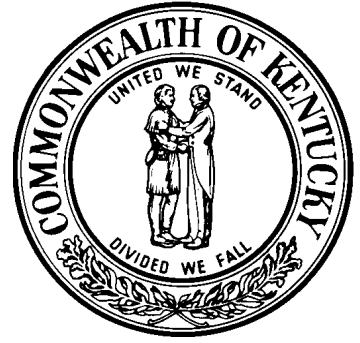


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 41, NUMBER 11
FRIDAY, MAY 1, 2015

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All subscriptions to the monthly *Administrative Register of Kentucky* expire with the June 1, 2015, issue (the final issue of Volume 41).

Volume 42 will begin with the July 1, 2015, issue and will include the 12 issues through June 1, 2015.

The 2015 *Kentucky Administrative Regulations Service* will contain all administrative regulations in effect as of June 15, 2015. The *Kentucky Administrative Regulations Service* will be published in two formats: on CD-Rom and in a 12 bound-volume set. They will be distributed as soon as possible after that date.

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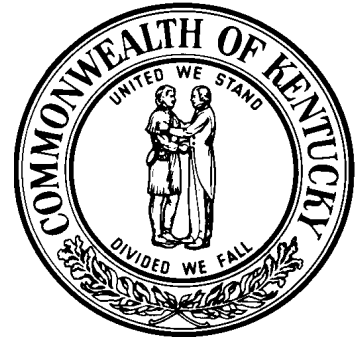
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ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 41, NUMBER 11
FRIDAY, MAY 1, 2015

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, April 15, 2015.

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MEETING NOTICE: EAARS

The **Education Assessment and Accountability Review Subcommittee** is **tentatively** scheduled to meet May 20, 2015, at 10:00 a.m. in room 129 Capitol Annex.

MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet May 5, 2015, at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages 2195-2196 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2014 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 41, Kentucky Register, page 318 (short form: 41 Ky.R. 318).

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

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

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VOLUME 41, NUMBER 11 – MAY 1, 2015

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, MAY 5, 2015, at 1:00 p.m., Room 149 Capitol Annex**

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services**

Authority

11 KAR 4:080. Student aid applications.

Grant Programs

11 KAR 5:145. CAP grant award determination procedure.

Kentucky Educational Excellence Scholarship Program

11 KAR 15:010. Definitions for 11 KAR Chapter 15.

11 KAR 15:090. Kentucky Educational Excellence Scholarship (KEES) program.

PERSONNEL CABINET

Classified

101 KAR 2:102. Classified leave general requirements.

101 KAR 2:105. Sick leave sharing procedures.

101 KAR 2:106. Annual leave sharing procedures.

101 KAR 2:160. Kentucky Employee Assistance Program (KEAP).

101 KAR 2:180. Employee performance evaluation system.

Unclassified

101 KAR 3:015. Leave requirements for unclassified service.

FINANCE AND ADMINISTRATION CABINET

**Department of Revenue
Office of Property Valuation**

Forms

103 KAR 3:030 & E. Property and Severance Forms manual. ("E" expires 7/15/2015) (Amended After Comments)

GENERAL GOVERNMENT CABINET

Board of Landscape Architects

Board

201 KAR 10:050. Fees.

Board of Chiropractic Examiners

Board

201 KAR 21:090 & E. Prechiropractic education requirements. ("E" expires 8/9/2015) (Deferred from April)

PUBLIC PROTECTION CABINET

**Office of Occupations and Professions
Board of Prosthetics, Orthotics, and Pedorthics**

Board

201 KAR 44:010. Fees.

TRANSPORTATION CABINET

**Department of Vehicle Regulation
Division of Motor Carriers**

Motor Carriers

601 KAR 1:112 & E. Transportation network company. ("E" expires 7/1/2015) (Amended After Comments)(Deferred from April)

**Kentucky Bicycle and Bikeways Commission
Office of the Secretary**

Motorcycle and Bicycle Safety

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

LABOR CABINET

Labor Standards; Wages and Hours

803 KAR 1:035. Hearing procedure. (Deferred from April)

PUBLIC PROTECTION CABINET

Department of Alcoholic Beverage Control

Retail Premises

804 KAR 7:011. Repeal of 804 KAR 7:010.

CABINET FOR HEALTH AND FAMILY SERVICES

**Office of Inspector General
Division of Health Care**

Long-term Care

900 KAR 2:050. Transfer and discharge rights.

Health Services and Facilities

902 KAR 20:091. Facilities specifications, operation and services; community mental health center.(Amended After Comments)

902 KAR 20:400. Limited services clinics. (Amended After Comments)

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**Department for Medicaid Services
Division of Community Alternatives**

Medicaid Services

907 KAR 1:044. Coverage provisions and requirements regarding community mental health center behavioral health services. (Amended After Comments)

Division of Policy and Operations

Medicaid Services

907 KAR 1:102. Advanced practice registered nurse services. (Amended After Comments)

Medicaid Services

907 KAR 1:350. Coverage and payments for organ transplants.

Commissioner's Office

Hospital Service Coverage and Reimbursement

907 KAR 10:826. Repeal of 907 KAR 10:825.

Division of Policy and Operations

Hospital Service Coverage and Reimbursement

907 KAR 10:830. Acute care inpatient hospital reimbursement.

Department for Behavioral Health, Developmental and Intellectual Disabilities

Division for Behavioral Health

Mental Health

908 KAR 2:220 & E. Adult peer support specialist. ("E" expires 8/8/2015) (Amended After Comments)

908 KAR 2:230 & E. Kentucky family peer support specialist. ("E" expires 8/8/2015) (Amended After Comments)

908 KAR 2:260 & E. Targeted case manager: eligibility and training. ("E" expires 8/8/2015) (Amended After Comments)

Department for Aging and Independent Living

Division of Quality Living

Aging Services

910 KAR 1:140. Appeal Procedures.

910 KAR 1:170. Older American Act supportive services for the elderly.

910 KAR 1:210. Kentucky Long-term Care Ombudsman Program.

910 KAR 1:220. General admission, programs for older individuals and persons with disabilities.

Department for Community Based Services

Division of Family Support

Supplemental Nutrition Assistance Program

921 KAR 3:045. Issuance procedures.

REMOVED FROM MAY AGENDA
COUNCIL ON POSTSECONDARY EDUCATION

Public Educational Institutions

13 KAR 2:045 & E. Determination of residency status for admission and tuition assessment purposes. ("E" Expires 8/29/15) (Comments Received)

JUSTICE AND PUBLIC SAFETY CABINET

Parole Board

Board

501 KAR 1:080. Parole Board policies and procedures. (Comments Received)

CABINET FOR HEALTH AND FAMILY SERVICES

**Department for Medicaid Services
Division of Community Alternatives**

Medicaid Services

907 KAR 1:045 & E. Reimbursement provisions and requirements regarding community mental health center services. ("E" expires 8/1/2015) (Not Amended After Comments) (Deferred from May)

Division of Policy and Operations

Medicaid Services

907 KAR 1:046. Community mental health center primary care services. (Amended After Comments) (Deferred from May)

Department for Community Based Services

Division of Family Support

Supplemental Nutrition Assistance Program

921 KAR 3:060. Administrative disqualification hearings and penalties. (Not Amended After Comments) (Deferred from April) (Withdrawn by agency, 4/15/15)

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.

VOLUME 41, NUMBER 11 – MAY 1, 2015
EMERGENCY ADMINISTRATIVE REGULATIONS

NONE

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARRS, April 14, 2015)

103 KAR 3:040. Income Tax Forms Manual.

RELATES TO: KRS 131.041, 131.051, 131.061, 131.081, 131.110, 131.130, 131.155, 131.170, 131.180, 131.190, 131.250, 131.340, 131.500, 131.510(1), (2)(a), 131.540, 141.010, 141.0101, 141.011, 141.016, 141.020, 141.0202, 141.030, 141.040, 141.0401, 141.0405, 141.041, 141.042, 141.044, 141.062, 141.065, 141.066, 141.067, 141.068, 141.069, 141.070, 141.071, 141.120, 141.121, 141.160, 141.170, 141.180, 141.200, 141.205, 141.206, 141.207, 141.208, 141.300, 141.310, 141.325, 141.330, 141.335, 141.347, 141.370, 141.381, 141.382, 141.383, 141.384, 141.385, 141.386, 141.390, 141.392, 141.395, 141.400, 141.401, 141.402, 141.403, 141.405, 141.407, 141.412, 141.415, 141.418, 141.420, 141.421, 141.423, 141.424, 141.4242, 141.4244, 141.428, 141.430, 141.433, 141.434, 141.436, 141.437, 141.438, 141.985, 141.990, 154.12-2086, 154.20-050, 154.22-060, 154.23-035, 154.24-110, 154.25-030, 154.26-090, 154.28-090, 154.32-010, 154.34-080, 154.48-025, 155.170, 164.0062

STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue forms used in the administration of income taxes by the Department of Revenue.

Section 1. Corporation Income Taxes. (1) Revenue Form 41A720, "Form 720, 2014[2013] Kentucky Corporation Income Tax and LLET Return", shall be used by a C corporation to determine its corporation income tax due in accordance with KRS 141.040 and its limited liability entity tax due in accordance with KRS 141.0401 for tax years beginning in 2014[2013].

(2) Revenue Form 41A720A, "Schedule A, Apportionment and Allocation (For corporations and pass-through entities taxable both within and without Kentucky)", shall be used by a corporation or a pass-through entity taxable both within and without Kentucky to apportion and allocate its net income to Kentucky in accordance with KRS 141.120 or 141.206.

(3) Revenue Form 41A720A-C, "Schedule A-C, Apportionment and Allocation - Continuation Sheet (For corporations and pass-through entities taxable both within and without Kentucky)", shall be used by a corporation or a pass-through entity taxable both within and without Kentucky that is also a partner or member of a pass-through entity to determine the sales, property and payroll amounts to be entered on Revenue Form 41A720A.

(4) Revenue Form 41A720A-N, "Schedule A-N, Apportionment Factor Schedule (For a Nexus Consolidated Tax Return)", shall be used by a corporation filing a mandatory nexus consolidated return to show the Kentucky and total sales, property, and payroll of the corporation and each subsidiary included in the apportionment factor.

(5) Revenue Form 41A720BIO, "Schedule BIO, Application and Credit Certificate of Income Tax/LLET Credit Biodiesel", shall be used by a taxpayer who is a biodiesel producer, biodiesel blender, or renewable diesel producer to report the biodiesel gallons produced or used by the blender and request approval from the Kentucky Department of Revenue of the tax credit amount allowed by KRS 141.423.

(6) Revenue Form 41A720CC, "Schedule CC, Coal Conversion Tax Credit", shall be used by a corporation to compute the tax credit allowed by KRS 141.041 for coal used or substituted

for other fuels in an eligible heating facility as described by KRS 141.041(1).

(7) Revenue Form 41A720-CCI, "Schedule CCI, Application and Credit Certificate of Clean Coal Incentive Tax Credit", shall be used by a taxpayer to request approval from the Department of Revenue of the tax credit amount allowed by KRS 141.428 for the purchase of Kentucky coal used by the taxpayer to generate electricity.

(8) Revenue Form 41A720CELL, "Schedule CELL, Application and Credit Certificate of Income Tax/LLET Credit Cellulosic Ethanol", shall be used by a taxpayer who is a producer of cellulosic ethanol to report the number of cellulosic ethanol gallons and request approval from the Department of Revenue of the tax credit amount allowed by KRS 141.4244.

(9) Revenue Form 41A720-CI, "Schedule CI, Application for Coal Incentive Tax Credit", shall be used by a taxpayer to request approval for the amount of tax credit allowed by KRS 141.0405 for the purchase of Kentucky coal used by the taxpayer to generate electricity.

(10) Revenue Form 41A720COGS, "Schedule COGS, Limited Liability Entity Tax Cost of Goods Sold", shall be used by a taxpayer to compute its Kentucky cost of goods sold and its total costs of goods sold from all sources for purposes of computing its limited liability entity tax based on gross profits.

(11) Revenue Form 41A720CR, "Schedule CR, Pro Forma Federal Consolidated Return Schedule", shall be used by a C corporation filing a consolidated return to show its federal pro forma consolidated return.

(12) Revenue Form 41A720CR-C, "Schedule CR-C, Pro Forma Federal Consolidated Return Schedule Continuation Sheet", shall be used by a C corporation filing a consolidated return as a continuation of Revenue Form 41A720CR.

(13) Revenue Form 41A720ES, "Form 720-ES Kentucky, 2015[2014] Corporation Income/Limited Liability Entity Tax Estimated Tax Voucher", shall be used by a corporation or a limited liability pass-through entity to submit payments of estimated corporation income or limited liability entity tax as required by KRS 141.044.

(14) Revenue Form 41A720ES(I), "Form 720ES, Instructions for Filing Corporation Income/Limited Liability Entity Tax Estimated Tax Voucher", shall be used by a corporation or a limited liability pass-through entity to submit payments of estimated corporation income or limited liability entity tax as required by KRS 141.044.

(15) Revenue Form 41A720ETH, "Schedule ETH, Application and Credit Certificate of Income Tax/LLET Credit Ethanol", shall be used by a taxpayer who is a producer of ethanol to report ethanol gallons produced and request approval from the Kentucky Department of Revenue of the tax credit amount allowed by KRS 141.4242.

(16)[(45)] Revenue Form 41A720FD, "Schedule FD, Food Donation Tax Credit", shall be used by a taxpayer who provides edible agricultural products to a nonprofit food program operating in Kentucky to determine the credit allowed by KRS 141.392.

(17)[(46)] Revenue Form 41A720HH, "Schedule HH, Kentucky Housing for Homeless Families Deduction", shall be used by an individual, corporation, fiduciary, or pass-through entity to determine the deduction allowed by KRS 141.0202.

(18)[(47)] Revenue Form 41A720(I), "Instructions, 2014[2013] Kentucky Corporation Income Tax and LLET Return", shall be used by a corporation to file its 2014[2013] Kentucky Corporation Income Tax and LLET Return and related schedules.

(19)[(48)] Revenue Form 41A720KCR, "Schedule KCR, Kentucky Consolidated Return Schedule", shall be used by a C corporation filing a nexus consolidated return showing the income or loss of each entity included in the nexus consolidated tax return.

(20)[(49)] Revenue Form 41A720KCR-C, "Schedule KCR-C, Kentucky Consolidated Return Schedule - Continuation Sheet",

shall be used by a C corporation filing a nexus consolidated return as a continuation of Revenue Form 41A720KCR.

(21)[(20)] Revenue Form 41A720KESA, "Schedule KESA, Tax Credit Computation Schedule (For a KESA Project of a Corporation)", shall be used by a corporation which has entered into an agreement for a Kentucky Environmental Stewardship Act (KESA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.430.

(22)[(21)] Revenue Form 41A720KESA-SP, "Schedule KESA-SP, Tax Credit Computation Schedule (For a KESA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has entered into an agreement for a Kentucky Environmental Stewardship Act (KESA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.430.

(23)[(22)] Revenue Form 41A720KESA-T, "Schedule KESA-T, Tracking Schedule for a KESA Project", shall be used by a company which has entered into an agreement for a Kentucky Environmental Stewardship Act (KESA) project to maintain a record of the approved costs and tax credits for the duration of the agreement.

(24)[(23)] Revenue Form 41A720LLET, "Schedule LLET, Limited Liability Entity Tax", shall be used by a corporation or a limited liability pass-through entity to determine the limited liability entity tax in accordance with KRS 141.0401.

(25)[(24)] Revenue Form 41A720LLET-C, "Schedule LLET-C, Limited Liability Entity Tax - Continuation Sheet", shall be used by a corporation or a limited liability pass-through entity that is a partner in a general partnership organized or formed as a general partnership after January 1, 2006, or a partner or member in a limited liability pass-through entity to determine its Kentucky gross receipts and Kentucky gross profits and its total gross receipts and total gross profits from all sources to be entered on Revenue Form 41A720LLET.

(26)[(25)] Revenue Form 41A720LLET(K), "Schedule LLET(K), Limited Liability Entity Tax (For a Limited Liability Pass-through Entity with Economic Development Project(s))", shall be used by limited liability pass-through entities with economic development projects to determine the limited liability entity tax in accordance with KRS 141.0401.

(27)[(26)] Revenue Form 41A720LLET(K)-C, "Schedule LLET(K)-C, Limited Liability Entity Tax - Continuation Sheet (For a Limited Liability Pass-through Entity with Economic Development Project(s))", shall be used by a limited liability pass-through entity with an economic development project that is a partner or member of a limited liability pass-through entity or a general partnership organized or formed as a general partnership after January 1, 2006, to determine its Kentucky gross receipts and Kentucky gross profits and its total gross receipts and total gross profits from all sources to be entered on Revenue Form 41A720LLET(K).

(28)[(27)] Revenue Form 41A720NOL, "Schedule NOL, Net Operating Loss Schedule", shall be used by a C corporation with a current year net operating loss or net operating loss carry-forward.

(29)[(28)] Revenue Form 41A720NOL-CF, "Schedule NOL-CF, Kentucky NOL Carry forward Schedule", shall be used by a corporation filing a nexus consolidated income tax return as provided by KRS 141.200, in addition to Revenue Form 41A720NOL, to show the Kentucky net operating loss (KNOL) carry forward balance for each new member of the affiliated group.

(30)[(29)] Revenue Form 41A720-O, "Schedule O-720, Other Additions and Subtractions To/From Federal Taxable Income", shall be used by a corporation filing Kentucky Form 720 to show other additions to and subtractions from federal taxable income on Revenue Form 41A720, Part III, Lines 9 and 16, respectively.

(31)[(30)] Revenue Form 41A720QR, "Schedule QR, Qualified Research Facility Tax Credit", shall be used by a corporation, individual, or pass-through entity to determine the credit against the income tax liability or LLET liability allowed by KRS 141.395.

(32)[(31)] Revenue Form 41A720RC, "Schedule RC, Application for Income Tax/LLET Credit for Recycling and/or Composting Equipment or Major Recycling Project", shall be used by a taxpayer to request approval for the amount of credit allowed

by KRS 141.390 for the purchase and installation of recycling or composting equipment or a major recycling project. This form shall also be used by an individual, corporation, fiduciary, or pass-through entity to substantiate and keep a record of the amount of approved credit claimed on their tax return.

(33)[(32)] Revenue Form 41A720RC-C, "Schedule RC-C, Schedule RC - Part I Continuation", shall be used by an individual, corporation, fiduciary, or pass-through entity, in addition to Revenue Form 41A720RC, to list additional equipment for which approval of the credit allowed by KRS 141.390 is being requested.

(34)[(33)] Revenue Form 41A720RC(I), "Instructions for Schedule RC", shall be used by taxpayers filing Revenue Form 41A720RC and Revenue Form 41A720RC-C requesting approval of a tax credit for recycling equipment, composting equipment, or a major recycling project.

(35)[(34)] Revenue Form 41A720RC-R, "Schedule RC-R, Recycling or Composting Equipment Tax Credit Recapture", shall be used by a taxpayer disposing of recycling or composting equipment before the end of the recapture period to compute the tax credit recaptured to be reported on the applicable tax return.

(36)[(35)] Revenue Form 41A720RPC, "Schedule RPC, Related Party Costs Disclosure Statement", shall be used by an entity to report related party expenses and the exceptions to the required disallowance of related party expenses as provided by KRS 141.205.

(37)[(36)] Revenue Form 41A720RR-E, "Schedule RR-E, Application and Credit Certificate of Income Tax/LLET Credit Railroad Expansion", shall be used by a corporation or pass-through entity requesting approval of a railroad expansion tax credit allowed by KRS 141.386.

(38)[(37)] Revenue Form 41A720RR-I, "Schedule RR-I, Railroad Maintenance and Improvement Tax Credit", shall be used by a corporation, individual, or pass-through entity to determine the credit against the income tax liability or LLET liability allowed by KRS 141.385.

(39)[(38)] Revenue Form 41A720S, "Form 720S, 2014[2013] Kentucky S Corporation Income Tax and LLET Return", shall be used by an S corporation to determine the amount of tax due in accordance with KRS 141.040 and 141.0401 and to report the shareholders' share of income, loss, credits, deductions, etc. for tax years beginning in 2014[2013].

(40)[(39)] Revenue Form 41A720S(I), "Instructions, 2014[2013] Kentucky S Corporation Income Tax and LLET Return", shall be used by an S corporation to file its 2014[2013] Kentucky S Corporation Income Tax and LLET Return and related schedules.

(41)[(40)] Revenue Form 41A720S(K), "Form 720S(K), Kentucky Schedule K for S Corporations With Economic Development Project(s)", shall be used for tax years beginning in 2014[2013] by S Corporations with economic development projects to determine the shareholders' shares of income, credit, deductions, etc., excluding the economic development projects.

(42)[(41)] Revenue Form 41A720S(K-1), "Kentucky Schedule K-1 (Form 720S), 2014[2013] Shareholder's Share of Income, Credits, Deductions, Etc.", shall be used by an S corporation to report to each of its shareholders the amount of income, credit, deduction, etc., that the shareholder shall report for Kentucky income tax purposes.

(43)[(42)] Revenue Form 41A720S-O, "Schedule O-PTE, Other Additions and Subtractions To/From Federal Ordinary Income", shall be used by a pass-through entity filing Revenue Form 41A720S, Form 41A765, or Form 42A765-GP to show other additions to and subtractions from federal ordinary income on Revenue Form 41A720S, Part III, Lines 5 and 9, or 41A765, or 42A765-GP Part I, Lines 5 and 9, respectively.

(44)[(43)] Revenue Form 41A720SL, "[Application for Six-Month] Extension of Time to File Kentucky Corporation/[LLET [or Limited Liability Pass-Through Entity] Return", shall be used by a corporation or a limited liability pass-through entity to request a six (6) month extension of time to file a tax return or an LLET return or to submit payment of unpaid tax.

(45)[(44)] Revenue Form 41A720TCS, "Schedule TCS, Tax Credit Summary Schedule", shall be used by a corporation or a limited liability pass-through entity to summarize tax credits

claimed and shall be attached to the tax return.

(46)[(45)] Revenue Form 41A720-VERB, "Schedule VERB, Voluntary Environmental Remediation Tax Credit", shall be used by an entity claiming a tax credit provided by KRS 141.418.

(47)[(46)] Revenue Form 41A720-S1, "Form 720X, Amended Kentucky Corporation Income Tax and Corporation License Tax Return", shall be used by a C corporation to amend its Kentucky Corporation Income and License Tax Return for tax periods beginning prior to January 1, 2005, as previously filed.

(48)[(47)] Revenue Form 41A720-S2, "Form 720-AMENDED, Amended Kentucky Corporation Income Tax Return", shall be used by a C corporation to amend its Kentucky Corporation Income Tax Return for periods beginning on or after January 1, 2005 and before January 1, 2007, as previously filed.

(49)[(48)] Revenue Form 41A720-S3, "Form 720-AMENDED (2007-2008), Amended Kentucky Corporation Income Tax and LLET Return", shall be used by a C corporation to amend its Kentucky Corporation Income Tax and LLET Return for periods beginning on or after January 1, 2007 and before January 1, 2009, as previously filed.

(50)[(49)] Revenue Form 41A720-S4, "Form 851-K, Kentucky Affiliations and Payment Schedule", shall be used by a corporation filing a consolidated Kentucky income tax return on Revenue Form 41A720 to identify the members of the affiliated group which are subject to the Kentucky corporation tax and to list the amount of tax paid.

(51)[(50)] Revenue Form 41A720-S6, "Form 2220-K, Underpayment and Late Payment of Estimated Income Tax and LLET", shall be used by a corporation or limited liability pass-through entity required by KRS 141.042 and 141.044 to file a declaration of estimated tax, to compute the underpayment penalty as provided by KRS 131.180(3) and 141.990, and to compute the interest on any late payment or underpayment of an estimated tax installment as provided by KRS 141.985.

(52)[(51)] Revenue Form 41A720-S7, "Form 5695-K, Kentucky Energy Efficiency Products Tax Credit", shall be used by a taxpayer to claim a tax credit for installation of energy efficiency products for residential and commercial property as provided by KRS 141.436.

(53)[(52)] Revenue Form 41A720-S8, "Form 8879(C) – K, Kentucky Corporation or Pass-Through Entity Tax Return Declaration for Electronic Filing", shall be used by a taxpayer as a declaration document and signature authorization for an electronic filing of a Kentucky income or LLET return.

(54)[(53)] Revenue Form 41A720-S9, "Form 8903-K, Kentucky Domestic Production Activities Deduction", shall be used by a corporation to determine the Domestic Production Activities Deduction amount for Kentucky corporation income tax purposes and shall be attached to the corporation income tax return.

(55)[(54)] Revenue Form 41A720-S11, "Form 8908-K, Kentucky ENERGY STAR (Homes and Manufactured Homes) Tax Credit", shall be used by a taxpayer to claim a tax credit for the construction of an ENERGY STAR home or the sale of an ENERGY STAR manufactured home as provided by KRS 141.437.

(56)[(55)] Revenue Form 41A720-S12, "Form 720-V, Electronic Filing Payment Voucher, 2014", shall be used by an entity filing an electronic Kentucky tax return to pay the balance of tax due.

(57)[(56)] Revenue Form 41A720-S16, "Schedule KREDA, Tax Credit Computation Schedule (For a KREDA Project of a Corporation)", shall be used by a corporation which has a Kentucky Rural Economic Development Act (KREDA) project to determine the credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.347.

(58)[(57)] Revenue Form 41A720-S17, "Schedule KREDA-T, Tracking Schedule for a KREDA Project", shall be used by a company which has a Kentucky Rural Economic Development Act (KREDA) project to maintain a record of the debt service payments, wage assessment fees and tax credits for the duration of the project.

(59)[(58)] Revenue Form 41A720-S18, "Schedule KREDA-SP, Tax Computation Schedule (For a KREDA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has

a Kentucky Rural Economic Development Act (KREDA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.347.

(60)[(59)] Revenue Form 41A720-S20, "Schedule KIDA, Tax Credit Computation Schedule (For a KIDA Project of a Corporation)", shall be used by a corporation which has a Kentucky Industrial Development Act (KIDA) project to determine the credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.400.

(61)[(60)] Revenue Form 41A720-S21, "Schedule KIDA-T, Tracking Schedule for a KIDA Project", shall be used by a company which has a Kentucky Industrial Development Act (KIDA) project to maintain a record of the debt service payments and tax credits for the duration of the project.

(62)[(61)] Revenue Form 41A720-S22, "Schedule KIDA-SP, Tax Computation Schedule (For a KIDA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Industrial Development Act (KIDA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.400.

(63)[(62)] Revenue Form 41A720-S24, "Schedule KIRA, Tax Credit Computation Schedule (For a KIRA Project of a Corporation)", shall be used by a corporation which has a Kentucky Industrial Revitalization Act (KIRA) project to determine the credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.403.

(64)[(63)] Revenue Form 41A720-S25, "Schedule KIRA-T, Tracking Schedule for a KIRA Project", shall be used by a company which has a Kentucky Industrial Revitalization Act (KIRA) project to maintain a record of the approved costs, wage assessment fees and tax credits for the duration of the project.

(65)[(64)] Revenue Form 41A720-S26, "Schedule KIRA-SP, Tax Computation Schedule (For a KIRA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Industrial Revitalization Act (KIRA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.403.

(66)[(65)] Revenue Form 41A720-S27, "Schedule KJDA, Tax Credit Computation Schedule (For a KJDA Project of a Corporation)", shall be used by a corporation which has a Kentucky Jobs Development Act (KJDA) project to determine the credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.407.

(67)[(66)] Revenue Form 41A720-S28, "Schedule KJDA-T, Tracking Schedule for a KJDA Project", shall be used by a company which has a Kentucky Jobs Development Act (KJDA) project to maintain a record of the approved costs, wage assessment fees, in-lieu-of credits and tax credits for the duration of the project.

(68)[(67)] Revenue Form 41A720-S29, "Schedule KJDA-SP, Tax Computation Schedule (For a KJDA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Jobs Development Act (KJDA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.407.

(69)[(68)] Revenue Form 41A720-S35, "Schedule KRA, Tax Credit Computation Schedule (For a KRA Project of a Corporation)", shall be used by a corporation which has entered into a Kentucky Reinvestment Act (KRA) project to compute the allowable KRA credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.415.

(70)[(69)] Revenue Form 41A720-S36, "Schedule KRA-SP, Tax Computation Schedule (For a KRA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Kentucky Reinvestment Act (KRA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.415.

(71)[(70)] Revenue Form 41A720-S37, "Schedule KRA-T, Tracking Schedule For a KRA Project", shall be used by a company which has entered into a Kentucky Reinvestment Act (KRA) project to maintain a record of the balance of approved

costs and tax credits for the duration of the agreement.

(72)[(74)] Revenue Form 41A720-S40, "Schedule KEOZ, Tax Credit Computation Schedule (For a KEOZ Project of a Corporation)", shall be used by a corporation which has entered into a Kentucky Economic Opportunity Zone (KEOZ) Act project to compute the allowable KEOZ credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.401.

(73)[(72)] Revenue Form 41A720-S41, "Schedule KEOZ-SP, Tax Computation Schedule (For a KEOZ Project of a Pass-Through Entity)", shall be used by a pass-through entity which has entered into a Kentucky Economic Opportunity Zone (KEOZ) Act project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.401.

(74)[(73)] Revenue Form 41A720-S42, "Schedule KEOZ-T, Tracking Schedule for a KEOZ Project", shall be used by a company which has entered into an agreement for a Kentucky Economic Opportunity Zone (KEOZ) Act project to maintain a record of the debt service payments, wage assessment fees, approved costs and tax credits for the duration of the agreement.

(75)[(74)] Revenue Form 41A720-S45, "Schedule KJRA, Tax Credit Computation Schedule (For a KJRA Project of a Corporation)", shall be used by a company which has entered into a Kentucky Jobs Retention Act (KJRA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.402.

(76)[(75)] Revenue Form 41A720-S46, "Schedule KJRA-T, Tracking Schedule For a KJRA Project", shall be used by a company which has entered into an agreement for a Kentucky Jobs Retention Act (KJRA) project to maintain a record of the debt service payments, wage assessment fees, approved costs, and tax credits for the duration of the agreement.

(77)[(76)] Revenue Form 41A720-S47, "Schedule KJRA-SP, Tax Computation Schedule (For a KJRA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has entered into a Kentucky Jobs Retention Act (KJRA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.402.

(78)[(77)] Revenue Form 41A720-S50, "Schedule IEIA, Tax Credit Computation Schedule (For an IEIA Project of a Corporation)", shall be used by a company which has entered into an Incentives for Energy Independence Act (IEIA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.421.

(79)[(78)] Revenue Form 41A720-S51, "Schedule IEIA-T, Tracking Schedule for an IEIA Project", shall be used by a company which has entered into an Incentives for Energy Independence Act (IEIA) project to maintain a record of the balance of approved costs, wage assessments, and tax credits for the duration of the agreement.

(80)[(79)] Revenue Form 41A720-S52, "Schedule IEIA-SP, Tax Computation Schedule (For an IEIA Project of a Pass-Through Entity)", shall be used by a pass-through entity which has entered into an Incentives for Energy Independence Act (IEIA) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.421.

(81)[(80)] Revenue Form 41A720-S53, "Schedule KBI, Tax Credit Computation Schedule (For a KBI Project of a Corporation)", shall be used by a corporation which has entered into a Kentucky Business Investment (KBI) project to compute the allowable KBI credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.415.

(82)[(81)] Revenue Form 41A720-S54, "Schedule KBI-SP, Tax Computation Schedule (For a KBI Project of a Pass-Through Entity)", shall be used by a pass-through entity which has entered into a Kentucky Business Investment (KBI) project to determine the credit allowed against its Kentucky income tax liability and limited liability entity tax liability in accordance with KRS 141.415.

(83)[(82)] Revenue Form 41A720-S55, "Schedule KBI-T,

Tracking Schedule for a KBI Project", shall be used by a company which has entered into an agreement for a Kentucky Business Investment (KBI) project to maintain a record of approved costs, wage assessments, and tax credits for the duration of the agreement.

(84)[(83)] Revenue Form 41A720-S56, "Schedule FON, Tax Credit Computation Schedule (For a FON project of a corporation)", shall be used by a corporation which has a Farm Operation Networking Project (FON) to compute the allowable FON credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.412.

(85)[(84)] Revenue Form 41A720-S57, "Schedule FON-SP, Tax Computation Schedule (For a FON project of a Pass-Through Entity)", shall be used by a pass-through entity which has a Farm Operation Networking Project (FON) to determine the allowable FON credit allowed against its Kentucky corporation income tax liability and limited liability entity tax liability in accordance with KRS 141.412.

(86)[(85)] Revenue Form 41A720-S58, "Schedule FON-T, Tracking Schedule for a FON Project", shall be used by a company with a Farm Operation Networking Project (FON) to maintain a record of approved costs and the tax credits taken for the duration of the project.

(87)[(86)] Revenue Form 41A720-S80, "Form 8874(K), Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit", shall be used by a qualified community development entity that seeks to have an equity investment or long-term debt security certified as a qualified equity investment eligible for the tax credit provided by KRS 141.434.

(88)[(87)] Revenue Form 41A720-S81, "Form 8874(K)-A, Notice of Kentucky New Markets Development Program Tax Credit and Certification", shall be used by a qualified community development entity to provide proof to the Kentucky Department of Revenue of the receipt of cash for a taxpayer's qualified equity investment.

(89)[(88)] Revenue Form 41A720-S82, "Form 8874(K)-B, Notice of Kentucky New Markets Development Program Tax Credit Recapture", shall be used by the Kentucky Department of Revenue to notify a taxpayer of a recapture of the New Markets Development Program tax credit.

(90) Revenue Form 41A720-S83, "Form 8874(K)-C, Kentucky New Markets Development Program Tax Credit Request for Refund of Performance Fee", shall be used by a qualified community development entity to request a refund of the performance fee provided by KRS 141.433/141.1433.

(91)[(89)] Revenue Form 41A725, "Form 725, 2014 [2013] Kentucky Single Member LLC Individually Owned Income and LLET Return", shall be used by a single member individually-owned LLC to file an LLET return in accordance with KRS 141.0401 for tax years beginning in 2014[2013].

(92)[(90)] Revenue Form 41A725CP, "Schedule CP, Form 725, 2014[2013] Kentucky Single Member LLC Individually Owned Composite Return Schedule", shall be used by a single member individual with multiple LLC entities to file LLET returns in accordance with KRS 141.0401 for tax years beginning in 2014[2013].

(93)[(94)] Revenue Form 41A725(I), "Instructions, 2014[2013] Kentucky Single Member LLC Individually Owned LLET Return", shall be used by a single member LLC individually owned to file its 2014[2013] Kentucky Income and LLET return and related schedules.

(94)[(92)] Revenue Form 41A750, "Form 750, 2014 Business Development Corporation Tax Return", shall be used by a corporation organized under the provisions of KRS Chapter 155 to determine its excise tax due in accordance with KRS 155.170 for tax years beginning in 2014[2013].

(95)[(93)] Revenue Form 41A765, "Form 765, 2014[2013] Kentucky Partnership Income and LLET Return", shall be used by an entity taxed as a partnership and organized as a LLC, LLP or LP to file its Kentucky income and LLET return in accordance with KRS 141.0401 and 141.206 for tax years beginning in 2014[2013].

(96)[(94)] Revenue Form 41A765(I), "Instructions, 2014[2013] Kentucky Partnership Income and LLET Return", shall be used by an entity taxed as a partnership and organized as a LLC, LLP, or LP to file its 2014[2013] Kentucky income and LLET return and related schedules.

(97)[(95)] Revenue Form 41A765(K), "Form 765(K), Kentucky Schedule K For Partnerships With Economic Development Project(s)", shall be used for tax years beginning in 2014[2013] by partnerships with economic development projects to determine the partners' share of income, credits, deductions, etc., excluding the economic development projects.

(98)[(96)] Revenue Form 41A765(K-1), "Kentucky Schedule K-1 (Form 765), 2014[2013] Partner's Share of Income, Credits, Deductions, Etc.", shall be used by an entity taxed as a partnership and organized as a LLC, LLP, or LP to report to its partners the amount of income, credit, deduction, etc., that the partners shall report for Kentucky income tax purposes.

(99)[(97)] Revenue Form 41A800, "Corporation and Pass-through Entity Nexus Questionnaire", shall be used by a corporation or pass-through entity to determine if the entity has nexus with the Commonwealth of Kentucky.

(100)[(98)] Revenue Form 41A802, "Corporation and Pass-through Entity Related Party Expense Questionnaire", shall be used by a corporation or pass-through entity to determine if the entity has nondeductible related party expense.

Section 2. Individual Income and Withholding Taxes. (1) Revenue Form 12A200, "Kentucky Individual Income Tax Installment Agreement Request", shall be submitted to the Department of Revenue to request an installment agreement to pay tax due.

(2) Revenue Form 40A100, "Application for Refund of Income Taxes", shall be presented to the Department of Revenue to request a refund of income taxes paid.

(3) Revenue Form 40A102, "2014[2013] Application for Extension of Time to File Individual, General Partnership and Fiduciary Income Tax Returns for Kentucky", shall be submitted to the Department of Revenue by individuals, partnerships, and fiduciaries prior to the date prescribed by law for filing a return to request a six (6) month extension to file the return or to remit payment of tax prior to the date the return is due.

(4) Revenue Form 40A103, "Application for New Home Tax Credit", shall be submitted to the Department of Revenue by individuals to request approval for the new home tax credit.

(5) Revenue Form 40A200, "Form PTE-WH, Kentucky Nonresident Income Tax Withholding on Distributive Share Income", shall be used by a pass-through entity doing business in Kentucky to report Kentucky income tax withheld on each nonresident individual or corporate partner doing business in Kentucky only through its ownership interest in the pass-through entity.

(6) Revenue Form 40A201, "Form 740NP-WH, Kentucky Nonresident Income Tax Withholding on Distributive Share Income Report and Composite Income Tax Return", shall be used by a pass-through entity doing business in Kentucky to report and pay Kentucky income tax withheld on nonresident individual and corporate partners.

(7) Revenue Form 40A201ES, "Form 740NP-WH-ES, Instructions – 2015[2014] Pass-Through Entity Nonresident Distributive Share Withholding Report and Composite Income Tax Return Voucher", shall be used by every pass-through entity for the declaration and payment of estimated tax if required.

(8) Revenue Form 40A201NP-WH-SL, "~~Form 740NP-WH-SL, Application for Six-Month~~ Extension of Time to File Kentucky Form 740NP-WH", shall be used by a pass-through entity to request a six (6)-month extension to file Form 740NP-WH, Kentucky Nonresident Income Tax Withholding on Distributive Share Income Report and Composite Income Tax Return.

(9) Revenue Form 40A201-WHP, "Form 740NP-WH-P, Underpayment and Late Payment of Estimated Tax on Form 740NP-WH", shall be used by a pass-through entity to compute the interest and penalty on the underpayment and late payment of estimated tax on Form 740NP-WH, Kentucky Nonresident Income

Tax Withholding on Distributive Share Income Report and Composite Income Tax Return.

(10) Revenue Form 40A727, "Kentucky Income Tax Forms Requisition", shall be used by a taxpayer or tax preparer to order individual income tax forms.

(11) Revenue Form 42A003, "Withholding Kentucky Income Tax Instructions for Employers", shall provide instructions for employers and shall contain forms used for withholding and reporting Kentucky income tax withholding.

(12) Revenue Form 42A003(T), "2015[2014] Withholding Tax Tables Computer Formula", shall be used by an employer for computing employees' Kentucky income tax withholding each pay period.

(13) Revenue Form 42A740, "Form 740, 2014[2013] Kentucky Individual Income Tax Return, Full-Year Residents Only", shall be completed by a resident individual to report taxable income and income tax liability for taxable years beginning in 2014[2013], and shall be due within three and one-half (3 1/2) months after the close of the taxable year.

(14) Revenue Form 42A740-A, "Schedule A, Form 740, 2014[2013] Kentucky Itemized Deductions", shall be completed by resident individuals and attached to Form 740 to support itemized deductions claimed for 2014[2013].

(15) Revenue Form 42A740ES, "Form 740-ES, 2015[2014] Individual Income Tax Kentucky Estimated Tax Voucher", shall be submitted to the Department of Revenue by individuals with payment of quarterly estimated tax.

(16) Revenue Form 42A740-EZ, "Form 740-EZ, 2014[2013] Kentucky Individual Income Tax Return for Single Persons with No Dependents", shall be completed by resident individuals to report taxable income and income tax liability for taxable years beginning in 2014[2013], and shall be due within three and one-half (3 1/2) months after the close of the taxable year.

(17) Revenue Form 42A740(I), "2014[2013] Kentucky Individual Income Tax Instructions for Forms 740 and 740-EZ", shall be used by resident individuals to file the 2014[2013] Kentucky Individual Tax Return and related schedules.

(18) Revenue Form 42A740-J, "Schedule J, Kentucky Farm Income Averaging", shall be completed by individuals and attached to Form 740 to compute tax liability by averaging farm income for taxable years beginning after December 31, 1997.

(19) Revenue Form 42A740-KNOL, "Schedule KNOL, 2014[2013] Kentucky Net Operating Loss Schedule", shall be used by individuals to compute and carry forward a net operating loss to subsequent years.

(20) Revenue Form 42A740-M, "Schedule M, 2014[2013] Kentucky Federal Adjusted Gross Income Modifications", shall be completed by individuals and attached to Form 740 in support of additions to and subtractions from federal adjusted gross income.

(21) Revenue Form 42A740-NP, "Form 740-NP, 2014[2013] Kentucky Individual Income Tax Return, Nonresident or Part-Year Resident", shall be completed by part-year or full-year nonresident individuals to report taxable income and income tax liability for taxable years beginning in 2014[2013], and shall be filed within three and one-half (3 1/2) months after the close of the taxable year.

(22) Revenue Form 42A740-NP-A, "Schedule A, Form 740-NP, 2014[2013] Kentucky Schedule A Itemized Deductions", shall be completed and attached to Form 42A740-NP by part-year or full-year nonresidents to support the itemized deductions claimed for 2014[2013].

(23) Revenue Form 42A740-NP-ME, "Schedule ME, Form 740-NP, 2014[2013] Moving Expense and Reimbursement", shall be completed and attached to Form 42A740-NP by part-year or full-year nonresidents to support moving expenses and reimbursement by employers for moving expenses for 2014[2013].

(24) Revenue Form 42A740-NP(I), "Instructions for 2014[2013] Kentucky Form 740-NP, Nonresident or Part-Year Resident Income Tax Return", shall be used by nonresident or part-year resident individuals to file the 2014[2013] Kentucky Form 740-NP and related schedules.

(25) Revenue Form 42A740-NP-R, "Form 740-NP-R, 2014[2013] Kentucky Income Tax Return Nonresident - Reciprocal

State", shall be completed by resident individuals of reciprocal states to request a refund of Kentucky withholding for 2014[2013].

(26) Revenue Form 42A740-NP(P), "2014[2013] Kentucky Income Tax Return^[L] Nonresident or Part-Year Resident", shall be a packet containing forms and instructions and shall be mailed to nonresident and part-year resident individuals for use in filing a Kentucky individual tax return for 2014[2013].

(27) Revenue Form 42A740(PKT), "2014[2013] Kentucky Individual Income Tax Forms", shall be a packet containing forms and instructions and shall be mailed to resident individuals for use in filing a Kentucky individual tax return for 2014[2013].

(28) Revenue Form 42A740-P, "Schedule P, 2014[2013] Kentucky Pension Income Exclusion", shall be completed by individuals and attached to Form 740 to compute the amount of allowable pension exclusion for 2014[2013].

(29) Revenue Form 42A740-UTC, "Schedule UTC, Unemployment Tax Credit", shall be completed by individuals and attached to Form 740 or Form 740-NP to provide the Office of Employment and Training Certificate Numbers in support of credit claimed for hiring an unemployed person.

(30) Revenue Form 42A740-X, "Form 740-X, Amended Kentucky Individual Income Tax Return", shall be completed by individuals and filed with the Department of Revenue to amend a previously filed tax return for 2005 or future years.

(31) Revenue Form 42A740-XP, "Form 740-XP, Amended Kentucky Individual Income Tax Return, 2004 and Prior Years", shall be completed by individuals and filed with the Department of Revenue to amend a previously filed tax return for 2004 or prior years.

(32) Revenue Form 42A740-S1, "Form 2210-K, 2014[2013] Underpayment of Estimated Tax by Individuals", shall be filed by individuals to request a waiver of estimated tax penalty or to compute and self assess an estimated tax penalty for a tax year beginning in 2014[2013].

(33) Revenue Form 42A740-S4, "2015[2014] Instructions for Filing Estimated Tax Vouchers", shall be used to compute the amount of estimated tax due for 2015[2014].

(34) Revenue Form 42A740-S18, "Form 8582-K, 2014[2013] Kentucky Passive Activity Loss Limitations", shall be completed by an individual taxpayer and attached to the individual tax return in support of an allowable passive loss deduction and carryover of a passive activity loss.

(35) Revenue Form 42A740-S21, "Form 4972-K, 2014[2013] Kentucky Tax on Lump-Sum Distributions", shall be completed by an individual taxpayer to compute tax liability on a lump sum distribution and attached to the taxpayer's individual income tax return.

(36) Revenue Form 42A740-S22, "Form 8879-K, 2014[2013] Kentucky Individual Income Tax Declaration for Electronic Filing", shall be completed, signed by the individual taxpayer or taxpayers and maintained by the preparer or taxpayer in support of an electronically filed return.

(37) Revenue Form 42A740-S23, "Form 740-V, 2014[2013] Kentucky Electronic Payment Voucher", shall be used by the individual taxpayer or taxpayers for the payment of additional tax due on an electronically filed return and submitted to the Department of Revenue.

(38) Revenue Form 42A740-S24, "Form 8863-K, 2014[2013] Kentucky Education Tuition Tax Credit", shall be used by an individual taxpayer or taxpayers to claim a tuition tax credit on the taxpayer's individual Kentucky income tax return.

(39) Revenue Form 42A740-S25, "Form 8948-K, Preparer Explanation For Not Filing Electronically", shall be used by the preparer to indicate the reason the return is not being filed electronically.

(40) Revenue Form 42A741, "Form 741, 2014[2013] Kentucky Fiduciary Income Tax Return", shall be used by a fiduciary of an estate or trust to report income and tax liability of an estate or trust and be filed with the Department of Revenue within three (3) months and fifteen (15) days after the close of the taxable year.

(41) Revenue Form 42A741-D, "Schedule D, Form 741, 2014[2013] Kentucky Capital Gains and Losses", shall be completed and attached to Form 741 by a fiduciary to report

income from capital gains and losses.

(42) Revenue Form 42A741(I), "Instructions - Form 741, Kentucky Fiduciary Income Tax Return", shall be the instruction guide provided by the Department of Revenue for completing the 2014[2013] Form 741.

(43) Revenue Form 42A741(K-1), "Schedule K-1, Form 741, 2014[2013] Kentucky Beneficiary's Share of Income, Deductions, Credits, etc.", shall be filed by the fiduciary with Form 741 to report each beneficiary's share of income, deductions, and credits.

(44) Revenue Form 42A765-GP, "Form 765-GP, 2014[2013] Kentucky General Partnership Income Return", shall be completed and filed with the Department of Revenue within three (3) months and fifteen (15) days after the close of the taxable year by a general partnership to report income, deductions, and credits of a general partnership for 2014[2013].

(45) Revenue Form 42A765-GP(I), "Instructions, 2014[2013] Kentucky General Partnership Income Return", shall be provided to assist the general partnership in completing a general partnership income return.

(46) Revenue Form 765-GP(K-1), "Kentucky Schedule K-1, Form 765-GP, 2014[2013] Partner's Share of Income, Credits, Deductions, etc.", shall be filed by the general partnership with Form 765-GP to report each general partner's share of income, deductions, and credits.

(47) Revenue Form 42A765-GP(K), "Form 765-GP(K), Kentucky Schedule K for General Partnerships with Economic Development Project(s)", shall be used by a general partnership which has one (1) or more economic development projects to determine the total general partners' share of income, credits, deductions, etc., excluding the amount of each item of income, credit, deduction, etc., attributable to the projects.

(48) Revenue Form 42A801, "Form K-1, Kentucky Employer's Income Tax Withheld Worksheet", shall be used by employers to report wages and taxes withheld for the filing period.

(49) Revenue Form 42A801(D), "Form K-1, Amended Employer's Return of Income Tax Withheld", shall be used by employers to correct wages and taxes reported for the filing period.

(50) Revenue Form 42A801-E, "Form K-1E, Kentucky Employer's Income Tax Withheld Worksheet - Electronic Funds Transfer", shall be used by employers who remit taxes withheld electronically to report wages and tax withheld for the filing period.

(51) "Form W-2, 2014[2013] Wage and Tax Statement", shall be used by an employer to report each of its employees' wages and Kentucky tax withheld for the calendar year 2014[2013].

(52) Revenue Form 42A803, "Form K-3, Kentucky Employer's Income Tax Withheld Worksheet", shall be used by employers to report wages and tax withheld for the filing period and annually reconcile wages and taxes reported.

(53) Revenue Form 42A803(D), "Form K-3, Amended Employer's Return of Income Tax Withheld", shall be used by employers to amend wages and taxes reported for the filing period and the annual reconciled wages and taxes reported.

(54) Revenue Form 42A803-E, "Form K-3E, Kentucky Employer's Income Tax Withheld Worksheet - Electronic Funds Transfer", shall be used by employers to report wages and tax withheld for the filing period and to annually reconcile wages and taxes reported.

(55) Revenue Form 42A804, "Form K-4, Kentucky Department of Revenue Employee's Withholding Exemption Certificate", shall be used by an employee to inform the employer of the number of exemptions claimed in order to determine the amount of Kentucky tax to withhold from wages each pay period.

(56) Revenue Form 42A804-A, "Form K-4A, Kentucky Department of Revenue Withholding Exemptions for Excess Itemized Deductions", shall be used by an employee to determine additional withholding exemptions.

(57) Revenue Form 42A804-E, "Form K-4E, Special Withholding Exemption Certificate", shall be used by employees to inform employers of special tax exempt status.

(58) Revenue Form 42A804-M, "Form K-4M, Nonresident Military Spouse Withholding Tax Exemption Certificate", shall be used by employees to inform employers of special tax exempt status as a nonresident military spouse.

(59) Revenue Form 42A806, "Transmitter Report for Filing Kentucky W2/K2, 1099 and W2-G Statements", shall be used by employers annually to submit Form W-2 Wage and Tax Statements.

(60) Revenue Form 42A807, "Form K-4FC, Fort Campbell Exemption Certificate", shall be completed by nonresident employees working at Fort Campbell, Kentucky, to inform employers of special tax exempt status.

(61) Revenue Form 42A808, "Authorization to Submit Employees Annual Wage and Tax Statements Via Kentucky Department of Revenue Web Site", shall be used by employers to request authorization to annually submit wage and tax statements via the Kentucky Department of Revenue Web site.

(62) Revenue Form 42A809, "Certificate of Nonresidence", shall be used by employees to inform employers of special tax exempt status as a result of being a resident of a reciprocal state.

(63) Revenue Form 42A810, "Nonresident's Affidavit - Kentucky Individual Income Tax", shall be used by individuals to submit a sworn statement concerning residency status.

(64) Revenue Form 42A811, "KREDA Annual Report", shall be completed by employers to report KREDA employee wage assessment fee information to the Department of Revenue.

(65) Revenue Form 42A812, "KIDA Annual Report", shall be completed by employers to report KIDA employee wage assessment fee information to the Department of Revenue.

(66) Revenue Form 42A813, "KJDA Annual Report", shall be completed by employers to report KJDA employee wage assessment fee information to the Department of Revenue.

(67) Revenue Form 42A814, "KIRA Annual Report", shall be completed by employers to report KIRA employee wage assessment fee information to the Department of Revenue.

(68) Revenue Form 42A815, "Withholding Tax Refund Application", shall be completed by employers to request a refund of withholding tax paid.

(69) Revenue Form 42A816, "KEOZ Annual Report", shall be completed by employers to report KEOZ employee wage assessment fee information to the Department of Revenue.

(70) Revenue Form 42A817, "KJRA Annual Report", shall be completed by employers to report KJRA employee wage assessment fee information to the Department of Revenue.

(71) Revenue Form 42A818, "KBI Annual Report", shall be completed by employers to report KBI employee wage assessment fee information to the Department of Revenue.

(72) Revenue Form 42D003, 2014[2013] Kentucky Wage and Tax Statements (W-2/K-2) Order Form", shall be used by employers to order wage and tax statements.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Corporation income taxes - referenced material:

1. Revenue Form 41A720, "Form 720, 2014[2013] Kentucky Corporation Income Tax and LLET Return", 2014[2013];

2. Revenue Form 41A720A, "Schedule A, Apportionment and Allocation (For corporations and pass-through entities taxable both within and without Kentucky)", October 2014[2013];

3. Revenue Form 41A720A-C, "Schedule A-C, Apportionment and Allocation - Continuation Sheet (For corporations and pass-through entities taxable both within and without Kentucky)", October 2014[2013];

4. Revenue Form 41A720A-N, "Schedule A-N, Apportionment Factor Schedule (For a Nexus Consolidated Tax Return)", October 2014[2013];

5. Revenue Form 41A720BIO, "Schedule BIO, Application and Credit Certificate of Income Tax/LLET Credit Biodiesel", October 2014[2013];

6. Revenue Form 41A720CC, "Schedule CC, Coal Conversion Tax Credit", October 2014[2013];

7. Revenue Form 41A720-CCI, "Schedule CCI, Application and Credit Certificate of Clean Coal Incentive Tax Credit", October 2014[2013];

8. Revenue Form 41A720CELL, "Schedule CELL, Application and Credit Certificate of Income Tax/LLET Credit Cellulosic Ethanol", October 2014[2013];

9. Revenue Form 41A720-CI, "Schedule CI, Application for Coal Incentive Tax Credit", October 2014[2013];

10. Revenue Form 41A720COGS, "Schedule COGS, Limited Liability Entity Tax Cost of Goods Sold", October 2014[2013];

11. Revenue Form 41A720CR, "Schedule CR, Pro Forma Federal Consolidated Return Schedule", October 2014[2013];

12. Revenue Form 41A720CR-C, "Schedule CR-C, Pro Forma Federal Consolidated Return Schedule Continuation Sheet", October 2014[2013];

13. Revenue Form 41A720ES, "Form 720-ES Kentucky, 2015[2014] Corporation Income/Limited Liability Entity Tax Estimated Tax Voucher", June 2014[2013];

14. Revenue Form 41A720ES(I), "Form 720ES, Instructions for Filing Corporation Income/Limited Liability Entity Tax Estimated Tax Voucher", June 2014;

15. Revenue Form 41A720ETH, "Schedule ETH, Application and Credit Certificate of Income Tax/LLET Credit Ethanol", October 2014[2013];

16.[145.] Revenue Form 41A720FD, "Schedule FD, Food Donation Tax Credit", June 2014[2013];

17.[146.] Revenue Form 41A720HH, "Schedule HH, Kentucky Housing for Homeless Families Deduction", October 2014[2013];

18.[147.] Revenue Form 41A720(I), "Instructions, 2014[2013] Kentucky Corporation Income Tax and LLET Return", November 2014[2013];

19.[148.] Revenue Form 41A720KCR, "Schedule KCR, Kentucky Consolidated Return Schedule", October 2014[2013];

20.[149.] Revenue Form 41A720KCR-C, "Schedule KCR-C, Kentucky Consolidated Return Schedule - Continuation Sheet", October 2014[2013];

21.[20.] Revenue Form 41A720KESA, "Schedule KESA, Tax Credit Computation Schedule (For a KESA Project of a Corporation)", October 2014[2013];

22.[24.] Revenue Form 41A720KESA-SP, "Schedule KESA-SP, Tax Credit Computation Schedule (For a KESA Project of a Pass-Through Entity)", October 2014[2013];

23.[22.] Revenue Form 41A720KESA-T, "Schedule KESA-T, Tracking Schedule for a KESA Project", October 2014[2013];

24.[23.] Revenue Form 41A720LLET, "Schedule LLET, Limited Liability Entity Tax", October 2014[2013];

25.[24.] Revenue Form 41A720LLET-C, "Schedule LLET-C, Limited Liability Entity Tax - Continuation Sheet", October 2014[2013];

26.[25.] Revenue Form 41A720LLET(K), "Schedule LLET(K), Limited Liability Entity Tax (For a Limited Liability Pass-through Entity with Economic Development Project(s))", October 2014[2013];

27.[26.] Revenue Form 41A720LLET(K)-C, "Schedule LLET(K)-C, Limited Liability Entity Tax - Continuation Sheet (For a Limited Liability Pass-through Entity with Economic Development Project(s))", October 2014[2013];

28.[27.] Revenue Form 41A720NOL, "Schedule NOL, Net Operating Loss Schedule", October 2014[2013];

29.[28.] Revenue Form 41A720NOL-CF, "Schedule NOL-CF, Kentucky NOL Carry forward Schedule", October 2014[2013];

30.[29.] Revenue Form 41A720-O, "Schedule O-720, Other Additions and Subtractions To/From Federal Taxable Income", December 2014[2013];

31.[30.] Revenue Form 41A720QR, "Schedule QR, Qualified Research Facility Tax Credit", October 2014[2013];

32.[34.] Revenue Form 41A720RC, "Schedule RC, Application for Income Tax/LLET Credit for Recycling and/or Composting Equipment or Major Recycling Project", October 2014[2013];

33.[32.] Revenue Form 41A720RC-C, "Schedule RC-C, Schedule RC - Part I Continuation", October 2014[2013];

34.[33.] Revenue Form 41A720RC(I), "Instructions For Schedule RC", October 2014[2013];

35.[34.] Revenue Form 41A720RC-R, "Schedule RC-R, Recycling or Composting Equipment Tax Credit Recapture", October 2014[2013];

36.[35.] Revenue Form 41A720RPC, "Schedule RPC, Related Party Costs Disclosure Statement," June 2014[2013];

37.[36.] Revenue Form 41A720RR-E, "Schedule RR-E,

Application and Credit Certificate of Income Tax/LLET Credit Railroad Expansion", October 2014[2013];

38.[37-] Revenue Form 41A720RR-I, "Schedule RR-I, Railroad Maintenance and Improvement Tax Credit", October 2014[2013];

39.[38-] Revenue Form 41A720S, "Form 720S, 2014[2013] Kentucky S Corporation Income Tax and LLET Return", 2014[2013];

40.[39-] Revenue Form 41A720S(I), "Instructions, 2014[2013] Kentucky S Corporation Income Tax and LLET Return", November 2014[2013];

41.[40-] Revenue Form 41A720S(K), "Form 720S(K), Kentucky Schedule K for S Corporations With Economic Development Project(s)", October 2014[2013];

42.[41-] Revenue Form 41A720S(K-1), "Kentucky Schedule K-1 (Form 720S), 2014[2013] Shareholder's Share of Income, Credits, Deductions, Etc.", 2014[2013];

43.[42-] Revenue Form 41A720S-O, "Schedule O-PTE, Other Additions and Subtractions To/From Federal Ordinary Income", November 2014[2013];

44.[43-] Revenue Form 41A720SL, "[Application for Six-Month]Extension of Time to File Kentucky Corporation/~~LLET~~[or Limited Liability Pass-Through Entity] Return", June 2014[2013];

45.[44-] Revenue Form 41A720TCS, "Schedule TCS, Tax Credit Summary Schedule", October 2014[2013];

46.[45-] Revenue Form 41A720VERB, "Schedule VERB, Voluntary Environmental Remediation Tax Credit", October 2014[2013];

47.[46-] Revenue Form 41A720-S1, "Form 720X, Amended Kentucky Corporation Income Tax and Corporation License Tax Return", October 2011;

48.[47-] Revenue Form 41A720-S2, "Form 720-AMENDED, Amended Kentucky Corporation Income Tax Return", October 2011;

49.[48-] Revenue Form 41A720-S3, "Form 720-AMENDED (2007-2008), Amended Kentucky Corporation Income Tax and LLET Return", October 2011;

50.[49-] Revenue Form 41A720-S4, "Form 851-K, Kentucky Affiliations and Payment Schedule", October 2014[2013];

51.[50-] Revenue Form 41A720-S6, "Form 2220-K, Underpayment and Late Payment of Estimated Income Tax and LLET", October 2014[2013];

52.[51-] Revenue Form 41A720-S7, "Form 5695-K, Kentucky Energy Efficiency Products Tax Credit", October 2014[2013];

53.[52-] Revenue Form 41A720-S8, "Form 8879(C) – K, Kentucky Corporation or Pass-Through Entity Tax Return Declaration for Electronic Filing", October 2014[2013];

54.[53-] Revenue Form 41A720-S9, "Schedule 8903-K, Kentucky Domestic Production Activities Deduction", October 2014[2013];

55.[54-] Revenue Form 41A720-S11, "Form 8908-K, Kentucky ENERGY STAR (Homes and Manufactured Homes) Tax Credit", October 2014[2013];

56.[55-] Revenue Form 41A720-S12, "720-V, Electronic Filing Payment Voucher, 2014", October 2014[2013];

57.[56-] Revenue Form 41A720-S16, "Schedule KREDA, Tax Credit Computation Schedule (For a KREDA Project of a Corporation)", October 2014[2013];

58.[57-] Revenue Form 41A720-S17, "Schedule KREDA-T, Tracking Schedule for a KREDA Project", October 2014[2013];

59.[58-] Revenue Form 41A720-S18, "Schedule KREDA-SP, Tax Computation Schedule (For a KREDA Project of a Pass-Through Entity)", October 2014[2013];

60.[59-] Revenue Form 41A720-S20, "Schedule KIDA, Tax Credit Computation Schedule (For a KIDA Project of a Corporation)", October 2014[2013];

61.[60-] Revenue Form 41A720-S21, "Schedule KIDA-T, Tracking Schedule for a KIDA Project" October 2014[2013];

62.[61-] Revenue Form 41A720-S22, "Schedule KIDA-SP, Tax Computation Schedule (For a KIDA Project of a Pass-Through Entity)", October 2014[2013];

63.[62-] Revenue Form 41A720-S24, "Schedule KIRA, Tax Credit Computation Schedule (For a KIRA Project of a Corporation)", October 2014[2013];

64.[63-] Revenue Form 41A720-S25, "Schedule KIRA-T, Tracking Schedule for a KIRA Project", October 2014[2013];

65.[64-] Revenue Form 41A720-S26, "Schedule KIRA-SP, Tax Computation Schedule (For a KIRA Project of a Pass-Through Entity)", October 2014[2013];

66.[65-] Revenue Form 41A720-S27, "Schedule KJDA, Tax Credit Computation Schedule (For a KJDA Project of a Corporation)", October 2014[2013];

67.[66-] Revenue Form 41A720-S28, "Schedule KJDA-T, Tracking Schedule for a KJDA Project", October 2014[2013];

68.[67-] Revenue Form 41A720-S29, "Schedule KJDA-SP, Tax Computation Schedule (For a KJDA Project of a Pass-Through Entity)", October 2014[2013];

69.[68-] Revenue Form 41A720-S35, "Schedule KRA, Tax Credit Computation Schedule (For a KRA Project of a Corporation)", October 2014[2013];

70.[69-] Revenue Form 41A720-S36, "Schedule KRA-SP, Tax Computation Schedule (For a KRA Project of a Pass-Through Entity)", October 2014[2013];

71.[70-] Revenue Form 41A720-S37, "Schedule KRA-T, Tracking Schedule for a KRA Project", October 2014[2013];

72.[71-] Revenue Form 41A720-S40, "Schedule KEOZ, Tax Credit Computation Schedule (For a KEOZ Project of a Corporation)", October 2014[2013];

73.[72-] Revenue Form 41A720-S41, "Schedule KEOZ-SP, Tax Computation Schedule (For a KEOZ Project of a Pass-Through Entity)", October 2014[2013];

74.[73-] Revenue Form 41A720-S42, "Schedule KEOZ-T, Tracking Schedule for a KEOZ Project", October 2014[2013];

75.[74-] Revenue Form 41A720-S45, "Schedule KJRA, Tax Credit Computation Schedule (For a KJRA Project of a Corporation)", October 2014[2013];

76.[75-] Revenue Form 41A720-S46, "Schedule KJRA-T, Tracking Schedule for a KJRA Project", October 2014[2013];

77.[76-] Revenue Form 41A720-S47, "Schedule KJRA-SP, Tax Computation Schedule (For a KJRA Project of a Pass-Through Entity)", October 2014[2013];

78.[77-] Revenue Form 41A720-S50, "Schedule IEIA, Tax Credit Computation Schedule (For an IEIA Project of a Corporation)", October 2014[2013];

79.[78-] Revenue Form 41A720-S51, "Schedule IEIA-T, Tracking Schedule for an IEIA Project", October 2014[2013];

80.[79-] Revenue Form 41A720-S52, "Schedule IEIA-SP, Tax Computation Schedule (For an IEIA Project of a Pass-Through Entity)", October 2014[2013];

81.[80-] Revenue Form 41A720-S53, "Schedule KBI, Tax Credit Computation Schedule (For a KBI Project of a Corporation)", October 2014[2013];

82.[81-] Revenue Form 41A720-S54, "Schedule KBI-SP, Tax Computation Schedule (For a KBI Project of a Pass-Through Entity)", October 2014[2013];

83.[82-] Revenue Form 41A720-S55, "Schedule KBI-T, Tracking Schedule for a KBI Project", October 2014[2013];

84.[83-] Revenue Form 41A720-S56, "Schedule FON, Tax Credit Computation Schedule (For a FON project of a corporation)", October 2014[2013];

85.[84-] Revenue Form 41A720-S57, "Schedule FON-SP, Tax Computation Schedule (For a FON project of a Pass-Through Entity)", October 2014[2013];

86.[85-] Revenue Form 41A720-S58, "Schedule FON-T, Tracking Schedule for a FON Project", October 2014[2013];

87.[86-] Revenue Form 41A720-S80, "Form 8874(K), Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit", May 2014[June 2014];

88.[87-] Revenue Form 41A720-S81, "Form 8874(K)-A, Notice of Kentucky New Markets Development Program Tax Credit and Certification", May 2014[June 2013];

89.[88-] Revenue Form 41A720-S82, "Form 8874(K)-B, Notice of Kentucky New Markets Development Program Tax Credit Recapture", May 2014[June 2013];

90. Revenue Form 41A720-S83, "Form 8874(K)-C, Kentucky New Markets Development Program Tax Credit Request for

Refund of Performance Fee", May 2014;

91.[89-] Revenue Form 41A725, "Form 725, 2014[2013] Kentucky Single Member LLC Individually Owned Income and LLET Return", 2014[2013];

92.[90-] Revenue Form 41A725CP, "Schedule CP, Form 725, 2014[2013] Kentucky Single Member LLC Individually Owned Composite Return Schedule", 2014[2013];

93.[94-] Revenue Form 41A725(I), "Instructions, 2014[2013] Kentucky Single Member LLC Individually Owned LLET Return", October 2014 [2013];

94.[92-] Revenue Form 41A750, "Form 750, 2014 Business Development Corporation Tax Return", September 2014[2013];

95.[93-] Revenue Form 41A765, "Form 765, 2014[2013] Kentucky Partnership Income and LLET Return", 2014[2013];

96.[94-] Revenue Form 41A765(I), "Instructions, 2014[2013] Kentucky Partnership Income and LLET Return", November 2014[2013];

97.[95-] Revenue Form 41A765(K), "Form 765(K), Kentucky Schedule K For Partnerships With Economic Development Project(s)", October 2014[2013];

98.[96-] Revenue Form 41A765(K-1), "Kentucky Schedule K-1 (Form 765), 2014[2013] Partner's Share of Income, Credits, Deductions, Etc.", 2014[2013];

99.[97-] Revenue Form 41A800, "Corporation and Pass-through Entity Nexus Questionnaire", December 2014[2013]; and

100.[98-] Revenue Form 41A802, "Corporation and Pass-through Entity Related Party Expense Questionnaire", June 2014[2013]; and

(b) Individual income and withholding taxes - referenced material:

1. Revenue Form 12A200, "Kentucky Individual Income Tax Installment Agreement Request", November 2014[2013];

2. Revenue Form 40A100, "Application for Refund of Income Taxes", October 2014[2013];

3. Revenue Form 40A102, "2014[2013] Application for Extension of Time to File Individual, General Partnership and Fiduciary Income Tax Returns for Kentucky", September[November] 2014[2013];

4. Revenue Form 40A103, "Application for New Home Tax Credit", June 2010;

5. Revenue Form 40A200, "Form PTE-WH, Kentucky Nonresident Income Tax Withholding on Distributive Share Income", October 2014[2013];

6. Revenue Form 40A201, "Form 740NP-WH, Kentucky Nonresident Income Tax Withholding on Distributive Share Income Report and Composite Income Tax Return", October 2014[2013];

7. Revenue Form 40A201ES, "Form 740NP-WH-ES, Instructions – 2015[2014] Pass-Through Entity Nonresident Distributive Share Withholding Report and Composite Income Tax Return Voucher", October 2014[2013];

8. Revenue Form 40A201NP-WH-SL, "[~~Form 740NP-WH-SL~~, Application for Six Month Extension of Time to File Kentucky Form 740NP-WH", October 2014[2013];

9. Revenue Form 40A201-WHP, "Form 740NP-WH-P, Underpayment and Late Payment of Estimated Tax on Form 740NP-WH", October 2014[2013];

10. Revenue Form 40A727, "Kentucky Income Tax Forms Requisition", October 2014[2013];

11. Revenue Form 42A003, "Withholding Kentucky Income Tax Instructions for Employers", August 2011;

12. Revenue Form 42A003(T), "2015[2014] Withholding Tax Tables Computer Formula", October[September] 2014[2013];

13. Revenue Form 42A740, "Form 740, 2014[2013] Kentucky Individual Income Tax Return, Full-Year Residents Only", 2014[2013];

14. Revenue Form 42A740-A, "Schedule A, Form 740, 2014 [2013] Kentucky Itemized Deductions", 2014[2013];

15. Revenue Form 42A740ES, "Form 740-ES, 2015[2014] Individual Income Tax Kentucky Estimated Tax Voucher", September 2014[2013];

16. Revenue Form 42A740-EZ, "Form 740-EZ, 2014[2013] Kentucky Individual Income Tax Return for Single Persons with No Dependents", 2014[2013];

17. Revenue Form 42A740(I), "2014[2013] Kentucky Individual Income Tax Instructions for Forms 740 and 740-EZ", October 2014[2013];

18. Revenue Form 42A740-J, "Schedule J, Kentucky Farm Income Averaging", October 2014[2013];

19. Revenue Form 42A740-KNOL, "Schedule KNOL, 2014[2013] Kentucky Net Operating Loss Schedule", 2014[2013];

20. Revenue Form 42A740-M, "Schedule M, 2014[2013] Kentucky Federal Adjusted Gross Income Modifications", 2014[2013];

21. Revenue Form 42A740-NP, "Form 740-NP, 2014[2013] Kentucky Individual Income Tax Return, Nonresident or Part-Year Resident", 2014[2013];

22. Revenue Form 42A740-NP-A, "Schedule A, Form 740-NP, 2014[2013] Kentucky Schedule A Itemized Deductions", 2014[2013];

23. Revenue Form 42A740-NP-ME, "Schedule ME, Form 740-NP, 2014[2013] Moving Expense and Reimbursement", 2014[2013];

24. Revenue Form 42A740-NP(I), "Instructions for 2014[2013] Kentucky Form 740-NP, Nonresident or Part-Year Resident Income Tax Return", October 2014[2013];

25. Revenue Form 42A740-NP-R, "Form 740-NP-R, 2014[2013] Kentucky Income Tax Return Nonresident - Reciprocal State", 2014[2013];

26. Revenue Form 42A740-NP(P), "2014[2013] Kentucky Income Tax Return Nonresident or Part-Year Resident", October 2014[2013];

27. Revenue Form 42A740(PKT), "2014[2013] Kentucky Individual Income Tax Forms", October 2014[2013];

28. Revenue Form 42A740-P, "Schedule P, 2014[2013] Kentucky Pension Income Exclusion", 2014[2013];

29. Revenue Form 42A740-UTC, "Schedule UTC, Unemployment Tax Credit", October 2014[2013];

30. Revenue Form 42A740-X, "Form 740-X, Amended Kentucky Individual Income Tax Return", November 2014[2013];

31. Revenue Form 42A740-XP, "Form 740-XP, Amended Kentucky Individual Income Tax Return, 2004 and Prior Years", November 2008;

32. Revenue Form 42A740-S1, "Form 2210-K, 2014[2013] Underpayment of Estimated Tax by Individuals", 2014 [2013];

33. Revenue Form 42A740-S4, "2015[2014] Instructions for Filing Estimated Tax Vouchers", October 2014[2013];

34. Revenue Form 42A740-S18, "Form 8582-K, 2014[2013] Kentucky Passive Activity Loss Limitations", 2014[2013];

35. Revenue Form 42A740-S21, "Form 4972-K, 2014[2013] Kentucky Tax on Lump-Sum Distributions", 2014[2013];

36. Revenue Form 42A740-S22, "Form 8879-K, 2014[2013] Kentucky Individual Income Tax Declaration for Electronic Filing", 2014[2013];

37. Revenue Form 42A740-S23, "Form 740-V, 2014[2013] Kentucky Electronic Payment Voucher", September[November] 2014[2013];

38. Revenue Form 42A740-S24, "Form 8863-K, 2014[2013] Kentucky Education Tuition Tax Credit", 2014[2013];

39. Revenue Form 42A740-S25, "Form 8948-K, Preparer Explanation For Not Filing Electronically", October 2014[2013];

40. Revenue Form 42A741, "Form 741, 2014[2013] Kentucky Fiduciary Income Tax Return", 2014[2013];

41. Revenue Form 42A741-D, "Schedule D, Form 741, 2014[2013] Kentucky Capital Gains and Losses", 2014[2013];

42. Revenue Form 42A741(I), "Instructions - Form 741, Kentucky Fiduciary Income Tax Return", October 2014[2013];

43. Revenue Form 42A741(K-1), "Schedule K-1, Form 741, 2014[2013] Kentucky Beneficiary's Share of Income, Deductions, Credits, etc.", 2014[2013];

44. Revenue Form 42A765-GP, "Form 765-GP, 2014[2013] Kentucky General Partnership Income Return", 2014[2013];

45. Revenue Form 42A765-GP(I), "Instructions, 2014[2013] Kentucky General Partnership Income Return", November 2014[2013];

46. Revenue Form 765-GP(K-1), "Kentucky Schedule K-1, Form 765-GP, 2014[2013] Partner's Share of Income, Credits,

Deductions, etc.", 2014[2013];

47. Revenue Form 42A765-GP(K), "Form 765-GP(K), Kentucky Schedule K for General Partnerships with Economic Development Project(s)", October 2014[2013];

48. Revenue Form 42A801, "Form K-1, Kentucky Employer's Income Tax Withheld Worksheet", November 2014[March 2007];

49. Revenue Form 42A801(D), "Form K-1, Amended Employer's Return of Income Tax Withheld", April 2008;

50. Revenue Form 42A801-E, "Form K-1E, Kentucky Employer's Income Tax Withheld Worksheet - Electronic Funds Transfer", November 2014[March 2007];

51. "Form W-2, 2014[2013] Wage and Tax Statement", 2014[2013];

52. Revenue Form 42A803, "Form K-3, Kentucky Employer's Income Tax Withheld Worksheet", November 2014[March 2007];

53. Revenue Form 42A803(D), "Form K-3, Amended Employer's Return of Income Tax Withheld", April 2008;

54. Revenue Form 42A803-E, "Form K-3E, Kentucky Employer's Income Tax Withheld Worksheet - Electronic Funds Transfer", November 2014[March 2007];

55. Revenue Form 42A804, "Form K-4, Kentucky Department of Revenue Employee's Withholding Exemption Certificate", November 2013;

56. Revenue Form 42A804-A, "Form K-4A, Kentucky Department of Revenue Withholding Exemptions for Excess Itemized Deductions", April 2008;

57. Revenue Form 42A804-E, "Form K-4E, Special Withholding Exemption Certificate", April 2014[May 2013];

58. Revenue Form 42A804-M, "Form K-4M, Nonresident Military Spouse Withholding Tax Exemption Certificate", November 2010;

59. Revenue Form 42A806, "Transmitter Report for Filing Kentucky W2/K2, 1099 and W2-G Statements", August 2014[July 2013];

60. Revenue Form 42A807, "Form K-4FC, Fort Campbell Exemption Certificate", August 2006;

61. Revenue Form 42A808, "Authorization to Submit Employees Annual Wage and Tax Statements Via Kentucky Department of Revenue Web Site", March 2006;

62. Revenue Form 42A809, "Certificate of Nonresidence", March 2007;

63. Revenue Form 42A810, "Nonresident's Affidavit - Kentucky Individual Income Tax", April 1989;

64. Revenue Form 42A811, "KREDA Annual Report", December 2007;

65. Revenue Form 42A812, "KIDA Annual Report", December 2007;

66. Revenue Form 42A813, "KJDA Annual Report", December 2007;

67. Revenue Form 42A814, "KIRA Annual Report", December 2007;

68. Revenue Form 42A815, "Withholding Tax Refund Application", August 2006;

69. Revenue Form 42A816, "KEOZ Annual Report", December 2007;

70. Revenue Form 42A817, "KJRA Annual Report", October 2010;

71. Revenue Form 42A818, "KBI Annual Report", October 2010; and

72. Revenue Form 42D003, "2014[2013] Kentucky Wage and Tax Statements (W-2/K-2) Order Form", July 2014[August 2013].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: December 30, 2014

FILED WITH LRC: December 31, 2014 at 10 a.m.

CONTACT PERSON: Lisa Swiger, Staff Assistant, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-9826, fax (502) 564-2541.

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, April 14, 2015)

301 KAR 2:132. Elk quota hunts, elk depredation permits, landowner cooperator permits, and voucher cooperator permits[quota hunts].

RELATES TO: KRS 150.010, 150.170(4), 150.180, 150.990
STATUTORY AUTHORITY: KRS 150.025(1), 150.105, 150.177, 150.178, 150.390(3)

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 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator permits to landowners who enroll property for public hunting access. KRS 150.390(3) authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued. This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission and landowner cooperator permits can be used, procedures for elk damage abatement, and any postseason hunt held after the quota hunts.

Section 1. Definitions. (1) "Antlered elk" means an elk having visible polished antler protruding above the hairline.

(2) "Antlerless elk" means an elk without visible polished antler protruding above the hairline.

(3) "At-large[north]" means any portion of the elk zone not included in a limited entry area[and that lies north of US Hwy 15].

(4)[~~"At-large south" means any portion of the elk zone not included in a limited entry area and that lies south of US Hwy 15.~~

~~(5) "Bait":~~

(a) Means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that could[~~may~~] lure, entice, or attract wildlife; and

(b) Does not mean[, but does not include] the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planning or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.

~~(5) [(6)] "Baiting" means to place, deposit, tend, distribute, or scatter bait.~~

~~(6) [(7)]~~ "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.

~~(6) [(7)] [(8)]~~ "Elk" means Cervus elaphus nelsoni.

~~(7) [(8)] [(9)]~~ "Elk Management Unit" or "EMU" means a designated area in the restoration zone with specific management restrictions for a post-season antlerless elk quota hunt.

~~(8) [(9)] [(10)]~~ "Landowner cooperator" means a landowner or lessee who owns or leases at least 5,000 acres of land in the restoration zone and enters an agreement with the department to allow public access and hunting for at least five (5) years.

~~(9) [(10)] [(11)]~~ "Limited Entry Area" or "LEA" means a designated area in the restoration zone with specific management restrictions.

~~(10) [(11)] [(12)]~~ "Out-of-zone" means all counties not included in the restoration zone.

~~(11) [(12)] [(13)]~~ "Restoration zone" means the [following] Kentucky counties: Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Leslie, Letcher, Magoffin, Martin, McCreary, Perry, Pike, and Whitley.

~~(12) [(13)] [(14)]~~ "Spike" means an elk having one (1) or two (2) antler points on each side.

(13) [(14)] "Voucher cooperator" means a landowner or lessee

who owns or leases at least 100 acres of land in the restoration zone and enters into an agreement with the department to allow elk hunting access.

~~(14)~~(15) "Youth" means a person under the age of sixteen (16) by the first date of the hunt.

Section 2. Elk Damage Control. The department may authorize the removal or destruction of elk that are causing property damage. A person authorized to destroy an elk shall:

- (1) Attach a department-issued disposal permit to an elk prior to moving the carcass; and
- (2) Not remove the disposal permit until the carcass is processed.

Section 3. Elk Quota Hunts. (1) The elk quota hunt application period shall be January 1 to April 30.

(2) An applicant shall:

(a) Complete the elk quota hunt application process on the department's Web site at fw.ky.gov; and

(b) Pay a nonrefundable application fee of ten (10) dollars.

(3) The commissioner shall~~may~~ extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period.

(4) There shall be a random electronic drawing from each applicant pool.

(5) Youth may enter a separate drawing pool for ten (10) either-sex elk permits. These permits~~that~~ shall be valid for use during all elk seasons:

(a) Anywhere in the at-large portion~~north or at-large south portions~~ of the restoration zone; or

(b) Within an LEA if the youth applies for and is drawn for an LEA, pursuant to Section 6(3)~~5(3)~~ of this administrative regulation.

(6) A youth applicant shall not apply for the youth-only elk quota hunt more than once per application period.

(7) An applicant for the youth-only elk quota hunt may also apply for the regular quota hunts. The regular quota hunts shall be as established in subsection (12) of this section.

(8) A youth applicant drawn for the youth-only elk quota hunt shall not be drawn in any other elk quota hunt held during the same calendar year.

(9) A youth drawn for the youth-only elk quota hunt shall be ineligible to be drawn in the youth-only elk quota hunt in subsequent years.

(10) Nonresidents shall not comprise~~No~~ more than ten (10) percent of all drawn applicants in each quota hunt pool shall be nonresidents.

(11) A quota hunt permit awarded from any department-administered drawing shall not be transferable.

(12) In addition to the youth-only quota hunt, there shall be four (4) separate regular elk quota hunts consisting of:

- (a) Antlered archery and crossbow;
- (b) Antlered firearms;
- (c) Antlerless archery and crossbow; and
- (d) Antlerless firearms.

(13) An applicant shall:

- (a) Apply only once for an individual elk quota hunt;
- (b) Not be eligible to be drawn in more than one (1) of the four (4) quota hunt pools;
- (c) Only be selected by a random electronic drawing; and
- (d) Pay a nonrefundable application fee of ten (10) dollars for each entry.

(14) A person who is drawn for an antlered elk quota hunt shall be ineligible to be drawn for any antlered elk quota hunt for the subsequent~~following~~ three (3) years.

(15) A person who does not have access to the department's Web site to apply for any quota hunt may contact the department toll free at 1-800-858-1549 for assistance in applying.

Section 4. Landowner Cooperator Permits. (1) With the approval of the commission, the commissioner shall issue to a landowner cooperator:

(a) One (1) either-sex permit annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement;

(b) Two (2) antlerless-only permits annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement; or

(c) One (1) antlerless-only permit annually per 5,000 acres of land enrolled with the department in an elk hunting access agreement for the duration of the agreement.

(2) A recipient of a landowner cooperator permit shall comply with the season, bag limit, and hunter requirements in Sections 6~~5~~ and 7~~6~~ of this administrative regulation.

(3) A landowner cooperator permit shall be transferable, but shall only be used on the land for which the agreement was made.

(a) The permit may be transferred to any person eligible to hunt in Kentucky.

(b) Prior to hunting, the landowner cooperator or person who has received the transferred permit shall provide the department with the hunter's:

1. Name;
2. Social Security number;
3. Address; and
4. Telephone number.

(c) The permit shall not be transferable after being used for the harvest of one (1) elk.

(4) Public access agreements with the department shall be recorded in writing.

Section 5. Voucher Cooperator Permits (1) A voucher cooperator shall accrue:

(a) Two (2) voucher points for each legally harvested antlered elk; and

(b) One (1) voucher point for each legally harvested antlerless elk.

(2) A voucher cooperator who accrues twenty (20) total points on land enrolled pursuant to Section 1(13)~~1(15)~~ of this administrative regulation shall receive one (1) either-sex elk permit from the department.

(3) A recipient of a voucher cooperator elk permit shall comply with all of the requirements established in Sections 6 and 7 of this administrative regulation.

(4) A voucher cooperator elk permit shall only be used on:

(a) The property enrolled with the department per agreement; or

(b) Other property that the landowner or lessee owns or leases.

(5) A voucher cooperator permit may be transferable to any person eligible to hunt in Kentucky.

(6) If a voucher cooperator permit is to be transferred, then the landowner, lessee, or person who has received the transferred permit shall provide to the department by August 15 the hunter's:

- (a) Name;
- (b) Social security number;
- (c) Address; and
- (d) Telephone number.

(7) A permit shall not be transferable after being used for the harvest of an elk.

Section 6. Hunter Requirements. (1) A person shall carry proof of purchase of a valid Kentucky hunting license and valid elk permit while hunting, unless exempted by KRS 150.170.

(2) The statewide bag limit shall be one (1) elk per hunter per license year.

(3) A drawn hunter may apply to hunt in up to four ~~(4)~~~~three~~ ~~(3)~~ areas in any combination of the limited entry~~and at-large~~ areas by completing the application process on the department's Web site.

(a) Up to five (5) drawn hunters may apply for their LEA choices as a party.

(b) If the party is drawn for the LEA, all hunters in the party shall be assigned to that same LEA.

(c) If the number of slots remaining in the quota is less than the number of hunters in the next party selected, the entire party shall be assigned to the party's next choice ranking or to the~~an~~ at-large

area.

(4) A hunter who does not apply for an LEA or is not drawn for an LEA shall be assigned ~~to[by]~~ the at-large area~~[department to either the:~~

- (a) ~~At-large north portion of the elk zone; or~~
- (b) ~~At-large south portion of the elk zone].~~

(5) A hunter drawn for an LEA may hunt only in the assigned LEA, except that a person who is drawn for any elk quota hunt may hunt on his or her land within the restoration zone.

(6) An elk hunter or any person accompanying an elk hunter shall comply with hunter orange requirements established in 301 KAR 2:172.

(7) An elk hunter shall not:

- (a) Take elk except during daylight hours;
- (b) Use dogs, except to recover wounded elk using leashed tracking dogs;
- (c) Hunt over bait inside the elk restoration zone;
- (d) Drive elk from outside the assigned area;
- (e) Take an elk while it is swimming;
- (f) Use electronic calls or electronic decoys; or
- (g) Take an elk if the hunter is in a vehicle, boat, or on horseback, except that a disabled hunter who has a hunting method exemption permit issued pursuant to 301 KAR 3:027 may use a stationary vehicle as a hunting platform.

(8) A person shall:

- (a) Obtain a vehicle tag from the department prior to hunting elk in the restoration zone; and
- (b) Display the vehicle tag in the windshield of the vehicle while hunting elk.

(9) A youth shall be accompanied by an adult who shall remain in a position to take immediate control of the youth's firearm.

(10) An adult accompanying a youth shall not be required to possess a hunting license or elk permit if the adult is not hunting.

(11) A hunter may use any deer hunting method authorized by 301 KAR 2:172.

(12) A person shall ~~only[not]~~ use the weapons and ammunition established[items listed] in paragraphs (a) through (e)~~[(f)]~~ of this subsection to take an elk:

(a) A crossbow or archery equipment loaded with a non-barbed broadhead of seven-eighths (7/8) inch or wider upon expansion[Any weapon or device prohibited for deer hunting pursuant to 301 KAR 2:172];

(b) A ~~modern~~ firearm;

1. With an action that fires a single round of ammunition upon each manipulation of the trigger;

2. Of .270 caliber or larger; and

3. Loaded with centerfire, single projectile ammunition designed to expand upon impact[less than .270 caliber];

(c) A muzzle-loading firearm ~~of[less than]~~ .50 caliber or larger;

(d) A shotgun of twenty (20)[less than 20] gauge or larger loaded with a shell containing one (1) projectile; or

(e) A handgun loaded with:

1. Centerfire cartridges;

2. Bullets of .270 caliber or larger designed to expand upon impact; and

3. Cartridges with a case length of 1.285 inches or larger.

(13) A crossbow shall contain a working safety device.

(14) An elk hunter shall not use a magazine capable of holding more than ten (10) rounds[Any arrow without a broadhead point;

(f) A handgun with a barrel length of less than six (6) inches, a bore diameter less than .270 inches (.270 caliber), and when fired, the bullet shall produce at least 550 ft/lbs of energy at 100 yards].

(15)[(13)] A quota elk hunter shall only take an elk of the type and sex determined by the permit drawn.

(16)[(14)] A hunter drawn for a firearms elk permit shall hunt elk pursuant to that permit only during the seven (7) day period assigned during the initial drawing.

(17)[(15)] An individual who receives or is transferred a landowner cooperator permit, a voucher cooperator permit, or a special commission permit may hunt in all of the antlered-only or antlerless-only quota hunts and shall hunt in accordance with the seasons and limits established in Section 7[6] of this administrative regulation.

(18)[(16)] A person who is drawn for an archery or crossbow permit or has a landowner cooperator permit, a[er] special commission permit, or voucher cooperator permit may hunt with a crossbow during all archery and crossbow seasons, if at the time of the hunt, the person:

(a) Is a youth;

(b) Is sixty-five (65) years or older; or

(c) Has a crossbow hunting method exemption permit for hunting deer pursuant to 301 KAR 3:027.

Section 7[6]. Elk Quota Hunt Seasons and Limits. (1) A person drawn for an antlerless or antlered archery and crossbow permit shall not hunt when an elk firearms season is open.

(2) A person drawn for an antlered archery and crossbow permit shall use:

(a) Archery equipment to take an antlered elk beginning the third Saturday in September through the third Monday in January; and

(b) A crossbow to take an antlered elk from the fourth Saturday in September through the fourth Friday in December[

1. For two (2) consecutive days beginning the third Saturday in October; and

2. From the second Saturday in November through December 31].

(3) A person drawn for an antlerless archery and crossbow permit shall use:

(a) Archery equipment to take an antlerless elk beginning the third Saturday in October through the third Monday in January; and

(b) A crossbow to take an antlerless elk from the third Saturday in October to the fourth Friday in December[

1. For two (2) consecutive days beginning the third Saturday in October; and

2. From the second Saturday in November through December 31].

(4) A person drawn for an antlered firearms permit shall use a modern gun or muzzleloader to take an antlered elk during one (1) of two (2) seven (7) day periods randomly assigned by the department from the:

(a) First Saturday in October for seven (7) consecutive days; or

(b) Second Saturday in October for seven (7) consecutive days.

(5) A person drawn for an antlerless firearms permit shall use a modern gun or muzzleloader to take an antlerless elk during one (1) of two (2) seven (7) periods randomly assigned by the department from the:

(a) Second Saturday in December for seven (7) consecutive days; or

(b) First[Third] Saturday in January[December] for seven (7) consecutive days.

Section 8[7]. LEA Boundaries. (1)[Caney LEA — Starting at the intersection of State Hwy 550 and Kentucky 1697, the boundary proceeds north on State Hwy 550 through Mousie and Betty to the intersection with State Hwy 7 near Lackey. The boundary then goes south on State Hwy 7, past Dena to intersection with State Hwy 899. The boundary then goes south on State Hwy 899, through Pippa Passes to intersection with Kentucky 1697 at Alice Lloyd College. The boundary then goes west on Kentucky 1697 to intersection with State Hwy 550 in Garner, completing the boundary.

(2)[Hazard LEA - Starting at the intersection of State Hwy 476 and State Hwy 80, the boundary proceeds east on Hwy 80 to the intersection with State Hwy 3209. The boundary then goes west on Hwy 3209 to the intersection with State Hwy 1087. The boundary then goes east on Hwy 1087 to the intersection with State Hwy 1098 near Yellow Mountain. The boundary then follows Hwy 1098 north and west to the intersection with State Hwy 15 near Quicksand. The boundary then goes south on Hwy 15 to the intersection with State Hwy 476 near Lost Creek. The boundary then goes south on Hwy 476 to the intersection with State Highway 80, completing the boundary.

(2) Middlesboro LEA - Starting at the intersection of US Hwy 25E and the Tennessee border at Middlesboro, the boundary

proceeds southward and westward on the Tennessee and Kentucky border until the intersection of State Hwy 190. The boundary proceeds northward and westward on State Hwy 190 to the intersection of US Hwy 25E. The boundary then goes south on US Hwy 25E to the Tennessee border, completing the boundary.

(3) Prestonsburg LEA – The area shall be within the boundary of the Czar Hunter Access Area as indicated by signage.

(4)[(3)] Straight Creek LEA - Starting at the intersection of State Hwy 66 and State Hwy 221 at Straight Creek, the boundary proceeds east on State Hwy 221 to the intersection with State Hwy 2009. The boundary then proceeds north along State Hwy 2009 to the intersection with US Route 421. The boundary then proceeds north on US Route 421 to the intersection with State Hwy 406 near Stinnett. The boundary then follows State Hwy 406 west to the intersection with State Highway 66. The boundary then follows State Hwy 66 south to the intersection with Hwy 221 to complete the boundary.

Section 9[8]. Post-season Quota Hunt on Private Land. (1) A modern firearms quota hunt for antlerless elk and spikes shall take place beginning on the fourth Saturday in January for fourteen (14) consecutive days.

(2) Each hunter shall be randomly drawn from the pool of applicants who:

- (a) Were not drawn for the previous elk quota hunts; and
- (b) Are residents of counties included, wholly or in part, within an EMU boundary.

(3) A drawn applicant shall comply with the requirements in Section 6[5] of this administrative regulation except that an applicant may hunt only in the assigned EMU or on land the applicant owns within another EMU.

(4) EMU boundaries shall be:

(a) Knott County EMU - Starting at the intersection of KY Route 777 and KY Route 550 near Porter Junction, the boundary proceeds east along KY Route 777 to the intersection with KY Route 680. The boundary then proceeds east along KY Route 680 to the intersection with KY Route 122 at Minnie. The boundary proceeds south along KY Route 122 to the intersection with KY Route 1498 near Bevinville. The boundary then continues south on KY Route 1498 to the intersection with KY Route 7. The boundary then proceeds south on KY Route 7 to the intersection with KY Route 1410. The boundary then proceeds west on KY Route 1410 to the intersection with KY Route 160. The boundary then proceeds north on KY Route 160 to the intersection with KY Route 550 in Hindman. The boundary then proceeds north on KY Route 550 to the intersection with KY Route 7, with which KY Route 550 merges and both continue north, to the intersection with KY Route 777 near Porter Junction, thus completing the boundary.

(b) Stoney Fork EMU - Starting at the intersection of State Hwy 2058 and U.S. Hwy 421 near Helton, the boundary then proceeds south along U.S. Hwy 421 to the intersection of U.S. Hwy 421 and U.S. Hwy 119 near Harlan, then west along U.S. Hwy 119 to the intersection of U.S. Hwy 119 and U.S. Hwy 25E. The boundary then goes north following U.S. Hwy 25E to the intersection with State Hwy 66, then north on State Hwy 66 to the intersection of State Hwys 66 and 1850, then east along State Hwy 1850 to the intersection of State Hwys 1850 and 1780 at Warbranch. The boundary then proceeds south on State Hwy 1780 to its intersection with State Hwy 2058 near Spruce Pine, then east on State Hwy 2058 back to U.S. Hwy 421 at Helton, thus completing the boundary.

(5) Any public hunting area within an EMU shall be closed to elk hunting during this season.

Section 10[9]. Tagging and Checking Requirements. (1) Immediately after taking an elk[and prior to removing the hide or head from the carcass], a hunter shall record on a hunter's log:

(a)[Record on a hunter's log the following information:

- 1.] The species harvested;
- (b)[2:] The sex of the animal;
- (c)[3:] Date of harvest; and
- (d)[4:] County of harvest.
- (2) A hunter shall[- and

(b)] check the harvested elk before midnight on the day the elk is recovered by:

(a)[1:] Calling (800) 245-4263 and providing the requested information; or

(b)[2:] Completing the online check-in process at fw.ky.gov.

(3) A hunter who has checked in an elk shall record the confirmation number on a hunter's log.

(4) If the hide or head is removed from the carcass before the elk is checked in, then the hunter shall be required to demonstrate proof of the sex of the elk.

(a) For antlered elk the hunter shall retain the:

- 1. Head with antlers; or
- 2. Testicles, scrotum, or penis attached to the carcass; or

(b) For antlerless elk the hunter shall retain the:

- 1. Head; or
- 2. Udder or vulva attached to the carcass.

(5)[(2)] If a harvested elk leaves the possession of the hunter, the hunter shall attach to the carcass a hand-made tag that contains the hunter's:

- (a) Confirmation number;
- (b) Name; and
- (c) Telephone number.

(6)[(3)] A person shall not provide false information in:

- (a) Completing the hunter's log;
- (b) Checking an elk; or
- (c) Creating a carcass tag.

Section 11[40]. Elk Hunting on Public Land. (1) A person drawn for an elk quota hunt or the recipient of a special commission permit may hunt on the areas listed in paragraphs (a) through (f) of this subsection within the restoration zone pursuant to the conditions of the permit received:

- (a) Wildlife Management Areas;
- (b) Hunter Access Areas;
- (c) State forests;
- (d) Big South Fork National River and Recreation Area;
- (e) Daniel Boone National Forest; or
- (f) Jefferson National Forest.

(2) Portions of Paintsville Lake WMA that lie out of the restoration zone shall before subject to the requirements established in Section 12[44] of this administrative regulation.

(3) Elk hunting shall not be allowed on public areas during quota deer hunts listed in 301 KAR 2:178.

(4) Paul Van Booven WMA.

(a) The archery and crossbow seasons shall be open as established in Section 7[6] of this administrative regulation.

(b) A firearm shall not be used to hunt elk.

(5) A person shall not mimic the sound of an elk on public land open to elk hunting from September 1 until the opening of the elk archery season.

Section 12[44]. Out-of-zone Elk Hunting. (1) The methods for taking deer and the deer seasons established in 301 KAR 2:172 shall apply to a person taking elk outside of the restoration zone, except that a hunter shall comply with[not use any of] the weapons and ammunition requirements established[items listed] in Section 6[paragraphs (a) through (f)] of this administrative regulation[subsection to take elk]:

(a) Any weapon or device prohibited for deer hunting pursuant to 301 KAR 2:172;

- (b) A modern firearm less than .270 caliber;
- (c) A muzzle-loading firearm less than .50 caliber;
- (d) A shotgun less than twenty (20) gauge; or
- (e) Any arrow without a broadhead point; or
- (f) A handgun:

- 1. With a barrel length of less than six (6) inches;
- 2. With a bore diameter of less than .270 caliber; and
- 3. That produces less than 550 foot-pounds of energy at 100 yards].

(2) Unless exempted by KRS 150.170, a person who is hunting out-of-zone elk shall possess:

- (a) A valid Kentucky hunting license; and

- (b) An out-of-zone elk permit.
- (3) A person may take an elk of either sex, which shall not count toward the person's deer bag limit.
- (4) Any elk harvested out-of-zone shall be telechecked pursuant to Section 10[9] of this administrative regulation.

Section 13[42]. A person who takes possession of any elk antler that has the skull or skull plate attached to it shall contact the department's Law Enforcement Division within twenty-four (24) hours to obtain a disposal permit.

Section 14[43]. A person who is the recipient of a valid elk quota hunt permit, landowner cooperator permit, voucher cooperator permit, or special commission permit may defer use of the permit to the following year if:

- (1) There is a death of the permit holder's:
 - (a) Spouse;
 - (b) Child; or
 - (c) Legal guardian, if the permit holder is under eighteen (18) years old; and
- (2) The permit holder provides to the department a death certificate and one (1) of the following documents prior to May 1 of the year following the hunting season:
 - (a) A marriage certificate;
 - (b) A birth certificate; or
 - (c) An affidavit of paternity or maternity.

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

APPROVED BY AGENCY: January 9, 2015

FILED WITH LRC: January 14, 2015 at 10 a.m.

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

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, April 14, 2015)

301 KAR 2:178. Deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas.

RELATES TO: KRS 150.010, 150.170, 150.340, 150.370(1), 150.990

STATUTORY AUTHORITY: 148.029(5), 150.025(1), 150.390(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.029(5) authorizes the Department of Parks, in cooperation with the Department of Fish and Wildlife Resources, to implement wildlife management plans on state parks. 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 to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of KRS Chapter 150 or Title 301 KAR. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation. This administrative regulation establishes deer hunting seasons, application procedures, and other matters pertaining to deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas that differ from statewide requirements.

Section 1. Definitions. (1) "Bait" means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that may lure, entice, or attract wildlife.

(2) "Centerfire" means a type of firearm that detonates a cartridge by the firing pin striking a primer in the middle of the end

of the cartridge casing.

(3) "In-line muzzleloading gun" means a firearm:

(a) Capable of being loaded only from the discharging end of the barrel or cylinder; and

(b) That is equipped with an enclosed ignition system located directly behind the powder charge.

(4) "Mobility-impaired" means an individual who meets the requirements of 301 KAR 3:026, Section 2(1).

(5) "Modern firearm season" means the ten (10) or sixteen (16) consecutive day period beginning the second Saturday in November during which/when breech-loading firearms may be used to take deer pursuant to 301 KAR 2:172.

(6) "Quota hunt" means a hunt in which a participant is selected by a random drawing.

(7) "Statewide requirements" mean the season dates, zone descriptions, and other requirements for deer hunting established in 301 KAR 2:172.

(8) "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.

(9) "Youth" means a person under the age of sixteen (16) by the date of the hunt.

Section 2. General WMA Requirements. (1) Unless established in this administrative regulation, statewide requirements shall apply.

(2) A hunter shall not take more than one (1) deer per day on a WMA in Zones 2, 3, or 4, except:

- (a) During a quota hunt; or
- (b) The Grayson Lake WMA open youth deer hunt.

(3) Except as established in Section 6 of this administrative regulation, if a WMA is in two (2) or more deer hunting zones as established in 301 KAR 2:172, then the WMA shall be regulated by the most liberal zone requirements of the zones in which it lies.

(4) Deer hunting on WMAs listed in Section 6 of this administrative regulation shall be permitted only as established in this administrative regulation, except archery hunting shall be allowed pursuant to the statewide archery requirements established in 301 KAR 2:172, unless otherwise noted.

(5) An antlerless deer shall not count against a person's statewide or zone bag limit if harvested during:

- (a) The Grayson Lake WMA open youth hunt;
- (b) West Kentucky WMA firearms hunts; or
- (c) Any WMA either-sex quota hunt.

(6) An open firearm deer hunt, beginning on the Wednesday following the third Monday in January for ten (10) consecutive days, shall:

(a) Be limited to members of the United States Armed Forces and the National Guard and reserve component who:

- 1. Are residents of Kentucky or nonresidents stationed in Kentucky; and
- 2. Were deployed out-of-country during any portion of the most recent regular statewide deer season;

(b) Only be on a WMA designated as open for this special hunt; and

(c) Be according to statewide requirements established in 301 KAR 2:172.

(7) On all WMAs and Otter Creek Outdoor Recreation Area, a person:

- (a) Attaching a tree stand or climbing a tree shall not use a:
 - 1. Nail;
 - 2. Spike;
 - 3. Screw-in device;
 - 4. Wire; or
 - 5. Tree climber;
- (b) May use a portable stand or climbing device that shall/does not injure a tree;

- (c) 1. Shall not place a portable stand in a tree more than two (2) weeks before opening day; and
- 2. Shall remove it within one (1) week following the last day of

each hunting period;

(d) Shall plainly mark the portable stand with the hunter's name and address;

(e) Shall not use an existing permanent tree stand; and

(f) Shall not place, distribute, or hunt over bait.

(8) A person without a valid quota hunt confirmation number shall not enter a WMA during a quota hunt on that area except:

(a) To travel through a WMA on an established road or to use an area designated open by a sign; or

(b) One (1) assistant, who shall not be required to have applied for the quota hunt, may accompany a mobility-impaired hunter who was drawn to hunt.

(9) Except for waterfowl or dove hunting, or legal hunting at night, a person who is hunting any species or a person who is accompanying a hunter shall wear hunter orange clothing pursuant to 301 KAR 2:172 while:

(a) On a WMA while firearms deer hunting is allowed;

(b) Hunting within the sixteen (16) county elk zone when a firearms elk season is open, pursuant to 301 KAR 2:132; or

(c) Hunting within the bear zone during a bear firearms season, pursuant to 301 KAR 2:300.

Section 3. General Quota Hunt Procedures. (1) A quota hunt applicant who is not selected and applies to hunt the following year shall be given one (1) preference point for each year the applicant was not selected.

(2) If selected for a quota hunt, a person shall lose all accumulated preference points.

(3) A random selection of hunters with preference points shall be made for each year's quota hunts before those without preference points are chosen.

(4) A person shall forfeit all accumulated preference points if, in a given year, the person does not apply for or is ineligible to apply for:

(a) A deer quota hunt; and

(b) The no-hunt option.

(5) A person who applies for the no-hunt option shall:

(a) Not be drawn for a quota hunt; and

(b) Be given one (1) preference point for each year the no-hunt option is selected.

(6) If applying as a party:

(a) Each applicant's preference points shall be independent of each other; and

(b) The entire party shall be selected if one (1) member of the party is selected.

(7) The commissioner shall[may] extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.

(8) A hunter may take up to two (2) deer on a quota hunt in Zones 2, 3, and 4, only one (1) of which may be an antlered deer, except as established[authorized] in Section 6 of this administrative regulation.

(9) If a hunter has purchased the appropriate permits, a hunter may take unlimited antlerless deer in:

(a) The West Kentucky WMA firearms season;

(b) WMA quota hunts in Zone 1; and

(c) State Park quota hunts in Zone 1, except as established in Section 7 of this administrative regulation.

(10) One (1) person shall be drawn from the eligible quota hunt applicants who were not selected in the original drawing, and shall receive one (1) deer permit that carries with it all the privileges of the Special Commission Permit established in 301 KAR 3:100.

Section 4. Quota Hunt Application Process. A person applying for a quota hunt shall:

(1) Call the toll free number listed in the current fall hunting and trapping guide or apply online at fw.ky.gov by completing the Quota Hunt Application: Deer Quota Hunt Form, between September 1 and September 30;

(2) Enter each applicant's Social Security number;

(3) Select:

(a) A first and second choice of hunts; or

(b) The no-hunt option;

(4) Pay a three (3) dollar application fee for each applicant, prior to the draw by:

(a) Electronic funds transfer;

(b) Visa Card;

(c) Master Card; or

(d) Discover Card;

(5) Not apply more than one (1) time;

(6) Not apply as a group of more than five (5) persons; and

(7) Not be eligible to participate in a quota hunt unless:

(a) Selected pursuant to this administrative regulation; or

(b) Accompanying a mobility-impaired hunter.

Section 5. Quota Hunt Participant Requirements. Except as otherwise established in this administrative regulation, a person selected to participate in a quota hunt shall:

(1) Possess, unless exempted pursuant to KRS 150.170:

(a) A valid annual Kentucky hunting license; and

(b) A deer permit that authorizes the taking of deer with the equipment being used and in accordance with the zone restrictions where the hunt will occur;

(2) Hunt on the assigned dates and in assigned areas selected by a random drawing of applicants if applicable;

(3) Comply with hunting equipment restrictions specified by the type of hunt;

(4) Check in at the designated check station prior to hunting:

(a) Either:

1. On the day before the hunt, between noon and 8 p.m. local time; or

2. On the day of the hunt, between 5:30 a.m. and 8 p.m. Eastern time; and

(b) With documentation of the participant's:

1. Social Security number or draw confirmation number; and

2. Purchase of a current license or permit which allows or includes statewide deer hunting privileges;

(5) Check out at the designated check station:

(a) If finished hunting;

(b) If the hunter's bag limit is reached; or

(c) By 8 p.m. Eastern time on the final day of the hunt;

(6) Take a harvested deer to the designated check station by 8 p.m. Eastern time the day the deer was harvested;

(7) Be declared ineligible to apply for the next year's drawing if the hunter fails to check out properly; and

(8) Comply with all species quota hunt requirements or be ineligible to apply for any quota hunt or no-hunt option for these species the following year.

Section 6. Wildlife Management Area Requirements. (1) Dr. Norman and Martha Adair WMA. The crossbow season shall be open pursuant to statewide requirements.

(2) Ballard WMA.

(a) On the main tract, the quota hunt shall be for two (2) consecutive days beginning on the first Saturday in November.

(b) On the main tract, the archery, crossbow, and youth firearm seasons shall be open pursuant to statewide requirements through October 14, except that the two (2) mile driving loop marked by signs shall be closed to all huntingif;

(c) The crossbow, modern firearm, youth firearm, and muzzleloader seasons shall be open pursuant to statewide requirements only on the 400 acre tract south of Sallie Crice Road.

(d) A hunter shall not take a deer with antlers that have an outside spread less than fifteen (15) inches.

(e) A quota hunt participant shall be given one (1) preference point for each female deer checked in, up to a maximum of four (4) points.

(3) Barren River WMA. The area shall be open pursuant to statewide requirements except that on the Peninsula Unit, including Narrows, Goose, and Grass Islands, a person shall not hunt deer with a modern firearm.

(4) Beaver Creek WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(b) The limit shall be one (1) antlered deer during the quota

hunt.

(c) The crossbow season shall be open pursuant to statewide requirements.

(5) Big Rivers WMA.

(a) The crossbow and youth firearms seasons shall be open pursuant to statewide requirements; and

(b) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in November.

(6) Boatwright WMA. The area shall be open pursuant to statewide requirements, except that:

(a) On the Swan Lake Unit the archery and crossbow season shall be open pursuant to statewide requirements through October 14; and

(b) The October youth deer season shall be open pursuant to statewide requirements.

(7) Cedar Creek Lake WMA. The crossbow season shall be open pursuant to statewide requirements.

(8) Clay WMA.

(a) On the main tract, crossbow, ~~[October]~~ muzzleloader, and youth firearm seasons shall be open pursuant to statewide requirements, except archery hunting shall be prohibited during the quota fox hunting field trials as established in 301 KAR 2:049.

(b) The remainder of the WMA shall be open pursuant to statewide requirements for the archery, crossbow, ~~[October]~~ muzzleloader, and youth seasons, except during the quota deer hunt.

(c) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(d) A quota hunt participant shall be given one (1) preference point for each female deer checked-in.

(e) Hunters drawn for the quota hunt may harvest up to four (4) deer, only one (1) of which may be antlered.

(9) Dewey Lake WMA.

(a) The crossbow and youth firearm seasons shall be open pursuant to statewide requirements.

(b) The use of firearms shall be prohibited for deer hunting on the:

1. Western side of the lake north of the Terry Boat Ramp; and

2. Eastern side of the lake, north of the ridge that begins across the lake from the Terry Boat Ramp, and extends eastward to the WMA boundary ~~[portion of the area extending southward from the dam to Shoreline Campground Number One, including all property from the WMA boundary downslope to the lake edge].~~

(c) A deer hunter shall not take a deer with antlers that have an outside spread less than fifteen (15) inches.

(d) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in December.

(e) There shall be a one (1) deer limit during the quota hunt.

(10) Dix River WMA. The crossbow, youth firearm, and muzzleloader seasons shall be open pursuant to statewide requirements.

(11) Fishtrap Lake WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning on the Saturday before Thanksgiving.

(b) The limit for the quota hunt shall be one (1) deer.

(c) The crossbow and youth firearm season shall be open pursuant to statewide requirements.

(12) Grayson Lake WMA.

(a) An open youth hunt shall:

1. Be the first Saturday in November for two (2) consecutive days; and

2. Have a two (2) deer bag limit, only one (1) of which may be an antlered deer.

(b) A person who has not checked in shall not enter the Grayson Lake WMA during the open youth hunt, except to:

1. Travel through the WMA on an established public road; or

2. Use an area designated as open by signs.

(c) The property of Camp Webb shall be open for a mobility-impaired deer hunting event during the first weekend of October.

(d) The crossbow hunt shall be from the first Saturday in September through the third Monday in January, except during the November open youth hunt.

(e) The statewide youth firearm season shall be open pursuant

to statewide requirements.

(13) Green River Lake WMA and Dennis-Gray WMA.

(a) The crossbow season shall be open pursuant to statewide requirements.

(b) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(c) Fifteen (15) openings shall be reserved in the quota hunt for mobility-impaired persons.

(d) A deer hunter shall not take a deer with antlers that have an outside spread less than fifteen (15) inches.

(e) The Green River Lake and Dennis-Gray WMAs shall be considered to be located in the Eastern Time Zone.

(14) Griffith Woods WMA. The crossbow and youth firearms seasons shall be open pursuant to statewide requirements.

(15) Higginson-Henry WMA.

(a) The youth firearm and crossbow deer seasons~~[season]~~ shall be open pursuant to statewide requirements.

(b) A hunter shall not take more than one (1) deer from the WMA per license year.

(16) J.C. Williams WMA. The crossbow and youth firearm seasons shall be open pursuant to statewide requirements.

(17) Kentucky River WMA.

(a) The crossbow and youth firearm seasons shall be open pursuant to statewide requirements.

(b) There shall be a quota hunt for two (2) consecutive days beginning on the first Saturday in November.

(18) Kleber WMA.

(a) The crossbow season shall be open pursuant to statewide requirements, except during a quota hunt.

(b) The quota hunts shall be for:

1. Two (2) consecutive days beginning the first Saturday in November; and

2. Two (2) consecutive days beginning the first Saturday in December.

(c) The youth firearm season shall be open pursuant to statewide requirements.

(19) Knobs State Forest WMA. The crossbow season shall be open pursuant to statewide requirements.

(20) Lake Barkley WMA shall be open pursuant to statewide requirements except:

(a) The North Refuge shall be~~[is]~~ closed from November 1 to February 15; and

(b) Duck Island shall be~~[is]~~ closed from October 15 to March 15, except that it shall be open for the October muzzleloader season, pursuant to statewide requirements.

~~(21)[Lewis County WMA. (a) The modern firearm and youth firearm seasons shall be open pursuant to statewide requirements, except the use of centerfire rifles and handguns shall be prohibited.~~

~~(b) The crossbow and muzzleloader seasons shall be open pursuant to statewide requirements.~~

~~(22)[Livingston County WMA. The crossbow, youth firearm, muzzleloader, and modern firearm seasons shall be open pursuant to statewide requirements, except a person shall not hunt deer with a modern **firearm**~~[gun]~~ during the modern firearm deer season.~~

~~(22)[(23)] Curtis Gates Lloyd WMA. The crossbow and youth firearms seasons shall be open pursuant to statewide requirements.~~

~~(23)[(24) Marion County WMA.~~

~~(a) The crossbow, muzzleloader, and youth firearm seasons shall be open pursuant to statewide requirements.~~

~~(b) There shall be a quota hunt for:~~

~~1. Five (5) consecutive days beginning the second Saturday in November; and~~

~~2. Five (5) consecutive days beginning the Thursday following the second Saturday in November.~~

~~(c) A quota hunt participant shall not be required to check in and out of the WMA, but shall telecheck or internet-check harvested deer as established in 301 KAR 2:172.~~

~~(25)[Mill Creek WMA.~~

~~(a) The crossbow season shall be open pursuant to statewide requirements.~~

~~(b) The quota hunt shall:~~

~~1. Be for two (2) consecutive days beginning the first Saturday~~

in November; and

2. Have a one (1) deer bag limit.

~~(24)~~~~(26)~~ Miller-Welch Central Kentucky WMA. The archery and crossbow seasons shall be open pursuant to statewide requirements:

(a) On Monday through Thursday, from the first Saturday in September through December 17, except during scheduled field trials as posted on the area bulletin board; and

(b) December 18 through the third Monday in January.

~~(25)~~~~(27)~~ Mud Camp Creek WMA. The crossbow, youth firearm, and muzzleloader seasons shall be open pursuant to statewide requirements.

~~(26)~~~~(28)~~ Mullins WMA. The crossbow season shall be open pursuant to statewide deer requirements.

~~(27)~~~~(29)~~ Ohio River Islands WMA, Stewart Island Unit.

(a) The muzzleloader season shall be for two (2) consecutive days beginning the third Saturday in October.

(b) The archery season shall be from the first Saturday in September through October 14.

(c) The crossbow season shall be from October 1 through October 14.

(d) The October youth season shall be open pursuant to statewide requirements.

(e) The remainder of the WMA shall be open pursuant to statewide requirements.

~~(28)~~~~(30)~~ Paintsville Lake WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(b) The crossbow and youth firearm seasons shall be open pursuant to statewide requirements.

(c) A person shall not use firearms for deer hunting on:

1. The area extending eastward from the drainage of Glade Branch, along the north edge of the lake, to the No Hunting Area surrounding Rocky Knob Recreation Area and enclosing all property from the WMA boundary downslope to the lake edge; and

2. The islands to the south and that portion of the area extending eastward along the south edge of the lake from the drainage of Shoal Branch to the No Hunting Area surrounding the dam and ranger station, and extending downslope to the edge of the lake.

(d) A deer hunter shall not take a deer with antlers that have an outside spread less than fifteen (15) inches.

~~(29)~~~~(31)~~ Peabody WMA.

(a) The crossbow, youth firearms, and muzzleloader seasons shall be open pursuant to statewide requirements.

(b) The modern firearm season shall be open pursuant to statewide requirements for ten (10) consecutive days beginning the second Saturday in November.

~~(30)~~~~(32)~~ Pennyriile State Forest-Tradewater WMA.

(a) The crossbow season shall be open pursuant to statewide requirements.

(b) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(c) A deer hunter shall not take a deer with antlers that have an outside spread less than fifteen (15) inches.

~~(31)~~~~(33)~~ Pioneer Weapons WMA. Statewide requirements shall apply except that a person:

(a) Shall not use a modern firearm;

(b) Shall not use an in-line muzzleloading gun;

(c) Shall not use a scope;

(d) May use a crossbow during the entire archery season; and

(e) Shall use only open or iron sights on any weapon.

~~(32)~~~~(34)~~ Redbird WMA.

(a) The crossbow season shall be open pursuant to statewide requirements.

(b) The modern firearm season shall be open pursuant to statewide requirements for two (2) consecutive days beginning the second Saturday in November.

~~(33)~~~~(35)~~ Dr. James R. Rich WMA.

(a) The crossbow season shall be open pursuant to statewide requirements, except during a quota hunt.

(b) The quota hunts shall be for:

1. Two (2) consecutive days beginning the first Saturday in

November; and

2. Two (2) consecutive days beginning the first Saturday in December; and

(c) The youth firearm season shall be open pursuant to statewide requirements.

~~(34)~~~~(36)~~ Robinson Forest WMA.

(a) A person shall not hunt deer on the main block of Robinson Forest.

(b) The remainder of the WMA shall be open pursuant to statewide requirements.

~~(35)~~~~(37)~~ Sinking Valley WMA. The crossbow and youth firearms seasons shall be open pursuant to statewide requirements.

~~(36)~~~~(38)~~ Sloughs WMA.

(a) On the Sauerheber Unit, the archery, crossbow, muzzleloader, and youth firearm seasons shall be open pursuant to statewide requirements through October 31, except that the Crenshaw and Duncan II Tracts shall be open pursuant to statewide requirements through the end of modern firearm season.

(b) The remainder of the WMA shall be open pursuant to statewide requirements.

~~(37)~~~~(39)~~ South Shore WMA.

(a) The youth firearm, October muzzleloader, and modern firearm seasons shall be open pursuant to statewide requirements through November 14, except that the use of centerfire rifles and handguns shall be prohibited.

(b) The archery and crossbow seasons shall be open pursuant to statewide requirements, except the area shall be closed November 15 through January 15.

~~(38)~~~~(40)~~ T.N. Sullivan WMA. The crossbow season shall be open pursuant to statewide requirements.

~~(39)~~~~(41)~~ R.F. Tarter WMA. The crossbow, youth firearm, and muzzleloader seasons shall be open pursuant to statewide requirements.

~~(40)~~~~(42)~~ Taylorsville Lake WMA.

(a) There shall be a quota hunt for:

1. Two (2) consecutive days beginning the first Saturday in November for antlerless deer;

2. Two (2) consecutive days beginning the first Saturday in December; and

3. Two (2) consecutive days beginning the second~~first~~ Saturday in January.

(b) Seven (7) openings shall be reserved in each quota hunt for mobility-impaired persons.

(c) The youth firearm season shall be open pursuant to statewide requirements.

(d) The crossbow season shall be open pursuant to statewide requirements.

(e) A participant in the November antlerless-only quota hunt shall be given one (1) preference point for each female deer checked in, up to four (4).

~~(41)~~~~(43)~~ Twin Eagle WMA. The crossbow season shall be open pursuant to statewide requirements.

~~(42)~~~~(44)~~ Paul Van Booven WMA. The crossbow season shall be open pursuant to statewide requirements.

~~(43)~~~~(45)~~ Veteran's Memorial WMA.

(a) The crossbow and youth firearms seasons shall be open pursuant to statewide requirements.~~;~~ and

(b) There shall be a quota hunt for:

1. Two (2) consecutive days beginning the first Saturday in November; and

2. Two (2) consecutive days beginning the first Saturday in December for antlerless deer.

(c) A participant in the December antlerless-only quota hunt shall be given one (1) preference point for each female deer checked in, up to a maximum of four (4) points.

~~(44)~~~~(46)~~ West Kentucky WMA.

(a) All tracts shall be open pursuant to statewide requirements for the archery and crossbow seasons, except that all tracts shall be closed to archery and crossbow hunting during department administered quota and firearm deer hunts.

(b) Tracts 1-6 shall be open to shotgun and muzzleloader hunters participating in the quota and open firearm deer hunts.

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(c) Tract 7 and "A" Tracts shall not be open for department administered quota or firearm deer hunts.

(d) The quota hunt shall be for five (5) consecutive days beginning the Saturday prior to Thanksgiving.

(e) The firearms season shall:

1. Be for three (3) consecutive days beginning the Saturday preceding the third Monday in January;

2. ~~Be limited to the first 200 hunters;~~

3. ~~Require a hunter to check-in at a designated check station from 4 p.m. to 8 p.m. Central Time on the day before the hunt or between 4:30 a.m. and 7 p.m. Central Time on hunt days;~~

3. ~~4. Shall~~ Require a hunter to check out at the designated check station:

a. When finished hunting; or

b. By 7 p.m. Central time on the final day of the hunt;

4. ~~5. Have an unlimited bag limit, only one (1) of which may be an antlered deer; and~~

5. ~~6. Require every person to check in during the firearms season, except for:~~

a. A person traveling on an established public road; or

b. A person in an area designated as open by signs.

(f) Firearm hunters shall not use centerfire rifles or handguns.

(g) All persons shall check in daily at the designated check-in locations before entering the "A" tracts.

(h) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(i) A participant in the quota hunt or open firearms season shall:

1. Sign in for the hunting tract of his or her choice at check-in prior to each day's hunt; and

2. Except after noon, not hunt outside of that tract.

(45) ~~(47)~~ Yatesville WMA.

~~(a) The crossbow, youth firearm, and muzzleloader, and modern firearm seasons shall be open pursuant to statewide requirements, except a person shall not take antlerless deer with a firearm during the modern firearm deer season].~~

~~(b) The modern firearm season shall be open pursuant to statewide requirements for ten (10) consecutive days beginning the second Saturday in November.~~

(46) ~~(48)~~ Yellowbank WMA. The crossbow and youth firearm deer seasons shall be open pursuant to statewide requirements.

Section 7. State Park Deer Seasons. (1) A state park may allow archery and crossbow hunting from the first Saturday in September through the third Monday in January for antlered or antlerless deer.

(2) A state park may allow up to sixteen (16) days of firearm hunting and up to eleven (11) days of muzzleloader hunting from the first Saturday in September through the third Monday in January for antlered or antlerless deer.

(3) A state park shall be open to deer hunting as established in this subsection and Section 8 of this administrative regulation.

(a) Lake Barkley State Resort Park. Deer hunting shall be permitted on the first Tuesday of January for two (2) consecutive days.

(b) Greenbo Lake State Resort Park. Deer hunting shall be permitted on the first Tuesday of January for two (2) consecutive days.

(c) Green River Lake State Park.

1. Archery and crossbow deer hunting shall be permitted beginning the second Thursday of December for four (4) consecutive days.

2. Archery and crossbow deer hunting shall be permitted beginning the third Thursday of December for four (4) consecutive days.

3. A deer hunter shall not take an antlered deer with antlers having an outside spread less than fifteen (15) inches.

(d) Yatesville Lake State Park. Muzzleloading firearm, archery, and crossbow deer hunting shall be permitted pursuant to statewide deer requirements on the second ~~third~~ Monday of December for three (3) consecutive days.

(e) Jenny Wiley State Resort Park.

1. Deer hunting shall be permitted on the second ~~first~~

Saturday of January for two (2) consecutive days.

2. The bag limit shall be two (2) deer, only one (1) of which may be antlered.

3. The hunt shall be open to the first fifteen (15) mobility-impaired persons who check in at the park on the day before the hunt.

4. A person who participates in the hunt shall comply with the requirements established in 301 KAR 3:026.

5. A deer hunter shall not take an antlered deer with antlers having an outside spread less than fifteen (15) inches.

Section 8. State Park Deer Hunt Requirements. (1) Except for the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park, a person shall not hunt on a state park unless:

(a) Selected by a random drawing as established in Section 3 of this administrative regulation;

(b) The person is a member of a successful applicant's hunting party; or

(c) The person was selected as part of a process administered by the Department of Parks, pursuant to Section 7 of this administrative regulation.

(2) A person participating in a state park hunt, except for the quota hunts at Green River Lake State Park and the Yatesville Lake State Park open deer hunt, shall:

(a) Check in and check out as required in Section 5 of this administrative regulation;

(b) Furnish at check-in a driver's license or other form of government-issued identification;

(c) Check in:

1. Between noon and 8 p.m. Eastern Time the day before the hunt at the state park campground if hunting in the Yatesville Lake State Park open deer hunt; or

2. At the park the day before the hunt if hunting in the Jenny Wiley State Resort Park deer hunt; and

(d) Not be eligible to apply for a quota hunt the following year if the person does not check out as required in Section 5 of this administrative regulation.

(3) A person participating in a state park deer hunt shall:

(a) Comply with the provisions of 301 KAR 2:172; and

(b) Check harvested deer daily at the designated park check station, except that deer taken in the Green River Lake State Park quota hunts and the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park shall be telechecked or checked in on the department's Web site at fw.ky.gov, pursuant to 301 KAR 2:172.

(4) A person participating in a state park deer hunt shall not:

(a) Take more than two (2) deer in a quota hunt, only one (1) of which may be antlered;

(b) Hunt over bait;

(c) Injure a tree by using:

1. A tree stand except a portable stand;

2. Climbing devices that nail or screw to the tree; or

3. Climbing spikes;

(d) Leave a deer stand unattended for more than twenty-four (24) hours;

(e) Discharge a firearm within 100 yards of a maintained road or building; or ~~and~~

(f) Hunt:

1. In an area posted as closed by signs; or

2. Outside park boundaries.

(5) A person participating in a state park deer hunt, other than the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park and any department administered state park quota hunt, may take up to two (2) bonus deer per hunt that shall not count toward the statewide limit if the person:

(a) Takes no more than one (1) bonus antlered deer per license year; and

(b) Obtains the valid bonus deer tag from the state park hunt administrators.

Section 9. Other Public Lands. (1) On Daniel Boone National Forest, Jefferson National Forest, and Land Between the Lakes, a person shall not use bait, feed, minerals, or other attractants.

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(2) The areas established in paragraphs (a) through (g) of this subsection may schedule a firearm, crossbow, or archery deer hunting season between September 1 and January 31:

- (a) Big South Fork National River and Recreation Area;
- (b) Clark's River National Wildlife Refuge;
- (c) Daniel Boone National Forest;
- (d) Jefferson National Forest;
- (e) Land Between the Lakes National Recreation Area;
- (f) Ohio River Islands National Wildlife Refuge; and
- (g) Reelfoot National Wildlife Refuge.

(3) An area listed in subsection (2) of this section may issue a bonus permit for antlered or antlerless deer, which shall:

- (a) Not count against a hunter's statewide bag limit; and
- (b) Only be issued for a hunt that is open to the general public.

(4) At Land Between the Lakes, a person:

- (a) Shall not take more than:
 - 1. Two (2) deer during archery hunts; and
 - 2. One (1) deer during quota hunts;
- (b) Who is a quota deer hunter shall:
 - 1. Apply in advance at Land Between the Lakes; and
 - 2. Only hunt from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset; and

(c) Who harvests a deer shall:

- 1. Check in the carcass pursuant to U.S. Forest Service requirements; and
- 2. Affix a game check card pursuant to U.S. Forest Service requirements.

(5) At Reelfoot National Wildlife Refuge:

(a) Zone 1 bag limits shall apply during the open archery season;

(b) A person shall not take more than two (2) deer by firearm, only one (1) of which shall be antlered;

(c) A quota hunt participant shall:

- 1. Tag deer with a tag issued by the Refuge; and
- 2. Comply with the Refuge check-in requirements; and

(d) A person who is archery hunting shall:

- 1. Only take deer using the appropriate statewide or additional deer permit; and
- 2. Check harvested deer through the department's telephone or online check-in systems.

(6) At Otter Creek Outdoor Recreation Area:

(a) The archery and crossbow seasons shall be open pursuant to statewide requirements; and

(b) There shall be a quota hunt for ~~two (2) consecutive days beginning the third Saturday in November; and~~

~~two (2) consecutive days beginning the~~ second Saturday in December.

(7) At Twin Knobs Campground, the area shall be closed to all statewide seasons, except that there shall be a quota hunt on the second Saturday in December during odd-numbered years for mobility-impaired persons.

(8) At Zilpo Campground, the area shall be closed to all statewide seasons, except that there shall be a quota hunt on the second Saturday in December during even-numbered years for mobility-impaired persons.

Section 10. Special Areas under Federal Control. (1) The areas established in paragraphs (a) through (e) of this subsection may schedule a firearm, archery, or crossbow deer hunting season between September 1 and January 31:

- (a) Bluegrass Army Depot;
- (b) Fort Campbell;
- (c) Fort Knox;
- (d) Hidden Valley Training Center; and
- (e) Wendell Ford Regional Training Center.

(2) An area listed in subsection (1) of this section may issue a bonus permit for antlered or antlerless deer, which shall:

- (a) Not count against a hunter's statewide bag limit; and
- (b) Only be issued for a hunt that is open to the general public.

(3) Except on the Hidden Valley Training area, on the areas listed in subsection (1) of this section, a deer hunter shall:

- (a) Obtain a permit from the area before hunting;
- (b) Only hunt on assigned dates;

(c) Remain in assigned areas;

(d) Tag deer with tags issued on the area, unless otherwise established in this section;

(e) Keep the area tag attached to the deer until the carcass is processed; and

(f) Check deer at a designated check station before leaving the area.

(4) At Bluegrass Army Depot, a person shall not take an antlered deer whose outside antler spread is less than fifteen (15) inches.

(5) At Fort Knox, a person shall not take an antlered deer whose outside antler spread is less than twelve (12) inches.

(6) At Hidden Valley Training Area, a person shall not use a firearm to hunt deer.

Section 11. Incorporation by Reference. (1) "Quota Hunt Application: Deer Quota Hunt Form", March 2014, 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.

KAREN WALDROP, Deputy Commissioner

For GREGORY K. JOHNSON, Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: January 9, 2015

FILED WITH LRC: January 14, 2015 at 10 a.m.

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136, email fwpubliccomments@ky.gov.

DEPARTMENT OF AGRICULTURE
Office of State Veterinarian
Division of Animal Health
(As Amended at ARRS, April 14, 2015)

302 KAR 20:110. Treatment of imported mares.

RELATES TO: KRS 257.070, 9 C.F.R. 93.301

STATUTORY AUTHORITY: KRS 257.030, 257.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.070 requires that importation of animals into Kentucky complies with administrative regulations promulgated by the board. KRS 257.030 authorizes the board to establish necessary quarantines and other measures to control the movement of livestock into, through, or within Kentucky. This administrative regulation establishes a technique for the treatment of a mare imported into Kentucky from a country listed in 9 C.F.R. 93.301 as a country affected by contagious equine metritis (CEM).

Section 1. Definitions. (1) "Application to import" means a request to import a horse or horses to a single specific farm or quarantine facility that includes submission of the Import Mare Agreement Form upon importation of the horse.

(2) "Approved veterinarian" means a licensed veterinarian who is accredited to do regulatory work by the United States Department of Agriculture and who has physically demonstrated proper swabbing and sampling methods to a representative of the Office of the State Veterinarian.

(3) "CEM" means contagious equine metritis.

(4) "CF test" means a complement-fixation test on equine serum for the detection of antibodies to the contagious equine metritis bacterium.

(5) "Cleansing of a stallion" means thorough washing, using warm water, of the external genitalia of the stallion with the penis in full erection.

(6) "Mare" means a female horse over 731 days of age.

(7) "Set of swabs" means a swab obtained from the clitoral sinus and clitoral fossa.

Section 2. A mare imported into Kentucky for breeding from a country known to be affected by CEM shall be tested and treated for Contagious Equine Metritis by or under the direct supervision of a Kentucky approved veterinarian who is approved by the Kentucky Department of Agriculture according to the procedures established in this section.

(1) Prior to importation, the premises shall be inspected by a representative of the Office of the State Veterinarian and USDA Veterinary Services Guidance 13406.1 shall be completed at the time of inspection and signed by the farm manager.

(2) Following arrival into Kentucky, the approved veterinarian shall determine the mare's pregnancy status, review the prescribed testing and treatment schedule, and submit to the Office of the State Veterinarian the reported findings and acceptance or required/enquired amendments to the testing schedule based on the conditions of the mare by completing the Import Mare Agreement Form and Import Mare CEM Plan and Worksheet Form.

(3) During the course of the quarantine, the approved veterinarian shall collect and submit for CEM culture three (3) sets of swabs from the mare. The sets of swabs shall be collected during a twelve (12) day period with a minimal of seventy-two (72) hours lapsing between each set being collected. Mares determined and reported to be non-pregnant shall have an additional swab collected from the endometrium or distal cervix~~of~~ included with the third set of swabs.

(4) Following the third set of swabs being submitted for culture, the approved veterinarian shall manually remove all organic debris from the clitoral fossa and sinuses. The sinuses shall then be flushed with an approved ceruminolytic agent until all remaining debris has been removed. The approved veterinarian shall, for five (5) consecutive days, wash and clean (scrub), with a solution of not less than two (2) percent chlorhexidine in a detergent base, the external genitalia, vaginal vestibule, clitoral fossa, and clitoral sinuses. The clitoral fossa, clitoral sinuses, external genitalia, and vaginal vestibule shall be filled and covered with an antibiotic ointment that is effective against the CEM organism and is approved by USDA and the Kentucky State Veterinarian.

(5) After the procedures established in subsections (1) and (2) of this section have been satisfactorily completed and all three (3) of the swabs are reported to the department as testing negative for CEM bacterium, the imported mare may be released from quarantine by the department.

(6) Before the imported mare may be bred in Kentucky, a swab shall be collected from the endometrium and cultured negative for CEM. This swab may be included with any of the three (3) required sets of swabs, or for a pregnant mare, may be collected after foaling.

(7) An imported mare bred in Kentucky shall be prophylactically scrubbed and bred last of the group of mares bred during that session. The external genitalia of the covering stallion shall be cleansed, as defined in Section 1 of this administrative regulation, after breeding an imported mare. The next three (3) mares bred to the stallion, after the imported mare, shall have a blood sample collected and submitted for CF testing fifteen (15) to twenty-five (25) days postbreeding. Included with the submission of the sample shall be the name of the imported mare that was bred prior to the mare being tested, and the name of the covering stallion, date, and time bred.

(8) The farm's management where the stallion is standing shall notify the owner or agent of the three (3) mares bred to the stallion, following an imported mare, that a postbreeding CF test is required.

(9) The farm where the stallion is standing shall contact the Kentucky State Veterinarian and provide the name, breeding date, time, and location of the imported mare covered, and the name, breeding date, time, and location of the three (3) mares bred to the stallion following the imported mare. A mare imported into Kentucky, for breeding, from a country known to be affected by CEM shall be treated by or under the direct supervision of a Kentucky licensed, accredited veterinarian according to the following procedure:

(1) Following arrival into Kentucky, the veterinarian shall obtain

a set of swabs from the mare on days one (1), four (4), and seven (7).

(2) On completing the set of swabs on day seven (7), the accredited veterinarian shall manually remove all organic debris from the clitoral fossa and sinuses. The sinuses shall then be flushed with an approved ceruminolytic agent until all remaining debris has been removed. The accredited veterinarian shall, for five (5) consecutive days, wash and clean (scrub), with a solution of not less than two (2) percent chlorhexidine in a detergent base, the external genitalia, vaginal vestibule, clitoral fossa, and clitoral sinuses. The clitoral fossa, clitoral sinuses, external genitalia, and vaginal vestibule shall be filled and covered with an antibiotic ointment that is effective against the CEM organism and is approved by USDA and the Kentucky State Veterinarian.

(3) After the procedures established in subsections (1) and (2) of this section have been satisfactorily completed and all three (3) of the swabs are reported to the department as testing negative for CEM bacterium, the imported mare may be released from quarantine.

(4) Before the imported mare may be bred in Kentucky, a swab shall be collected from the endometrium and cultured negative for CEM. This swab may be included with any of the three (3) required sets of swabs, or for a pregnant mare, may be collected after foaling.

(5) An imported mare bred in Kentucky shall be prophylactically scrubbed and bred last of the group of mares bred during that session. The external genitalia of the covering stallion shall be cleansed, as defined in Section 1 of this administrative regulation, after breeding an imported mare. The next three (3) mares bred to the stallion, after the imported mare, shall have a blood sample collected and submitted for CF testing fifteen (15) to twenty-five (25) days postbreeding. Included with the submission of the sample shall be the name of the imported mare that was bred prior to the mare being tested, and the name of the covering stallion, date, and time bred.

(6) The farm where the stallion is standing shall to notify the owner or agent of the three (3) mares bred to the stallion, following an imported mare, that a postbreeding CF test is required.

(7) The farm where the stallion is standing shall contact the Kentucky State Veterinarian and provide the name, breeding date, time, and location of the imported mare covered, and the name, breeding date, time, and location of the three (3) mares bred to the stallion following the imported mare.

Section 3. The imported mare may be released from quarantine when:

(1) The requirements of Sections 1 and 2 of this administrative regulation have been completed; and

(2) The required specimens taken from the mare test negative for the CEM bacterium].

Section 3.[4:] A CEM culture positive mare shall remain under quarantine and shall be treated as described in Section 2(4)[(2)] and [7]([5]) of this administrative regulation. The mare shall have sets of swabs obtained, as described in Section 2(3)[(4)] of this administrative regulation, no less than twenty-one (21) days after the last day of treatment. If all required specimens taken from the mare test negative for the CEM bacterium, the mare may be released from quarantine.

Section 4.[5:] User fees shall be assessed for an equine import. (1)(a) An import broker making application to import mares into Kentucky for completion of a CEM quarantine shall be assessed and pay a fee for the processing, implementation, and monitoring of the quarantine.

(b) If multiple destinations are declared for animals to be quarantined, each listed destination shall constitute a separate application.

(2) An application processing and premise inspection fee of \$100 shall be assessed for each application received to import mares into Kentucky for completion of the CEM quarantine.

(3) Upon receipt of the mare(s) at the quarantine facility, the broker shall be assessed a fee of \$120 per individual mare for the

receipt, inspection, quarantine, and monitoring to establish the animal's disease status during the quarantine period.

(4) An import broker shall pay a fee for each shipment of mares which arrives at a Kentucky quarantine destination on weekends, state-recognized holidays, and between the hours of 5:01 p.m. and 6:59 a.m.

(a) For weekends and between the hours of 5:01 p.m. and 6:59 a.m., the assessed fee shall be sixty (60) dollars per hour with a minimum of two (2) hours time charged, including the travel time of KDA employees.

(b) For state-recognized holidays, the assessed fee shall be \$120 per hour with a minimum of two (2) hours charged. The holiday fee shall apply to all mares received during the holiday period which runs from the close of business on the last scheduled work day preceding the holiday, through the start of business on the next scheduled work day following the holiday including the travel time of KDA employees.

(5) The broker shall pay the assessed fees by check. The check shall be made payable to the Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Office of State Veterinarian within ninety-six (96) hours of receipt of the charges.

(6) Failure to comply with the user fee schedule may result in an application for importation to be delayed or denied.

Section 5. The imported mare shall be released from quarantine ~~if/when~~:

(1) The requirements of all sections of this administrative regulation have been completed;

(2) The required specimens taken from the mare test negative for the CEM bacterium; and

(3) No other evidence of CEM conditions, indication of possible CEM suppression, or other related medical issues are found.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Import Mare Agreement Form", February 2015

(b) "~~Import Mare Agreement Form and~~ Import Mare CEM Plan and Worksheet Form", February 2015; and

(c) "USDA Veterinary Services Guidance 13406.1", 2/13/13.[February 2015]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of the State Veterinarian, 109 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material is also available on the department Web site at www.kyagr.com.

DR. ROBERT STOUT, Kentucky State Veterinarian

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DEPARTMENT OF AGRICULTURE
Office of State Veterinarian
Division of Animal Health
(As Amended at ARRS, April 14, 2015)

302 KAR 20:120. Treatment of imported stallions.

RELATES TO: KRS 257.070, 9 C.F.R. 93.301

STATUTORY AUTHORITY: KRS 257.030, 257.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.070 requires that importation of animals[the importing of an animal] into Kentucky complies with administrative regulations promulgated by the board. KRS 257.030 authorizes the board to establish necessary quarantines and other measures to control the movement of livestock into, through, or within Kentucky. This administrative regulation establishes a technique[techniques] for the treatment of a stallion[stallions] imported into Kentucky from a country listed in 9 C.F.R. 93.301 as a country affected by

contagious equine metritis (CEM)[outside the continental United States, its territories and possessions, or Canada].

Section 1. Definitions. (1) "Application to import" means a request to import a horse or horses to a single specific farm or quarantine facility that includes submission of the Import Stallion Agreement Form upon importation of the horse.

(2) "Approved veterinarian" means a licensed veterinarian who is accredited to do regulatory work by the United States Department of Agriculture and who has physically demonstrated proper swabbing and sampling methods to a representative of the Office of the State Veterinarian.

(3) "Breeding" or "bred" means the natural covering of a mare.

(4)[(3)] "CEM" means contagious equine metritis.

(5)[(4)] "CF test" means a complement-fixation test on equine serum for the detection of antibodies to the contagious equine metritis bacterium.

(6)[(5)] "Set of swabs" means:

(a) For a female equine, a swab obtained from the clitoral sinus and clitoral fossa; and

(b) For an intact male equine, a swab obtained from the prepuce, the urethral sinus, and the fossa glandis, including the diverticulum of the fossa glandis.

(7)[(6)] "Stallion" means a male horse, other than a gelding, over 731 days of age.

Section 2. A stallion imported into Kentucky[Stallions over 731 days of age at the time of importation] from a country identified or classified by the United States Department of Agriculture to be affected with Contagious Equine Metritis, and which imports into the United States and Kentucky via a breeding permit issued by USDA shall be quarantined by the Kentucky Department of Agriculture until all testing for CEM required in 9 C.F.R. 93.300-93.326[Title 9 of the Code of Federal Regulations] is complied with and it is determined the stallion is free of the disease causing organism.

Section 3. Stallions, other than those addressed in Section 2 of this administrative regulation, imported from any country outside the continental United States, its territories, possessions, or Canada shall, before breeding in Kentucky, be treated by or under the direct supervision of a Kentucky approved veterinarian who is approved by the Kentucky Department of Agriculture according to the procedures established in this section[licensed, accredited veterinarian according to the requirements of this section].

(1) The stallion's management and approved veterinarian shall complete the Import Stallion Agreement Form and CEM Imported Stallion Worksheet Form[Stallion CEM Worksheet].

(2) The premises shall be inspected by a representative of the Office of the State Veterinarian and USDA Veterinary Services Guidance 13406.1 shall be completed at the time of inspection and signed by the farm manager.

(3) While wearing disposable gloves and using disposable equipment, the approved veterinarian shall collect one (1) set of swabs from the stallion to be cultured for CEM.

(4) The stallion shall be bred to two (2) test mares that have been qualified as CEM free. The test mares shall qualify as CEM free if:

(a) They test negative to a CF test; and

(b) If three (3) sets of swabs taken from the mares during a twelve (12) day period with a minimal of seventy-two (72) hours lapsing between each set being collected are culture negative for the CEM bacterium.

(5) After being bred by the stallion, a set of swabs shall be collected from the test mares on the third, sixth, and ninth days after breeding.

(6) The test mares shall have a CF test conducted fifteen (15) days after breeding.

(7) With the stallion in full erection, the approved veterinarian shall, for five (5) consecutive days, wash and clean (scrub) with a solution of not less than two (2) percent chlorhexidine in a detergent base, the prepuce, urethral sinus, and fossa glandis.

including the diverticulum of the fossa glandis. The external genitalia, the prepuce, urethral sinus, and fossa glandis, including the diverticulum of the fossa glandis, shall then be filled and covered with an antibiotic ointment that is effective against the CEM organism and which is approved by the USDA and the Kentucky State Veterinarian. [A list of approved laboratories may be found at http://www.aphis.usda.gov/animal_health/lab_info_services/downloads/Approvedlabs_CEM.pdf]

(8) All tests and cultures required by this section shall be conducted at a laboratory approved by the USDA's National Veterinary Services Laboratory and the Kentucky State Veterinarian. A list of approved laboratories may be found at http://www.aphis.usda.gov/animal_health/lab_info_services/downloads/Approvedlabs_CEM.pdf. If all required specimens taken from the test mares and stallion are test negative and culture negative for the CEM bacterium, the stallion and the test mares may be released from quarantine [Stallions over 734 days of age at the time of importation from outside the continental United States, its territories, possessions, or Canada shall, before breeding, be treated by or under the direct supervision of a Kentucky licensed, accredited veterinarian according to the following:

(1) While wearing disposable gloves and using disposable equipment, the veterinarian shall collect one (1) set of swabs from the stallion to be cultured for CEM.

(2) The stallion shall be bred to two (2) test mares that have been qualified as CEM free. The test mares shall qualify as CEM free if:

(a) They test negative to a CF test; and

(b) A set of swabs taken from the mares on days one (1), four (4), and seven (7) are culture negative for the CEM bacterium.

(3) After being bred by the stallion, a set of swabs shall be collected from the test mares on the third, sixth, and ninth days after breeding.

(4) The test mares shall have a CF test conducted fifteen (15) days after breeding.

(5) With the stallion in full erection, the veterinarian shall, for five (5) consecutive days, wash and clean (scrub) with a solution of not less than two (2) percent chlorhexidine in a detergent base, the prepuce, urethral sinus, and fossa glandis, including the diverticulum of the fossa glandis. The external genitalia, the prepuce, urethral sinus, and fossa glandis, including the diverticulum of the fossa glandis, shall then be filled and covered with an antibiotic ointment that is effective against the CEM organism and which is approved by the USDA and the Kentucky State Veterinarian. A list of approved laboratories may be found at http://www.aphis.usda.gov/animal_health/lab_info_services/downloads/Approvedlabs_CEM.pdf

(7) All tests and cultures required by this section shall be conducted at a laboratory approved by the USDA's National Veterinary Services Laboratory and the Kentucky State Veterinarian. If all required specimens taken from the test mares and stallion are test negative and culture negative for the CEM bacterium, the stallion and the test mares may be released from quarantine].

Section 4.[3.] User fees shall be assessed for an equine import. (1)(a) An import broker making application to import a stallion into Kentucky for completion of a CEM quarantine shall be assessed and pay a fee for the processing, implementation, and monitoring of the quarantine.

(b) If multiple destinations are declared for animals to be quarantined, each listed destination shall constitute a separate application.

(2) An application processing and premise inspection fee of \$100 shall be assessed for each application received to import horses into Kentucky for completion of the prescribed CEM quarantine and testing.

(3) Upon receipt of the stallion at the quarantine facility the broker shall be assessed a fee of \$260 per individual stallion for the receipt, inspection, quarantine, test breeding, and monitoring of the stallion and test mares to establish the animal's disease status

during the quarantine period.

(4) An import broker shall pay a fee for each shipment of stallions which arrive at a Kentucky quarantine destination on weekends, state-recognized holidays, and between the hours of 5:01 p.m. and 6:59 a.m.

(a) For weekends and between the hours of 5:01 p.m. and 6:59 a.m., the assessed fee shall be sixty (60) dollars per hour with a minimum of two (2) hours time charged including the travel time of KDA employees.

(b) For state-recognized holidays, the assessed fee shall be \$120 per hour with a minimum of two (2) hours time charged. The holiday fee shall apply to all stallions received during the holiday period which runs from the close of business on the last scheduled work day preceding the holiday, through the start of business on the next scheduled work day following the holiday including the travel time of KDA employees.

(5) The broker shall pay the assessed fees by check. The check shall be made payable to the Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Office of State Veterinarian within ninety-six (96) hours of receipt of the charges.

(6) Failure to comply with the user fee schedule may result in an application for importation to be delayed or denied.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Import Stallion Agreement Form", February 2015;

(b) "CEM Imported/Import" Stallion Worksheet Form", February 2015; and

(c) "USDA Veterinary Services Guidance 13406.1", 2/13/13[February 2015].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of State Veterinarian, 109 Corporate Drive, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material is also available on the department Web site at www.kyagr.com.

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (As Amended at ARRS, April 14, 2015)

702 KAR 3:320. Finance officer certification requirements.

RELATES TO: KRS 160.431, 161.020(1)(b)

STATUTORY AUTHORITY: KRS 156.070, 160.431

NECESSITY, FUNCTION AND CONFORMITY: KRS 156.070 authorizes the Kentucky Board of Education to promulgate administrative regulations necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. KRS 160.431(2) requires [school finance officers to meet certification and continuing education requirements and authorizes] the Kentucky Board of Education to promulgate administrative regulations identifying and prescribing the criteria and procedures for school finance officer certification and continuing education. This administrative regulation establishes the standards for school finance officer certification and continuing education.

Section 1. Definitions. (1) "Break in service" means an end to the employment relationship of the individual as the designated finance officer for a Kentucky school district without a transfer of employment to another Kentucky school district to serve as the designated finance officer.

(2) "Finance officer" means a person appointed pursuant to

KRS 160.431(1).

(3)(2) "Finance officer intern" means any finance officer who has obtained a provisional certificate under Section 3 of this administrative regulation but who has not acquired a full certificate under Section 4 of this administrative regulation.

(4)(3) "Mentor" means an individual approved by the department to oversee a finance officer intern through the Kentucky Finance Officer Internship Program.

Section 2. Initial Qualifications. An individual shall be eligible to be employed as a finance officer on or after July 1, 2015, if the individual:

(1) Is employed on June 30, 2015 as a finance officer in a Kentucky school district and does not have a six (6) month or longer[an] employment break in service as a finance officer in any Kentucky school district after June 30, 2015. A six (6) month or longer break in service as a finance officer in any Kentucky school district after June 30, 2015, shall terminate the individual's qualification for employment as a finance officer under this subsection; or

(2) Obtains a provisional or full certificate under Section 3 or 4 of this administrative regulation.

Section 3. Provisional Certification. (1) An individual who is seeking to be employed as a finance officer in a Kentucky school district who does not meet the requirements of Section 2(1) of this administrative regulation and who does not possess a full certificate shall secure a provisional certificate by submitting the Provisional Certification Application Form, KDE-FOCP-1, to the department to verify the individual meets the following eligibility requirements:

(a) A minimum of a bachelor's degree from any accredited postsecondary institution; and

(b)1. A minimum of twelve (12) credit hours in accounting coursework from any accredited postsecondary institution;

2. A minimum of four (4) years' work experience primarily in accounting or finance, confirmed by the district of employment; or

3. A minimum of two (2) years' work experience in finance in a local school district, confirmed by the district of employment.

(2) The department shall issue a provisional certificate to an individual providing proof of the eligibility requirements of subsection (1) of this section and proof of an offer of employment as a finance officer in a Kentucky school district.

(3) A finance officer provisional certificate shall be in effect until:

(a) The individual obtains full certification;

(b) The individual fails to provide to the department the proof of progress toward full certification required by subsection (4) of this section; or

(c) Five (5) years have passed since the provisional certificate's issuance date.

(4) The provisional certificate holder shall annually submit proof of progress toward full certification to the department by the anniversary of the issuance date of the provisional certificate. Failure to provide this annual proof of progress or to obtain full certification within five (5) years of the issuance of a provisional certificate shall result in the loss of the provisional certificate.

Section 4. Full Certification. (1) An individual who is eligible for employment as a finance officer under Section 2(2) of this administrative regulation shall apply for full certification prior to the expiration of the provisional certificate by submitting the Full Certification Application Form, KDE-FOCP-2, to the department to verify:

(a) Current provisional certification;

(b) Completion of the Kentucky Finance Officer Internship Program (KFIP) under Section 5 of this administrative regulation;

(c) Fifteen (15) hours of finance officer training from the Finance Officer Curriculum, KDE-FOCP-6, provided by a department-approved training provider; and

(d) Twelve (12) hours of training in the state-approved school district financial software package provided by a department-approved training provider.

(2) A full certificate shall be renewed automatically unless the finance officer fails to meet the biennial continuing education requirements of Section 6 of this administrative regulation.

Section 5. Kentucky Finance Officer Internship Program (KFIP). (1) Within thirty (30) days of employment as a finance officer, the provisionally certified finance officer shall apply for participation in the KFIP.

(2) The KFIP Assessment Committee shall consist of:

(a) The mentor assigned by the department;

(b) The employing district's superintendent or designee; and

(c) A department representative.

(3) Mentors shall meet the following qualification requirements:

(a) Possess full certification under this administrative regulation or meet the requirements of Section 2(1) of this administrative regulation;

(b) Complete the department's mentor training; and

(c) Complete the Mentor Application Form, KDE-FOCP-5.

(4) Mentors shall:

(a) Work with finance officer interns to develop a chronological task plan based on the Finance Officer Curriculum, KDE-FPCO-6;

(b) Continue the mentorship for a period of twelve (12) consecutive months;

(c) Document the time spent mentoring and a summary of the content on form KDE-FOCP-3;

(d) Document attendance by the finance officer intern at any mentoring meetings during the internship; and

(e) Serve as a mentor for no more than two (2) individuals concurrently.

(5) Mentors shall be eligible to earn, as a mentor, a maximum of twenty-one (21) hours of continuing education, not to exceed one (1) hour per month, during the mentorship, toward the requirement of KRS 160.431(3) for the mentor training and mentor contact.

(6) Mentors shall be eligible to receive from available funds an annual stipend, not to exceed \$1,000 each fiscal year per individual mentored, from the department for the mentorship. A district may also choose to reimburse the mentor for any expenses, including travel and provide a separate, additional stipend to the mentor. If the KFIP Assessment Committee requires a finance officer intern to repeat a portion or the entire internship curriculum under subsection (9) of this section, then a mentor shall not be eligible to receive the stipend from the department for additional fiscal years of mentorship required by the KFIP Assessment Committee. The district may still reimburse and provide a stipend to a mentor of a finance officer intern in any additional fiscal years of internship required by the KFIP Assessment Committee.

(7) The KFIP Assessment Committee shall:

(a) Assist in the development of the intern's chronological task plan required in subsection (4)(a) of this section;

(b) Meet six (6) months after the initiation of the internship to assess progress;

(c) Assess whether the finance officer intern completed the internship; and

(d) Complete the Assessment Committee Report Form, KDE-FOCP-4.

(8) As part of its assessment, the KFIP Assessment Committee shall consider:

(a) Documentation provided by the mentor, pursuant to subsection (4) of this section;

(b) The recommendation of the finance officer intern's superintendent based on actual work performance; and

(c) The report by the department of work product submissions and interactions.

(9) Based upon the information obtained pursuant to subsection (7) of this section, the KFIP Assessment Committee shall do one (1) of the following at the end of the internship, ~~the KFIP Assessment Committee shall do one (1) of the following~~:

(a) Declare the internship completed;

(b) Require the finance officer intern to repeat a portion of the internship curriculum; or

(c) Require the finance officer intern to repeat the entire internship curriculum.

(10) The finance officer intern may request a different mentor if the KFIP Assessment Committee requires the internship to be repeated.

(11) The mentor may request to be replaced by another mentor if the KFIP Assessment Committee requires the internship to be repeated.

Section 6. Continuing Education. (1) Fully certified finance officers and those qualified under Section 2(1) of this administrative regulation shall meet the continuing education requirements of KRS 160.431(3). **A break in service for any length of time for any finance officer shall not reduce the continuing education requirements of KRS 160.431(3).**

(2) Each finance officer shall complete at least twelve (12) hours of continuing education by June 30 of each fiscal year.

(3) The department shall approve continuing education courses that:

(a) Include the following subject areas:

1. Evaluation of financial staff;

2. Financial system management, including payroll, purchasing, budgeting, general ledger, and financial reporting;

3. Alignment of the financial budget with federal and state law requirements;

4. Analysis of district financial data and provision of financial reports to the local board of education, school councils, and the department;

5. Comprehension of the district vision for education and the role of district finances in accomplishing that vision;

6. Interpretation, use, and communication of financial data and financial strengths and weaknesses of the district to the local board of education, school councils, and the community;
or

7. Professional development designed to support any existing district improvement plan;

(b) Adhere to research-based principles of adult learning;

(c) Reflect current thinking in the field and promote generally accepted accounting practices;

(d) Provide for active engagement of participants; and

(e) Extend participants' learning, financial, and leadership skills.

(4) Continuing education course providers shall:

(a) Structure a training program so as to improve and maintain the quality and effectiveness of the financial operations in the public school districts of the Commonwealth;

(b) Ensure that training is intensive and designed specifically for finance officers;

(c) Have an established organizational structure or be an affiliate of this type of organization;

(d) Develop and submit programs to the department for approval at least thirty (30) days prior to the scheduled delivery of the continuing education program;

(e) Maintain the necessary records to:

1. Evaluate every continuing education course session;

2. Track attendance; and

3. Award certificates of completion to continuing education course attendees that provide the name of session, approval number, hours of continuing education credit awarded, and the name of the sponsor of the training;

(f) Provide evidence that the assigned trainers have knowledge, skill, and experience relevant to the particular training;

(g) Conduct training as approved; and

(h) Identify in all program promotional literature the following:

1. The two (2) year cycle for which training approval is granted;

2. The subject areas for which training is approved; and

3. The approval number assigned by the department for finance officer continuing education course eligibility.

Section 7. Revocation and Appeal for Reinstatement of Full Certification. (1)(a) Failure to meet the annual requirement of twelve (12) hours of continuing education of Section 6(2) of this administrative regulation shall result in a temporary suspension of a finance officer's full certification.

(b) The department shall notify the district superintendent of the temporary suspension.

(c) The certificate holder shall complete the required number of hours of continuing education by the end of the biennial period.

(d) Three (3) temporary suspensions shall result in revocation of the full certification.

(2) Failure to meet the biennial requirement of forty-two (42) hours of continuing education shall result in revocation of the full certification.

(3) The certificate holder may appeal to the department for reinstatement of a provisional or full certification which has been revoked under subsections (1) or (2) of this section if:

(a) The certificate holder requests reinstatement and provides supporting documentation to the department; and

(b) The certificate holder has fulfilled all requirements of the provisional or full certification including the required continuing education for the latest fiscal year.

(4) The department shall review and make a determination regarding reinstatement within thirty (30) days of receipt of the appeal. **The department shall reinstate a certificate holder who has met the requirements of subsection (3) of this section.**

Section 8. Grandfather Status. (1) An individual who is eligible for grandfather status pursuant to Section 2(1) of this administrative regulation shall submit the Provisional Certification Application Form, KDE-FOCP-1, to the department.

(2) An individual with grandfather status may obtain full certification if either:

(a) The department approves the individual as a mentor in the KFIP in accordance with the requirements of this administrative regulation; or

(b) The individual meets all provisional and full certification requirements, including successful completion of the KFIP.

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

(a) "Provisional Certification Application", FOCP-1, July 2015;

(b) "Full Certification Application", FOCP-2, July 2015;

(c) "Intern Progress Report", FOCP-3, July 2015;

(d) "Assessment Committee Report", FOCP-4, July 2015;

(e) "Mentor Application", FOCP-5, July 2015; and

(f) "Finance Officer Curriculum", FOCP-6, July 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, 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 of Education

ROGER L. MARCUM, Chairperson

APPROVED BY AGENCY: February 13, 2015

FILED WITH LRC: February 13, 2015 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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, April 14, 2015)

705 KAR 4:250. Energy technology engineering career pathway.

RELATES TO: KRS 158.808, 158.810

STATUTORY AUTHORITY: KRS 156.070, 158.808

NECESSITY, FUNCTION, AND CONFORMITY: KRS

156.070(4) authorizes the Kentucky Board of Education to promulgate administrative regulations and prescribe courses of study and curriculums necessary for the efficient management, control, and operations of schools and programs under its jurisdiction. KRS 158.808 requires the board to promulgate administrative regulations to establish and administer an energy technology career track program, approve grant recipients, and distribute funds to local school districts. This administrative regulation establishes requirements for the application and the awarding of grants for an energy technology engineering career pathway[KRS 158.808 requires the Kentucky Department of Education (department) to establish and administer an energy technology engineering career pathway, approve grant recipients, and distribute funds to local school districts. The Kentucky Board of Education is authorized by KRS 158.808 to promulgate administrative regulations for the administration of that program. This administrative regulation establishes a process for the department Kentucky Board of Education to administer the energy technology engineering career track program, approve grant recipients, and distribute funds to local school districts].

Section 1. Definitions.[Definition:] (1) "Career pathway program of study" is defined by/in KRS 158.810(7)(6)[means a coherent, articulated sequence of rigorous academic and career and technical courses, including dual credit opportunities, leading to a postsecondary degree or industry-recognized certification or licensure, that is developed, implemented, and maintained in partnership with secondary and postsecondary institutions, businesses, and employers].

(2) "Secondary area center" is defined by/in KRS 158.810(11).

Section 2. Application Process. (1) A Kentucky public school district shall be eligible to apply for a grant through a request for application process. The application materials shall be posted publicly on the department's Web site for a minimum of thirty (30) days. The application deadlines shall be published at <http://education.ky.gov/districts/business/Pages/Competitive%20Grants%20from%20KDE.aspx>proposal process.

(2) A local school district superintendent shall submit the Request for Application, Energy Technology Engineering Career Pathway Grant[application] and have the approval of participating schools' school-based decision making councils and local board of education.

(3) A grant application shall indicate the fiscal agent as:

(a) A local board of education for all district comprehensive secondary schools and locally-operated secondary area centers; or

(b) The department's Office of Career and Technical Education for all state-operated secondary area centers.

(4) To be eligible for funding, an applicant school shall provide an energy career pathway approved by the department in accordance with this administrative regulation, and which includes the following components:

(a) Energy-related applications, including energy and power technology, engineering design and development, and energy-related research and applications as developed by the department in consultation with representatives from the energy technology industry, the University of Kentucky Center for Applied Energy Research, the Council on Postsecondary Education, the Kentucky Community and Technical College System, the Kentucky

Department for Energy Development and Independence, and local school districts[The Project Lead the Way middle school program Gateway to Technology, with content to include energy-related activities and the following Project Lead the Way pre engineering courses at the high school level:

1. Introduction to Engineering Design;

2. Principles of Engineering;

3. Digital Electronics;

4. A specialized course in Energy and Power Technology, or integration of energy-related content and applications in each of the Project Lead the way courses. The content shall include energy-related applications as developed by the Kentucky Department of Education, in consultation with representatives from the energy technology industry, the University of Kentucky Center for Applied Energy Research, the Council on Postsecondary Education, the Kentucky Community and Technical College System, Governor's Office of Energy Policy, local school districts, and Project Lead the Way; and

5. Engineering Design and Development, with content to include energy-related research and applications];

(b) A curriculum that has been reviewed and is supported by representatives from the energy technology industry and by an institution of higher education as a curriculum that will prepare students for success in either college or career within the energy industry;

(c) The opportunity for students to participate in a related career and technical student organization, as well as energy related internships or cooperative education with energy-related industries or postsecondary education;

(d)(e) Matching funds that shall be allocated to directly support the implementation of the program, which may include other state, federal, local, or nonpublic sources, within the uses and conditions set forth by the source of those funds. Previously awarded energy and engineering initiative[Project Lead the Way] state grants and local matches shall not be considered as matching funds for this program;and

(e)(d) [Status as a registered Project Lead The Way site prior to disbursement of funds; and

(e) Submission of seven (7) complete copies of the application plus an electronic copy; and

(f) The completion of all affiliate agreements and required registrations by the fall of each year.

Section 3. Selection of Grants. (1) The criteria for selection of applications for funding shall be based on the appropriateness and quality of the following:

(a) Process for identifying potential students and estimated enrollment in the Energy Technology Engineering Career Pathway;

(b) An implementation plan, which includes:

1. Computer availability, including hardware and software commonly used in related fields;

2. Teacher availability and certification;

3. Elementary school integration;

4. Middle school and high school program;

5. Measures of student progress to be utilized;

6. Instructional space that is a minimum of 1,700 square feet;

7. Program Growth[Student Recruitment] Plan, including recruitment of traditionally underserved populations;

8. Business and postsecondary partners and other education partnerships;and

9. Narrative of budget and timeline, including the efficient and effective use of proposed grant funds and matching funds; and

10. Action plans for program sustainability, which shall include a description of the degree to which program objectives are to be met, specific methods and criteria used for evaluation, and the assessment used to determine if outcomes have been met;

(c) Program evaluation to include annual graduate follow-up surveys; and

(d) Level of individual school and district commitment for teacher professional development[; and

(e) Narrative of budget and timeline, including the efficient and

effective use of proposed grant funds and matching funds].

(2) An application shall be reviewed as follows:

(a) A team of evaluators shall review the application; ~~and~~

(b) ~~1-] The application shall be required to receive the minimum score as determined by the department according to the application's scoring rubric. The scoring rubric shall be posted in the application materials as part of the request for application; and~~

(c) The department ~~[Kentucky Department of Education]~~ shall approve funding based upon the results of the review.

(3) ~~2-] Consideration may be given to provide for geographic diversity and the number of students to be served, as well as the use of matching funds,~~ in order to maximize the benefits of the program.

Section 4. Grant Allocations and Requirements. (1) The award size or range of grants shall be determined by the department ~~[Kentucky Department of Education]~~, in accordance with this section.

(a) A school shall be eligible for a maximum of three (3) years of funding.

(b) 1. Year one (1) funding shall be used for implementation; and

2. Years two (2) and three (3) shall be used for the sustainability of the program.

(2) Allowable expenditures include:

(a) Laboratory equipment and instructional materials necessary for ~~[Project Lead the Way]~~ instruction;

(b) Computers and computer upgrades;

(c) Computer software required by the curriculum ~~[Project Lead the Way];~~

(d) A laptop computer for the instructor;

(e) Travel expenses and registration fees for teachers and school administrators, including school counselors, to attend ~~[the]~~ required conferences and trainings ~~[Project Lead the Way counselors conference];~~

(f) ~~[Travel expenses and registration fees for teachers to attend the required Project Lead the Way summer teacher institutes;~~

(g) ~~Resources and professional learning~~ ~~[development]~~ for integrating energy activities in the curriculum; ~~and]~~

(h) ~~Energy related instructional materials and equipment; and~~

(h) A prorated allocation of the funding paid to a collaborating state-operated secondary area center or local community/ technical college, which shall be included in the requisite budget forms.

(3) State grant funds shall not be used to maintain, renovate, or build facilities or pay teacher salaries, but local district expenditures for these purposes may be included as matching funds.

(4) Monitoring of awarded grants shall include the following:

(a) Fiscal reports submitted semi-annually ~~[quarterly]~~ to the department ~~[of Education]~~; and

(b) Annual program evaluation report on the implementation plan that outlines the project accomplishments related to the project need, objectives, and outcomes.

Section 5. Incorporation by Reference. (1) The "Energy Technology Engineering Career Pathway Grant Application", March 2015, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, 500 Mero Street, Capitol Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., and is available on the department's Web site at <http://education.ky.gov/districts/business/Pages/Competitive%20Grants%20from%20KDE.aspx>.

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: December 15, 2014

FILED WITH LRC: December 15, 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.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Provider Operations

(As Amended at ARRS, April 14, 2015)

907 KAR 3:017. Enhanced reimbursement for preventive and wellness services.

RELATES TO: KRS 205.520, 205.560

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(1), 42 U.S.C. 1396a(a)(30) ~~[.]~~

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the policies and requirements regarding the Department for Medicaid Services' enhanced reimbursement for certain preventive services and wellness services provided to Medicaid recipients who are not enrolled with a managed care organization.

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

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

~~(3)]~~ "Currently enrolled with the Medicaid Program" means:

(a) Currently enrolled with the Medicaid Program pursuant to 907 KAR 1:672; and

(b) Currently participating with the Medicaid Program pursuant to 907 KAR 1:671.

~~(3)]~~ (4) "Department" means the Department for Medicaid Services or its designee.

~~(4)]~~ (5) "Federal financial participation" is defined by 42 C.F.R. 400.203.

~~(5)]~~ (6) "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

~~(6)]~~ (7) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

~~(7)]~~ (8) "Physician" is defined by KRS 311.550(12).

~~(8)]~~ (9) "Physician assistant" is defined by KRS 311.840(3).

~~(9)]~~ (10) "Provider" is defined by KRS 205.8451(7).

~~(11)]~~ "Provider group" means a group of at least:

(a) Two (2) individually licensed physicians who:

1. Are currently enrolled with the Medicaid Program individually and as a group; and

2. Share the same Medicaid group provider number;

(b) Two (2) individually licensed APRNs who:

1. Are currently enrolled with the Medicaid Program individually and as a group; and

2. Share the same Medicaid group provider number; or

(c) At least one (1) APRN and at least one (1) physician who:

1. Are currently enrolled with the Medicaid Program individually and as a group; and

2. Share the same Medicaid group provider number.

~~(10)]~~ (12) "Recipient" is defined in KRS 205.8451(9).

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Section 2. Qualifying Requirements. To qualify as a service to be reimbursed at the amount established on the Medicaid Preventive and Wellness Enhanced Fee Schedule, the service shall:

- (1) Be medically necessary;
- (2) Meet the criteria established for the service on the Medicaid Preventive and Wellness Enhanced Fee Schedule; and
- (3) Be provided:
 - (a) To a recipient who is not enrolled with a managed care organization; and
 - (b) By:
 1. A physician who is:
 - a. Currently enrolled with the Medicaid Program; or
 - b. Participating with a provider group that is currently enrolled with the Medicaid Program;
 2. An APRN who is:
 - a. Currently enrolled with the Medicaid Program; or
 - b. Participating with a provider group that is currently enrolled with the Medicaid Program; or
 3. A physician assistant who is employed by or under contract with:
 - a. A physician who is currently enrolled with the Medicaid Program;
 - b. An APRN who is currently enrolled with the Medicaid Program; or
 - c. A provider group that is currently enrolled with the Medicaid Program.

Section 3. Enhanced Reimbursement for Preventive and Wellness Services. (1) The department shall reimburse for a preventive or wellness service listed on the Medicaid Preventive and Wellness Enhanced Fee Schedule:

- (a) If the service meets the qualifying requirements established in Section 2 of this administrative regulation;
 - (b) In accordance with the requirements and limits established on the Medicaid Preventive and Wellness Enhanced Fee Schedule; and
 - (c) The amount corresponding to the service as listed on the Medicaid Preventive and Wellness Enhanced Fee Schedule.
- (2) The department's reimbursement referenced in subsection (1)(c) of this section shall:
- (a) Apply to services rendered from January 1, 2015 through June 30, 2016; and
 - (b) Not apply to services rendered July 1, 2016 going forward.

Section 4. 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 5. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to implement the reimbursement established in this administrative regulation.

Section 6. 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 7. Supersede. If any reimbursement provision stated in 907 KAR 3:010 or 907 KAR 1:104 contradicts a provision stated in this administrative regulation or in the Medicaid Preventive and Wellness Enhanced Fee Schedule, the provision stated in this administrative regulation or in the Medicaid Preventive and Wellness Enhanced Fee Schedule shall supersede the provision stated in 907 KAR 3:010 or 907 KAR 1:104.

Section 8. Incorporation by Reference. (1) The "Medicaid

Preventive and Wellness Enhanced Fee Schedule", April 2015[December 2014], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a) At 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: December 18, 2014

FILED WITH LRC: December 31, 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.

**ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS**

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Property Valuation
(Amended After Comments)**

103 KAR 3:030. Property and Severance Forms manual.

RELATES TO: KRS 42.470, 61.870-61.884, 131.020, 131.030, 131.041-131.081, 131.110, 131.130, 131.155, 131.181, 131.183, 131.190, 131.340, 131.500, 131.510(1), (2)(a), 131.540, 132.020, 132.130-132.180, 132.190, 132.200, 132.220-132.270, 132.290, 132.310, 132.320, 132.360, 132.450, 132.487, 132.510, 132.820, 132.825, 132.990, 133.045, 133.110, 133.120, 133.130, 133.240, 134.015, 134.119, 134.121, 134.122, 134.127, 134.128, 134.129, 134.420, 134.590, 134.800, 134.805, 134.810, 134.815, 134.820, 134.825, 134.830, 135.010, 135.020, 135.050, 136.020, 136.050, 136.115-136.180, 136.1802-136.1806, 136.1873, 136.188, 136.310, 136.320, 136.330, 136.335, 136.377, 136.545, 136.575, 136.600-136.660, 137.130, 137.160, 143.030(1), 143.037, 143.040, 143.050, 143.060(1), 143.085, 143.990, 143A.010, 143A.030, 143A.035, 143A.037, 143A.080, 143A.090, 143A.100(1), 143A.991, Ky. Const. Sec. 170

STATUTORY AUTHORITY: KRS 131.130(3)

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

Section 1. Property Tax - Required Forms. (1) Revenue Form 61A200(P), "Property Tax Forms and Instructions for Public Service Companies 2015[2014]", shall be the packet of files and instructions relating to Revenue Form 61A200 for use by public service companies reporting company name, location, and other pertinent filing information with the Department of Revenue.

(2) Revenue Form 61A200, "Public Service Company Property Tax Return for Year Ending December 31, 2014[2013]", shall be filed by public service companies reporting company name, location, and other pertinent filing information with the Department of Revenue.

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

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

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

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

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

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

of the taxable year.

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

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

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

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

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

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

(15) Revenue Form 61A200(M), "Report of Property and Business Factors for Interstate Railroad and Sleeping Car Companies", shall be filed by interstate railroad and sleeping car companies with the Department of Revenue, reporting property and business factors in total and for the state of Kentucky.

(16) Revenue Form 61A200(N1), "Report of Operating Leased Real Property Located in Kentucky By Taxing District", shall be filed by public service companies with the Department of Revenue, reporting all leased real property and the terms of the lease by taxing district.

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

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

(19) Revenue Form 61A200(O), "Railroad Private Car Mileage Report", shall be filed by railroad car line companies with the Department of Revenue reporting the name and address of the company and the mileage in Kentucky.

(20) Revenue Form 61A200(Q), "Supplemental Report of Operations for Contained and Residential Landfills", shall be filed by landfills with the Department of Revenue, reporting historic, current, and projected operational information.

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

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

(23) Revenue Form 61A202, "2015[2014] Public Service Company Property Tax Return for Railroad Car Line", shall be filed by railroad car line companies with the Department of Revenue,

classifying the railcars by type and reporting cost, age, and mileage for each railcar.

(24) Revenue Form 61A206(P), "Public Service Company Property Tax Forms and Instructions for Commercial Air Passenger and Air Freight Carriers 2015[2014]", shall be the packet of files and instructions relating to Revenue Form 61A206 for use by commercial air passenger and air freight carriers reporting company name, location and other pertinent information with the Department of Revenue.

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

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

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

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

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

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

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

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

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

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

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

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

(37) Revenue Form 61A206(J), "Summary Report of System and Kentucky Operating Lease Payments", shall be filed by all commercial air passenger and air freight carriers listing all annual operating lease payments.

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

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

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

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

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

(43) Revenue Form 61A207(P), "Commercial Watercraft Personal Property Tax Return 2015[2014]", shall be the packet of files and instructions relating to Revenue Form 61A207 for use by commercial watercraft owners both resident and nonresident, reporting the watercraft's book value, original cost and total and Kentucky route mileage with the Department of Revenue.

(44) Revenue Form 61A207, "2015[2014] Commercial Watercraft Personal Property Tax Return", shall be filed by all commercial watercraft owners, both resident and nonresident, reporting the watercraft's book value, original cost, and total and Kentucky route mileage with the Department of Revenue.

(45) Revenue Form 61A207(A), "Report of Owned Vessels in Your Possession", shall be filed with the Department of Revenue, reporting all owned vessels (both available and operating) in their fleet as of January 1, 2015[2014].

(46) Revenue Form 61A207(B), "Report of Owned Vessels - in Possession of Others", shall be filed with the Department of Revenue, reporting all owned vessels that are in possession of other persons, companies, corporations, operators, or charterers as of January 1, 2015[2014].

(47) Revenue Form 61A207(C), "Report of Nonowned Vessels in Your Possession", shall be filed with the Department of Revenue, reporting all nonowned vessels (both available and operating) in their fleet as of January 1, 2015[2014].

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

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

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

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

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

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

(54) Revenue Form 61A211(IP), "Instructions For Editing the Public Service Company Motor Vehicle Printout", shall provide instructions for editing the computer printout of previously reported licensed vehicles sent by the Department of Revenue to public service companies that have listed vehicles with the department in prior years.

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

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

(57) Revenue Form 61A250, "Notice of Assessment", shall be sent by the Department of Revenue to the taxpayer notifying the taxpayer of his or her claim of assessed value on public service company property.

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

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

(60) Revenue Form 61A500(P), "2015[2014] Personal Property Tax Forms and Instructions for Communications Service Providers and Multichannel Video Programming Service Providers", shall be the packet of files and instructions relating to Revenue Form 61A500 for use by telecommunication, satellite, and cable television companies, reporting all tangible personal property with the Department of Revenue.

(61) Revenue Form 61A500, "2015[2014] Tangible Personal Property Tax Return for Communications Service Providers and Multichannel Video Programming Service Providers", shall be filed by telecommunication, satellite, and cable television companies, reporting all tangible personal property with the Department of Revenue.

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

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

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

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

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

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

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

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

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

(71) Revenue Form 61A508-S5, "Schedule 5", shall be filed by distilleries with the Department of Revenue, reporting the fair cash values of case goods summarized on Form 61A508.

(72) Revenue Form 61A508-S6, "Schedule 6 Industrial

Revenue Bond Property", shall be filed with the Department of Revenue, reporting property purchased with an industrial revenue bond.

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

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

(75) Revenue Form 61F008, "Notification Protesting Your Assessment", shall inform taxpayers of the protest procedures on Railroad Car Line assessments.

(76) Revenue Form 61F009, "Notification Protesting Your Assessment", shall inform taxpayers of the protest procedures on Public Service Company Property Tax assessments.

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

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

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

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

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

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

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

(84) Revenue Form 62A015, "2015[2014] Motor Vehicle and Watercraft Property Tax Rate Certification", shall be submitted annually to the Department of Revenue by motor vehicle and watercraft taxing jurisdictions to certify the rates established by the taxing jurisdiction for motor vehicles and watercraft.

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

(86) Revenue Form 62A017, "County Clerk's Claim for Calculation of Motor Vehicle and Boat Bills", shall be completed by the Department of Revenue and county clerk to certify the total number of motor vehicle and boat accounts for a given county and find the county clerk's compensation for making tax bills.

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

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

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

(90) Revenue Form 62A044, "Affidavit for Correction/Exoneration of Motor Vehicle/Boat/Trailer Property

Tax", shall be completed by the owner of a vehicle, boat, or trailer at the property valuation administrator's office in order to correct owner or vehicle, boat, or trailer information in the ad valorem tax computer system. The PVA shall present the form to the county clerk when a tax refund is authorized.

(91) Revenue Form 62A200(P), "~~2015~~[2014] Unmined Coal Property Tax Information Return", shall be the packet of files and instructions relating to Revenue Form 62A200 for use by owners or lessees of unmined minerals, reporting filer information with the Department of Revenue.

(92) Revenue Form 62A200, "~~2015~~[2014] Unmined Coal Property Tax Information Return", shall be filed by owners or lessees of unmined minerals, reporting filer information with the Department of Revenue.

(93) Revenue Form 62A200, "Schedule A Fee Property Ownership", shall be filed by owners or lessees of unmined minerals with the Department of Revenue, reporting ownership information for each parcel or royalty information for each leased parcel.

(94) Revenue Form 62A200, "Schedule B Leased Property", shall be filed by all lessees and sublessees with the Department of Revenue, reporting ownership information for each parcel or royalty information for each leased parcel.

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

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

(97) Revenue Form 62A200, "Schedule E Farm Exception to Unmined Minerals Tax", shall be filed by surface owners, who own the mineral rights in their entirety and are engaged primarily in farming, to be excepted from the unmined minerals tax.

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

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

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

(101) Revenue Form 62A303, "Minutes of the Board of Assessment Appeals", shall be used by the county clerk to record the proceedings of the local board of assessment appeals, list[listing] taxpayer information, provide a description of the property, include the property valuation administrator's assessment and indicate the amount of increase or decrease in value[increase/decrease].

(102) Revenue Form 62A303-A, "Certification", shall be used by the county clerk to affirm that the minutes of the local board of assessment appeals are[is] accurate.

(103) Revenue Form 62A303-B, "Summary of Appeals Filed With the County Board of Assessment Appeals", shall be used by the county clerk to list all appeals filed with the local board of assessment appeals, including the date and time the hearing has been scheduled.

(104) Revenue Form 62A303-C, "Justification for Decision of Local Board of Assessment Appeals", shall be used to list a justification of the decision of the local board of assessment appeals.

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

(106)[(102)] Revenue Form 62A305, "Property Valuation

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

(107)[(103)] Revenue Form 62A307, "Property Owner Conference Record", shall be used by the property valuation administrator to document a property owner's appeal conference. The property owner or his or her representative shall be asked to sign the record and shall be given a copy of the record.

(108)[(104)] Revenue Form 62A323, "Record of Additions and Deletions", shall be used by the PVA to report all real property additions and deletions for a particular assessment year.

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

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

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

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

(113)[(109)] Revenue Form 62A354, "Notice to Property Owner of Final Decision of Board of Assessment Appeals", shall be sent from the Board of Assessment Appeals to the property owner to inform him or her of its ruling.

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

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

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

(117)[(113)] Revenue Form 62A360, "Order Correcting Erroneous Assessment", shall be issued to the collection agency (county sheriff or clerk) and taxpayer correcting an erroneous mineral property tax assessment.

(118)[(114)] Revenue Form 62A362, "Sheriff's Report of Delinquent Personal Property Tax Bills Transferred to the County Clerk", shall be used by the sheriff to report delinquent personal property tax bills transferred from the sheriff to the county clerk's office.

(119) Revenue Form 62A362-A, "Certification", shall be used by the sheriff to affirm that the list of delinquent personal property tax bills transferred to the county clerk is correct.

(120)[(115)] Revenue Form 62A363, "County Clerk's Claim for Preparing Tax Bills", shall be submitted by the county clerk in order to receive payment for each property tax bill prepared, with one-half (1/2) paid out of the county treasury and one-half (1/2) paid out of the State Treasury.

(121)[(116)] Revenue Form 62A363-B, "County Clerk's Claim for Preparing Omitted Tax Bills", shall be submitted by the county

clerk in order to receive payment of one (1) dollar for each omitted property tax bill prepared, with one-half (1/2) paid out of the county treasury and one-half (1/2) paid out of the State Treasury.

(122)[(117)] Revenue Form 62A364, "County Clerk's Monthly Report of Omitted Assessments", shall be used by the county clerk to report omitted assessments made by the property valuation administrator.

(123)[(118)] Revenue Form 62A365, "Nonresidency Affidavit", shall be filed as proof of nonresidency in Kentucky as of January 1, for ad valorem tax purposes.

(124)[(119)] Revenue Form 62A366, "Order Correcting Erroneous Assessment", shall be filed by the property valuation administrator with the sheriff, to correct an error made in an assessment of property.

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

(126)[(121)] Revenue Form 62A366R, "Exoneration Form for Property Tax Refund", shall be filed by a taxpayer for refunds of property tax.

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

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

(129)[(124)] Revenue Form 62A368-A, "County Clerk's Monthly Report of Delinquent Tax Collections", shall be used by county clerks to report monthly to the Department of Revenue delinquent property tax collections for the 1997 tax year only.

(130)[(125)] Revenue Form 62A368-B, "County Clerk's Monthly Report of Delinquent Tax Collections", shall be used by county clerks to report monthly to the Department of Revenue delinquent property tax collections for tax years after 1997.

(131)[(126)] Revenue Form 62A369, "County Clerk's Monthly Report of Delinquent Tax Collections", shall be used by county clerks to report monthly to the Department of Revenue delinquent property tax collections for 1996 and earlier tax years.

(132)[(127)] Revenue Form 62A369-A, "County Clerk's Monthly Report of Delinquent Tax Collections", shall be used by county clerks to report monthly to the Department of Revenue state commission from delinquent property tax collections.

(133)[(128)] Revenue Form 62A370, "Kentucky Department of Revenue Certificate of Registration", shall be issued by the Department of Revenue to individuals, corporations or partnerships proving eligibility to purchase certificates of delinquency. This certificate shall be presented to the county clerk at the time the third-party purchaser registers for the tax sale.

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

(135)[(130)] Revenue Form 62A371, "Attestation Form For Use When Taxpayer Cannot Make Contact With A Third Party Purchaser", shall be used by the taxpayer to attest to the county clerk that the taxpayer attempted to contact the third party purchaser in the manner specified by KRS 134.127(3)(e) and was unsuccessful.

(136)[(131)] Revenue Form 62A372, "Sheriff's List of Orders Correcting Erroneous Assessments", shall be used by the sheriff to report all exoneration made to the tax bills by the property valuation administrator.

(137)[(132)] Revenue Form 62A372-A, "Certification", shall be used by the sheriff to affirm that the list of exoneration is accurate.

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

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

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

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

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

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

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

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

(146)[(141)] Revenue Form 62A384C(I) "Instructions to Complete Clay Property Tax Return", shall be used by owners and lessees of land containing mineable clay minerals to file Revenue Form 62A384C.

(147)[(142)] Revenue Form 62A384-G, "Natural Gas Property Tax Return", shall be filed with the Department of Revenue by persons owning or leasing developed natural gas properties, reporting the location of the property, total yearly gas production, number of producing wells, and the total dollar value of production.

(148)[(143)] Revenue Form 62A384-G/O(I) "Gas/Oil," shall be used as a letter informing owners of natural gas and oil property of the responsibility to file, the filing deadline, and where to locate the forms.

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

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

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

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

(153) Revenue Form 62A386, "Sheriff's Official Receipt for Additional/Supplemental Property Tax Bills(s)", shall be used by the sheriff to acknowledge receipt of additional or supplemental property tax bills and to document the amount to be collected for each taxing district.

(154)[(148)] Revenue Form 62A393, "Sheriff's Property Tax Account Statement", shall be used by the Department of Revenue to conduct the annual property tax settlement with the sheriff.

(155)[(149)] Revenue Form 62A393-A, "Incoming Sheriff's

Property Tax Account Statement", shall be used by the Department of Revenue to conduct the property tax settlement with the incoming sheriff.

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

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

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

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

(160)[(154)] Revenue Form 62A500(P), "2015[2014] Personal Property Tax Forms and Instructions", shall be the packet of files and instructions relating to Revenue Form 62A500 for use by owners or lessees of tangible personal property reporting taxpayer information, original cost of tangible property and reported value of tangible property with either the property valuation administrator of the county of taxable situs or with the Department of Revenue.

(161)[(155)] Revenue Form 62A500, "2015[2014] Tangible Personal Property Tax Return", shall be filed by owners or lessees of tangible personal property reporting taxpayer information, original cost of tangible property and reported value of tangible property with either the property valuation administrator of the county of taxable situs or with the Department of Revenue.

(162)[(156)] Revenue Form 62A500-A, "2015[2014] Tangible Personal Property Tax Return (Aircraft Assessments Only)", shall be filed by owners or lessees of aircraft not used for commercial purposes, with either the property valuation administrator of the county of taxable situs or with the Department of Revenue, reporting the federal registration number, make and model, and taxpayer's value for each aircraft.

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

(164)[(158)] Revenue Form 62A500-L, "Lessee Tangible Personal Property Tax Return", shall be filed by lessees of tangible personal property who did not list the property on Revenue Form 62A500, with either the property valuation administrator of the county of taxable situs or with the Department of Revenue, reporting lessor information and equipment information.

(165)[(159)] Revenue Form 62A500-M1, "Boat Dealer's Used Inventory Listing for Line 31 Tangible Personal Property Tax Return", shall be filed by boat dealers with the property valuation administrator of each county of taxable situs or with the Department of Revenue, containing a detailed listing of used boats held for sale by a licensed boat dealer.

(166)[(160)] Revenue Form 62A500-S1, "Automobile Dealer's Inventory Listing for Line 34 Tangible Personal Property Tax Return", shall be filed by automobile dealers, dealers with new boat and marine equipment held under a floor plan or dealers with new farm machinery held under a floor plan with the property valuation administrator of each county of taxable situs or with the Department of Revenue, containing a detailed listing of property reported on line 34 of the Tangible Personal Property Tax Return.

(167)[(161)] Revenue Form 62A500-W, "2015[2014] Tangible Personal Property Tax Return (Documented Watercraft)", shall be filed by owners or lessees of documented vessels not used for commercial purposes, with either the property valuation administrator of the county of taxable situs or with the Department of Revenue, reporting the coast guard number, make and model

and taxpayer's value for each watercraft.

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

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

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

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

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

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

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

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

(176)[(170)] Revenue Form 62B003, "Unmined Coal Notice of Tax Assessment", shall be sent by the Department of Revenue to the taxpayer notifying him or her of the value of his or her interest in unmixed coal property.

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

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

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

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

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

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

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

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

(185)[(179)] Revenue Form 62F384-G, "Important Reminder" shall be a postcard mailed to previous filers of the Natural Gas

Property Tax Return as a reminder of the responsibility to file, the filing deadline, and where to locate the forms.

(186)[(180)] Revenue Form 62F500, "Important Reminder" shall be a postcard mailed to previous filers of the Tangible Personal Property Tax Return as a reminder of the responsibility to file, the filing deadline and where to locate the forms.

(187)[(181)] Revenue Form 62F1341, "Exemptions Allowed for Savings and Loans, Savings Banks and Similar Institutions for Intangible Property Tax Purposes", shall inform taxpayers, subject to intangible property tax on the value of their capital stock, of those institutions which issue obligations that are exempt from state ad valorem taxation.

Section 2. Severance Taxes - Required Forms. (1) Revenue Form 10A100, "Kentucky Tax Registration Application", shall be filed by taxpayers with a coal severance and processing tax account listing taxpayer information including mine name and mining permit number.

(2) Revenue Form 10A104, "Update Or Cancellation Of Kentucky Tax Account(s)", shall be used by taxpayers with a coal severance and processing tax account to update business information or to cancel the account.

(3) Revenue Form 55A004, "Coal Severance Tax Seller/Purchaser Certificate", shall be filed by the taxpayer to verify purchase coal deductions.

(4) Revenue Form 55A100, "Coal Severance Tax Return", shall be filed monthly by the taxpayer to report production and tax due.

(5) Revenue Form 55A100, "Part IV - Schedule of Purchased Coal", shall be used by the taxpayer to report coal purchased for processing and resale. "Part V - Schedule for Thin Seam Coal Tax Credit", shall be used by the taxpayer to apply for tax credit for underground mining of thin coal seams.

(6) Revenue Form 55A101, "Coal Severance Tax Return Instructions", shall be included with the coal tax return mailed to the taxpayer to assist in the completion of his or her return.

(7) Revenue Form 55A131, "Credit Memorandum", shall be used by the department to issue a credit to the taxpayer for an overpayment rather than a refund.

(8) Revenue Form 55A209, "Severance Tax Refund Application", shall be used by the taxpayer for the purpose of requesting a refund of tax overpaid.

(9) Revenue Form 56A001, "Application for Certificate of Registration Minerals and Natural Gas Tax", shall be used by persons dealing in minerals, natural gas or natural gas liquids who wish to register with the Department of Revenue to acquire an account number.

(10) Revenue Form 56A100, "Natural Gas and Natural Gas Liquids Tax Return", shall be used by registered natural gas and natural gas liquids taxpayers monthly to report production and tax due.

(11) Revenue Form 56A101, "Minerals Tax Return", shall be used by registered mineral taxpayers monthly to report production and tax due.

(12) Revenue Form 56A106, "Minerals Tax Certificate of Exemption", shall be used by mineral taxpayers to claim exemptions from minerals tax for minerals purchased for the maintenance of a privately maintained but publicly dedicated road.

(13) Revenue Form 56A107, "Schedule A, Allocation of Gross Value of Minerals Severed in Kentucky and Schedule B, Minerals Purchased from Others for Processing by Taxpayer", shall be used by mineral taxpayers to compute gross value of minerals to be allocated and to show the allocation by county of the gross value of minerals severed in Kentucky and also shall be used by a taxpayer for showing minerals that are purchased from others for processing by the taxpayer.

(14) Revenue Form 56A108, "Schedule A, Gross Value of Natural Gas Sold to Nonconsumers and Schedule B, Taxable Gross Value of Natural Gas and Natural Gas Liquids Extracted in Kentucky by Taxpayer - Allocation", shall be used by natural gas taxpayers to show details of all natural gas extracted in Kentucky and sold to nonconsumers and also shall be used by natural gas taxpayers to allocate the natural gas to the county or counties

where the natural gas or natural gas liquids were located prior to extraction.

(15) Revenue Form 56A109, "Schedule C, Natural Gas First Purchased by Taxpayer From Kentucky Producers", shall be used by natural gas taxpayers who are first purchasers of natural gas to show gross value by county or counties from which the natural gas was extracted.

(16) Revenue Form 56A110, "Minerals Tax Return Attachment, Schedule C, Computation of Clay Severed and Processed in Kentucky and Allocation of Tax Attributable to Clay", shall be used by mineral taxpayers that sever clay to compute tax due.

(17) Revenue Form 56A112, "Crude Petroleum Transporter's Monthly Report, Kentucky Oil Production Tax", shall be used by registered crude petroleum transporter's for reporting gross value and tax due.

(18) Revenue Form 56A113, "Minerals Tax Credit for Limestone Sold in Interstate Commerce", shall be used by mineral taxpayers for the purpose of determining the eligibility for the minerals tax credit.

(19) Revenue Form 56A114, "Crude Petroleum Transporter's Application for Registration", shall be used by crude petroleum transporters who wish to acquire an account number with the Kentucky Department of Revenue.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Property tax - referenced material:

1. Revenue Form 61A200(P), "Property Tax Forms and Instructions for Public Service Companies 2015[2014]", November 2014[October 2013];

2. Revenue Form 61A200, "Public Service Company Property Tax Return for Year Ending December 31, 2014[2013]", November 2014[October 2013];

3. Revenue Form 61A200(A), "Report of Total Unit System and Kentucky Operations", November 2014[October 2013];

4. Revenue Form 61A200(B), "Report of Kentucky Vehicles, Car Lines and Watercraft", November 2014[October 2013];

5. Revenue Form 61A200(C), "Report of Total Unit Operations Balance Sheet", November 2014[October 2013];

6. Revenue Form 61A200(D), "Report of Total Unit Operations Income Statement", November 2014[October 2013];

7. Revenue Form 61A200(E), "Filing Extension Application", November 2014[October 2013];

8. Revenue Form 61A200(G), "Report of Capital Stocks", November 2014[October 2013];

9. Revenue Form 61A200(H), "Report of Funded Debt", November 2014[October 2013];

10. Revenue Form 61A200(I), "Business Summary by Taxing Jurisdiction", November 2014[October 2013];

11. Revenue Form 61A200(J), "Property Summary by Taxing Jurisdiction, Operating and Nonoperating Property", November 2014[October 2013];

12. Revenue Form 61A200(K), "Operating Property Listing by Taxing Jurisdiction", November 2014[October 2013];

13. Revenue Form 61A200(K2), "Nonoperating [Nonoperating/Nonutility] Property Listing by Taxing Jurisdiction", November 2014[October 2013];

14. Revenue Form 61A200(L), "Report of Allocation Factors, Operating and Noncarrier Property for All Interstate Companies", November 2014[October 2013];

15. Revenue Form 61A200(M), "Report of Property and Business Factors for Interstate Railroad and Sleeping Car Companies", November 2014[October 2013];

16. Revenue Form 61A200(N1), "Report of Operating Leased Real Property Located in Kentucky By Taxing District", November 2014[October 2013];

17. Revenue Form 61A200(N2), "Report of Operating Leased Personal Property Located in Kentucky By Taxing District", November 2014[October 2013];

18. Revenue Form 61A200(N3), "Summary Report of System and Kentucky Operating Lease Payments", November 2014[October 2013];

19. Revenue Form 61A200(O), "Railroad Private Car Mileage

Report", November 2014[October-2013]

20. Revenue Form 61A200(Q), "Supplemental Report of Operations for Contained and Residential Landfills", November 2014[October-2013];

21. Revenue Form 61A200(R), "Report of Property Subject to the Pollution Control Tax Exemption", November 2014[October-2013];

22. Revenue Form 61A200(U), "Industrial Revenue Bond Property", November 2014[October-2013];

23. Revenue Form 61A202, "2015[2014] Public Service Company Property Tax Return for Railroad Car Line", November 2014[October-2013];

24. Revenue Form 61A206(P), "Public Service Company Property Tax Forms and Instructions for Commercial Air Passenger and Air Freight Carriers 2015[2014]", November 2014[October-2013];

25. Revenue Form 61A206, "Public Service Company Property Tax Return For Commercial Air Passenger and Air Freight Carriers", November 2014[October-2013];

26. Revenue Form 61A206(A), "Filing Extension Application for Public Service Company Property Tax Return", November 2014[October-2013];

27. Revenue Form 61A206(B), "Report of Kentucky Registered and Licensed Motor Vehicles", November 2014[October-2013];

28. Revenue Form 61A206(C), "Report of Financial Operations for Commercial Air Passenger and Air Freight Carriers", November 2014[October-2013];

29. Revenue Form 61A206(D-1), "Report of System Aircraft Fleet", November 2014[October-2013];

30. Revenue Form 61A206(D-2), "Report of System Aircraft Fleet", November 2014[October-2013];

31. Revenue Form 61A206(D-3), "Report of System Aircraft Fleet", November 2014[October-2013];

32. Revenue Form 61A206(E), "Report of Kentucky Flight Statistics By Airport", November 2014[October-2013];

33. Revenue Form 61A206(F), "Report of System and Kentucky Allocation Factors", November 2014[October-2013];

34. Revenue Form 61A206(G), "Report of Funded Debt", November 2014[October-2013];

35. Revenue Form 61A206(H), "Report of Operating Leased Real Property Located in Kentucky By Taxing District", November 2014[October-2013];

36. Revenue Form 61A206(I), "Report of Operating Leased Personal Property Located in Kentucky By Taxing District", November 2014[October-2013];

37. Revenue Form 61A206(J), "Summary Report of System and Kentucky Operating Lease Payments", November 2014[October-2013];

38. Revenue Form 61A206(K), "Report of Owned Real Property Located in Kentucky By Taxing District", November 2014[October-2013];

39. Revenue Form 61A206(L), "Report of Owned Personal Property Located in Kentucky By Taxing District", November 2014[October-2013];

40. Revenue Form 61A206(M), "Summary Report of Total System and Kentucky Operations", November 2014[October-2013];

41. Revenue Form 61A206(N), "Industrial Revenue Bond Property", November 2014 [October-2013];

42. Revenue Form 61A206(O), "Public Service Company Sales", November 2014[October-2013];

43. Revenue Form 61A207(P), "Commercial Watercraft Personal Property Tax Return 2015[2014]", November 2014[October-2013];

44. Revenue Form 61A207, "2015[2014] Commercial Watercraft Personal Property Tax Return", November 2014[October-2013];

45. Revenue Form 61A207(A), "Report of Owned Vessels in Your Possession", November 2014[October-2013];

46. Revenue Form 61A207(B), "Report of Owned Vessels - in Possession of Others", November 2014[October-2013];

47. Revenue Form 61A207(C), "Report of Nonowned Vessels in Your Possession", November 2014[October-2013];

48. Revenue Form 61A207(D), "Commercial Watercraft

Valuation Worksheet", November 2014[October-2013];

49. Revenue Form 61A207(E), "Report of Kentucky Route Miles", November 2014[October-2013];

50. Revenue Form 61A207(F), "Report of System Route Miles", November 2014[October-2013];

51. Revenue Form 61A209, "Public Service Company Sales", November 2014[October-2013];

52. Revenue Form 61A211, "Public Service Company Schedule of Owned and/or Leased Motor Vehicles with Kentucky Situs", November 2014[October-2013];

53. Revenue Form 61A211(I), "Instructions Public Service Company Schedule of Owned and/or Leased Motor Vehicles with Kentucky Situs", November 2014[October-2013];

54. Revenue Form 61A211(IP), "Instructions For Editing the Public Service Company Motor Vehicle Printout", November 2014[March-2013];

55. Revenue Form 61A230, "Notice of Assessment", February 2010;

56. Revenue Form 61A240, "Notice of Assessment", July 2011;

57. Revenue Form 61A250, "Notice of Assessment", August 2008;

58. Revenue Form 61A255, "Public Service Company Property Tax Statement", January 2012;

59. Revenue Form 61A255(I), "Instructions for 61A255, Public Service Company Property Tax Statement", July 2008;

60. Revenue Form 61A500(P), "2015[2014] Personal Property Tax Forms and Instructions for Communications Service Providers and Multichannel Video Programming Service Providers", December[November] 2014[October-2013];

61. Revenue Form 61A500, "2015[2014] Tangible Personal Property Tax Return for Communications Service Providers and Multichannel Video Programming Service Providers", December[November] 2014[October-2013];

62. Revenue Form 61A500(H), "Report of Total Personal Tangible Property in Kentucky", December[November] 2014[October-2013];

63. Revenue Form 61A500(I), "Summary of Gross Personal Tangible Property Listing by Taxing District", December[November] 2014[October-2013];

64. Revenue Form 61A500(J), "Summary of Reported Personal Tangible Property Listing by Taxing District", December[November] 2014[October-2013];

65. Revenue Form 61A500(K), "Personal Tangible Property Listing by Taxing District", December[November] 2014[October-2013];

66. Revenue Form 61A508, "Annual Report of Distilled Spirits in Bonded Warehouse", December[November] 2014[October-2013];

67. Revenue Form 61A508-S1, "Schedule 1 Office[Department] of Property Valuation Cost of Production Schedule", December[November] 2014[October-2013];

68. Revenue Form 61A508-S2, "Schedule 2 Office[Department] of Property Valuation Storage Cost Schedule", December[November] 2014[October-2013];

69. Revenue Form 61A508-S3, "Schedule 3 Schedule of Bulk Sales and Purchases (Bourbon Only)", December[November] 2014[October-2013];

70. Revenue Form 61A508-S4, "Schedule 4", December[November] 2014[October-2013];

71. Revenue Form 61A508-S5, "Schedule 5", December[November] 2014[October-2013];

72. Revenue Form 61A508-S6, "Schedule 6 Industrial Revenue Bond Property", December[November] 2014[October-2013];

73. Revenue Form 61A509, "Distilled Spirits or Telecoms Property Tax Statement", January 2012;

74. Revenue Form 61F007, "Notification Protesting Your Commercial Watercraft Assessment", July 2011;

75. Revenue Form 61F008, "Notification Protesting Your Assessment", July 2011;

76. Revenue Form 61F009, "Notification Protesting Your Assessment", July 2011;

77. Revenue Form 61F010, "Property Value Assessments for Public Service and Centrally Assessed Companies - Assessment of Distilled Spirits in Bonded Warehouses", March 2010;

78. Revenue Form 62A007, "Motor Vehicle Tax and/or Registration Renewal Notice", 2006;

79. Revenue Form 62A007S, "Motor Vehicle/Boat Property Tax Notice - Second Notice", 2006;

80. Revenue Form 62A008, "Motor Vehicle Tax Notice", 2006;

81. Revenue Form 62A009, "Map Sales Invoice", July, 2006;

82. Revenue Form 62A010, "Notice for Boat Transfer", 2009;

83. Revenue Form 62A013, "Application for Assessment Moratorium Certificate", December 2009;

84. Revenue Form 62A015, "2015[2014] Motor Vehicle and Watercraft Property Tax Rate Certification", 2014[2013];

85. Revenue Form 62A016, "2014[2012];

86. Revenue Form 62A017, "County Clerk's Claim for Calculation of Motor Vehicle and Boat Bills", 2009;

87. Revenue Form 62A020, "Intercounty Property Tax Collections", 2009;

88. Revenue Form 62A023, "Application for Exemption from Property Taxation", July 2013;

89. Revenue Form 62A030, "Request for Reproduction of PVA Public Records and Contract for Commercial Users", February 2008;

90. Revenue Form 62A044, "Affidavit for Correction/Exoneration of Motor Vehicle/Boat/Trailer Property Tax", February 2009;

91. Revenue Form 62A200(P), "2015[2014] Unmined Coal Property Tax Information Return", December 2014[2013];

92. Revenue Form 62A200, "2015[2014] Unmined Coal Property Tax Information Return", December 2014[2013];

93. Revenue Form 62A200, "Schedule A Fee Property Ownership", December 2014[2013];

94. Revenue Form 62A200, "Schedule B Leased Property", December 2014[2013];

95. Revenue Form 62A200, "Schedule C Property or Stock Transfers", December 2014[2013];

96. Revenue Form 62A200, "Schedule D Lease Terminations, Transfers or Assignments", December 2014[2013];

97. Revenue Form 62A200, "Schedule E Farm Exception to Unmined Minerals Tax", December 2014[2013];

98. Revenue Form 62A200, "Schedule F Geological Information by County", December 2014[2013];

99. Revenue Form 62A301-S, "Omitted Real Estate Property Tax Bill", January 2013;

100. Revenue Form 62A302, "Request for Information for Local Board of Tax Appeals", September 2005;

101. Revenue Form 62A303, "Minutes of the Board of Assessment Appeals", July 2014;

102. Revenue Form 62A303-A, "Certification", July 2014;

103. Revenue Form **62A303-B[303-B]**, "Summary of Appeals Filed With the County Board of Assessment Appeals", July 2014;

104. Revenue Form **62A303-C[303-C]**, "Justification For Decision of Local Board of Assessment Appeals", July 2014;

105. Revenue Form 62A304, "Property Valuation Administrator's Recapitulation of Real Property Tax Roll", July 2014[December 2008];

106.[102.] Revenue Form 62A305, "Property Valuation Administrator's Summary of Real Property Tax Roll Changes (Since Recapitulation)", July 2014[December 2008];

107.[403.] Revenue Form 62A307, "Property Owner Conference Record", September 2005;

108.[404.] Revenue Form 62A323, "Record of Additions and Deletions", July 2014[December 2008];

109.[405.] Revenue Form 62A329, "Annual Report of Domestic Life Insurance Companies", June 2014[August 2010];

110.[406.] Revenue Form 62A350, "Application for Exemption Under the Homestead/Disability Amendment", December 2011;

111.[407.] Revenue Form 62A352, "Notice to Real Property Owner of Assessment by Property Valuation Administrator", April 2005;

112.[408.] Revenue Form 62A353, "Notice of Listing of Omitted Real Property", September 2005;

113.[409.] Revenue Form 62A354, "Notice to Property Owner of Final Decision of Board of Assessment Appeals", July 2014[August 2006];

114.[410.] Revenue Form 62A358, "Receipt for Transferring Delinquent Property Tax Bills From the Sheriff to the County Clerk", December 2009;

115.[411.] Revenue Form 62A358-S, "Supplemental Receipt to Document Timely Postmarked Payments Received After the Delinquent Tax Bill Transfer Date", March 2010;

116.[412.] Revenue Form 62A359, "Sheriff's Report of Real Property Tax Bills Transferred to the County Clerk", December 2009;

117.[413.] Revenue Form 62A360, "Order Correcting Erroneous Assessment", 2011;

118.[414.] Revenue Form 62A362, "Sheriff's Report of Delinquent Personal Property Tax Bills Transferred to the County Clerk", July 2014[December 2012];

119. Revenue Form **62A362-A[1A]**, "Certification", July 2014;

120.[415.] Revenue Form 62A363, "County Clerk's Claim for Preparing Tax Bills", July 2014[December 2007];

121.[416.] Revenue Form 62A363-B, "County Clerk's Claim for Preparing Omitted Tax Bills", July 2014[December 2007];

122.[417.] Revenue Form 62A364, "County Clerk's Monthly Report of Omitted Assessments", July 2014[February 2006];

123.[418.] Revenue Form 62A365, "Nonresidency Affidavit", January 2012;

124.[419.] Revenue Form 62A366, "Order Correcting Erroneous Assessment", December 2013;

125.[420.] Revenue Form 62A366-D, "Order Correcting Erroneous Delinquent Assessment", July 2014[December 2013];

126.[421.] Revenue Form 62A366R, "Exoneration Form for Property Tax Refund", December 2013;

127.[422.] Revenue Form 62A367, "Authorization for Preparing Additional/Supplemental Property Tax Bills", July 2014[December 2008];

128.[423.] Revenue Form 62A367-A, "Instructions for Preparation of Additional/Supplemental Tax Bills and Official Receipt", July 2014[November 2011];

129.[424.] Revenue Form 62A368-A, "County Clerk's Monthly Report of Delinquent Tax Collections", February 2006;

130.[425.] Revenue Form 62A368-B, "County Clerk's Monthly Report of Delinquent Tax Collections", February 2006;

131.[426.] Revenue Form 62A369, "County Clerk's Monthly Report of Delinquent Tax Collections", February 2006;

132.[427.] Revenue Form 62A369-A, "County Clerk's Monthly Report of Delinquent Tax Collections", February 2006;

133.[428.] Revenue Form 62A370, "Kentucky Department of Revenue Certificate of Registration", November 2009;

134.[429.] Revenue Form 62A370A, "Kentucky Department of Revenue Application for Certificate of Registration to Purchase Certificates of Delinquency", October 2013[2011];

135.[430.] Revenue Form 62A371, "Attestation Form For Use When Taxpayer Cannot Make Contact With A Third Party Purchaser", January 2013;

136.[431.] Revenue Form 62A372, "Sheriff's List of Orders Correcting Erroneous Assessments", February 2006;

137.[432.] Revenue Form 62A372-A, "Certification", February 2006;

138.[433.] Revenue Form 62A373, "Certificate of Transfer for Property Tax Payment", January 2010;

139.[434.] Revenue Form 62A374, "County Clerk Certificate of Delinquency Sale Registration", November 2010;

140.[435.] Revenue Form 62A375, "Release of Certificate of Delinquency Assigned to a Third Party", February 2011;

141.[436.] Revenue Form 62A377, "In House Release Of Third Party Purchaser Lien When Lien Is Paid To Clerk", January 2013;

142.[437.] Revenue Form 62A378, "Report of Mobile Homes and Recreational Vehicles Not Registered in this State", August 2013;

143.[438.] Revenue Form 62A379, "Listing of Omitted Real Property", December 2014[2013];

144.[439.] Revenue Form 62A380, "Notification of Updated Mailing Address from Sheriff to Property Valuation Administrator",

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September 2010;

145.[140.] Revenue Form 62A384C, "Clay Property Tax Return", January 2013;

146.[141.] Revenue Form 62A384C(I), "Instructions to Complete Clay Property Tax Return", January 2014;

147.[142.] Revenue Form 62A384-G, "Natural Gas Property Tax Return", January 2013;

148.[143.] Revenue Form 62A384-G/O(I), "Gas/Oil", January 2015[2014];

149.[144.] Revenue Form 62A384L, "Limestone and Sand and Gravel Property Tax Return", January 2015[2014];

150.[145.] Revenue Form 62A384-O, "Oil Property Tax Return Lease Report", January 2013;

151.[146.] Revenue Form 62A385, "Sheriff's Official Receipt for Property Tax Bills", July 2014[February 2006];

152.[147.] Revenue Form 62A385-A, "Sheriff's Receipt for Unpaid and Partially Paid Tax Bills", July 2014[February 2006];

153. Revenue Form 62A386, "Sheriff's Official Receipt For Additional/Supplemental Property Tax Bill(s)", July 2014;

154.[148.] Revenue Form 62A393, "Sheriff's Property Tax Account Statement", February 2006;

155.[149.] Revenue Form 62A393-A, "Incoming Sheriff's Property Tax Account Statement", February 2006;

156.[150.] Revenue Form 62A393-B, "Outgoing Sheriff's Property Tax Account Statement", February 2006;

157.[151.] Revenue Form 62A394, "Sheriff's Monthly Report of Property Tax Collections", January 2010;

158.[152.] Revenue Form 62A394-MV, "County Clerk's Monthly Report of Motor Vehicle Property Tax Collections", August 2011;

159.[153.] Revenue Form 62A398, "Property Valuation Administrator's Bond", September 2014[2010];

160.[154.] Revenue Form 62A500(P), "2015[2014] Personal Property Tax Forms and Instructions", November 2014[2013];

161.[155.] Revenue Form 62A500, "2015[2014] Tangible Personal Property Tax Return", November 2014[2013];

162.[156.] Revenue Form 62A500-A, "2015[2014] Tangible Personal Property Tax Return (Aircraft Assessments Only)", November 2014[2013];

163.[157.] Revenue Form 62A500-C, "Consignee Tangible Personal Property Tax Return", November 2014[2013];

164.[158.] Revenue Form 62A500-L, "Lessee Tangible Personal Property Tax Return", November 2014[2013];

165.[159.] Revenue Form 62A500-M1, "Boat Dealer's Used Inventory Listing for Line 31 Tangible Personal Property Tax Return", November 2014[2013];

166.[160.] Revenue Form 62A500-S1, "Automobile Dealer's Inventory Listing for Line 34 Tangible Personal Property Tax Return", November 2014[2013];

167.[161.] Revenue Form 62A500-W, "2015[2014] Tangible Personal Property Tax Return (Documented Watercraft)", November 2014[2013];

168.[162.] Revenue Form 62A600, "Domestic Savings and Loan Tax Return", August 2013;

169.[163.] Revenue Form 62A601, "Foreign Savings and Loan Tax Return", August 2013;

170.[164.] Revenue Form 62A601-S2, "Schedule B, Computation of Exempt Securities", August 2013;

171.[165.] Revenue Form 62A850, "Bank Deposits Tax Return", August 2013;

172.[166.] Revenue Form 62A862, "Certification of Tax Rate for Bank Deposits Franchise Tax", August 2011;

173.[167.] Revenue Form 62A863, "Financial Institutions Local Deposits Summary Report", November 2014[August 2013];

174.[168.] Revenue Form 62A863-A, "Schedule A, Summary of Net Deposits", August 2013;

175.[169.] Revenue Form 62A880, "Personal Property Assessment", October 2004;

176.[170.] Revenue Form 62B003, "Unmined Coal Notice of Tax Assessment", November 2008;

177.[171.] Revenue Form 62B011, "Limestone, Sand, or Gravel Assessment Notice", July 2006;

178.[172.] Revenue Form 62B012, "Oil Assessment Notice",

July 2006;

179.[173.] Revenue Form 62B013, "Clay Assessment Notice", July 2006;

180.[174.] Revenue Form 62B015, "Gas Assessment Notice", July 2006;

181.[175.] Revenue Form 62F003, "Appeals Process for Real Property Assessments", September 2014[May 2009];

182.[176.] Revenue Form 62F015, "PVA Open Records Commercial Fee Guidelines", August 2012;

183.[177.] Revenue Form 62F031, "Appeal to Local Board of Assessment Appeals", January 2010;

184.[178.] Revenue Form 62F200, "Important Reminder", January 2015[2014];

185.[179.] Revenue Form 62F384-G, "Important Reminder", January 2015[2014];

186.[180.] Revenue Form 62F500, "Important Reminder", January 2015[December 2013]; and

187.[181.] Revenue Form 62F1341, "Exemptions Allowed for Savings and Loans, Savings Banks and Similar Institutions for Intangible Property Tax Purposes", August 2011; and

(b) Severance taxes - referenced material:

1. Revenue Form 10A100, "Kentucky Tax Registration Application", July 2013;

2. Revenue Form 10A104, "Update or Cancellation of Kentucky Account(s)", June 2011;

3. Revenue Form 55A004, "Coal Severance Tax Seller/Purchaser Certificate", October 2010;

4. Revenue Form 55A100, "Coal Severance Tax Return", October 2010;

5. Revenue Form 55A100, "Part IV - Schedule of Purchased Coal" and "Part V - Schedule for Thin Seam Coal Tax Credit", October 2010;

6. Revenue Form 55A101, "Coal Severance Tax Return Instructions", October 2010;

7. Revenue Form 55A131, "Credit Memorandum", December 2006;

8. Revenue Form 55A209, "Severance Tax Refund Application", August 2009;

9. Revenue Form 56A001, "Application for Certificate of Registration Minerals and Natural Gas Tax", October 1984;

10. Revenue Form 56A100, "Natural Gas and Natural Gas Liquids Tax Return", July 2004;

11. Revenue Form 56A101, "Minerals Tax Return", July 2004;

12. Revenue Form 56A106, "Minerals Tax Certificate of Exemption", December 2006;

13. Revenue Form 56A107, "Schedule A, Allocation of Gross Value of Minerals Severed in Kentucky and Schedule B, Minerals Purchased from Others for Processing by Taxpayer", January 2005;

14. Revenue Form 56A108, "Schedule A, Gross Value of Natural Gas Sold to Nonconsumers and Schedule B, Taxable Gross Value of Natural Gas and Natural Gas Liquids Extracted in Kentucky by Taxpayer - Allocation", March 2005;

15. Revenue Form 56A109, "Schedule C, Natural Gas First Purchased by Taxpayer from Kentucky Producers", January 2005;

16. Revenue Form 56A110, "Minerals Tax Return Attachment, Schedule C, Computation of Clay Severed and Processed in Kentucky and Allocation of Tax Attributable to Clay", March 2005;

17. Revenue Form 56A112, "Crude Petroleum Transporter's Monthly Report, Kentucky Oil Production Tax", July 2004;

18. Revenue Form 56A113, "Minerals Tax Credit for Limestone Sold in Interstate Commerce", November 1997; and

19. Revenue Form 56A114, "Crude Petroleum Transporter's Application for Registration", December 2006.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: April 14, 2015

FILED WITH LRC: April 14, 2015 at 3 p.m.

CONTACT PERSON: Lisa Swiger, Staff Assistant, Office of

General Counsel, Finance and Administration Cabinet, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-2541.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the administration of Property and Severance Taxes by the Department of Revenue.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for the Department of Revenue to meet the requirements of KRS Chapter 13A.110 which requires that forms required to be submitted by a regulated entity shall be included in an administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the administration of Property and Severance Taxes by the Department of Revenue.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the required forms used in the administration of Property and Severance Taxes by the Department of Revenue.

(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 contains tax forms to be used for tax year 2015.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update tax forms for the tax year 2015.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe tax forms necessary for the administration of the tax laws.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide taxpayers with the necessary tax forms to file and pay personal tangible and public service property taxes for tax years beginning in 2015.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky taxpayers and their representatives will be affected by the listing of forms administered by the Department of Revenue in an administrative regulation. Local government will be affected to the extent they utilize forms administered by the Department of Revenue. The Department of Revenue will be affected to the extent that it administers the referenced forms.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As forms are changed, the manuals and the Department of Revenue Website in which copies of all forms listed in this regulation are maintained will be updated.

(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 complying with the regulation.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): All taxpayers and the administering agencies will benefit by having access to a centralized listing of the most current forms in use.

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

(a) Initially: The Department of Revenue will not incur additional cost as the result of this regulation.

(b) On a continuing basis: The Department of Revenue will not incur additional costs as the result of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Revenue agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because the requirements of this regulation apply to every taxpayer.

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 Finance and Administration Cabinet, Department of Revenue, Office of Property Valuation, Division of Local Support, Division of State Valuation and Division of Minerals Taxation and GIS Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(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? None.

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

(c) How much will it cost to administer this program for the first year? The administrative cost will be absorbed in the normal operating cost of the Department.

(d) How much will it cost to administer this program for subsequent years? The administrative cost will be absorbed in the normal operating budget of the Department.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education
Department of Education
(Amended After Comments)

703 KAR 5:200. Next-Generation Learners.

RELATES TO: KRS 158.6451, 158.6453, 158.6455, 158.860
STATUTORY AUTHORITY: KRS 158.6453[;KRS] 158.6455
NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and

implement a balanced statewide assessment program that measures the achievement of students, schools and districts, complies with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability. This administrative regulation establishes the assessment and accountability requirements for students.

Section 1. Definitions. (1) "Achievement" means student performance described with the student performance levels of novice, apprentice, proficient and distinguished on state-required content area tests.

(2) ~~"College readiness" means the percentage of middle school students meeting~~~~[[ACT-established]]~~~~benchmarks on the high school readiness test in grade eight (8) that are linked statistically to the ACT]]~~~~[EXPLORE]]~~~~test in reading, English or mathematics.~~

(3) ~~"College and career readiness" means a readiness percentage calculated by dividing the number of high school graduates who have successfully met an indicator of readiness for college or career with the total number of graduates.~~

(4) "Full Academic Year" means 100 or more instructional days of enrollment within the school year.

(3) ~~[(5)]~~ "Gap" means the average of:

(a) The percentage of students in the non-duplicated student gap group scoring proficient or distinguished on state-required content area tests; and

(b) The percentage of novice reduction goals met for~~and the reduction of students in the novice performance level in~~ individual student gap groups in the state-required reading and mathematics tests.

(4) ~~[(6)]~~ "Growth" means the average of:

(a) The percentage of students that show typical yearly growth in reading or mathematics; ~~[[using the student growth percentile]]~~ and

(b) The percentage of students who move from~~the individual movement of students in reading and mathematics from~~ one (1) performance level to a higher performance level and continue to perform at the proficient and distinguished level in reading and mathematics.

(5) "Readiness" means:

(a) For a middle school, the percentage of students in grade eight (8) whose scores on the high school readiness test meet benchmarks that are linked statistically to the ACT test, calculated by averaging together the percentages in reading, English, or mathematics; and

(b) For a high school, a readiness percentage calculated by dividing the number of high school graduates who have met an indicator of readiness for college or career by the total number of graduates.

(6) ~~[(7)]~~ ~~"Next-generation instructional programs and supports" means a component of the state-wide accountability system for Kentucky public schools and districts based on reviews of instructional programs.~~

(8) ~~"Next-generation learners" means a component of the state-wide accountability system for Kentucky public schools and districts based on student data.~~

(9) ~~"Next-generation professionals" means a component of the state-wide accountability system for Kentucky public schools and districts based on teacher and administrator data.~~

(10) ~~"Next-generation schools and districts" means a component of the state-wide accountability system that reports performance data for schools and districts.~~

(11) "Student growth percentile" means each student's rate of change compared to other students with a similar test score history.

(7) ~~[(12)]~~ "Typical yearly growth" means a student growth percentile at forty (40) or above.

(8) "Writing" means a content area that includes writing on-demand and language mechanics tests.

Section 2. ~~[(1)]~~ ~~Except as provided in subsections (2) or (3)~~

~~of this section,~~ Kentucky's accountability system to classify schools and districts shall consist of the following components:

~~(1) [(a)]~~ Next-generation learners, as established in this administrative regulation; and

~~(2) Additional components established in 703 KAR 5:225 [(b)]~~ Next-generation instructional programs and support, as established in 703-KAR 5:230.

~~(2) Following the effective date of an administrative regulation promulgated by the Kentucky Board of Education to establish the requirements for next-generation schools and districts, Kentucky's accountability system to classify schools and districts shall consist of:~~

(a) ~~The two (2) components included in subsection (1) of this section; and~~

(b) ~~The next generation schools and districts component.~~

~~(3) Following the effective date of an administrative regulation promulgated by the Kentucky Board of Education to establish the requirements for next-generation professionals, Kentucky's accountability system to classify schools and districts shall consist of:~~

(a) ~~The two (2) components included in subsection (1) of this section;~~

(b) ~~The next-generation schools and district component, if the administrative regulation referenced in subsection (2) has become effective; and~~

(c) ~~The next-generation professionals component].~~

Section 3. Next-Generation Learners. (1) Data shall be reported for schools and districts in the following categories:

(a) Achievement;

(b) Gap;

(c) ~~Individual student]~~ Growth;

(d) Readiness~~for college or career];~~ and

(e) Graduation rate.

(2) Data from individual student performance on state assessments administered as required in KRS 158.6451 and KRS 158.6453 shall be included in the next-generation learners component. This data shall include students with disabilities who participate in the alternate assessment program.

(3) Data in reporting categories shall be attributed to grade level spans for schools and districts as established in this subsection.

(a) Elementary schools shall receive data from achievement, gap, and individual student growth.

(b) Middle schools shall receive data from achievement, gap, ~~individual student]~~ growth, and readiness~~for college].~~

(c) High schools shall receive data from achievement, gap, ~~individual student]~~ growth, readiness~~for college or career],~~ and graduation rate.

Section 4. Calculations for Reporting Categories. (1) Achievement shall be reported, equally for each content area, in next-generation learners as established in this subsection.

(a) In elementary, middle, and high schools, for each content area of reading, mathematics, science, social studies, and writing one (1) point for each percent of students scoring proficient or distinguished shall be awarded. One-half (.5) point shall be awarded for each percent of students scoring apprentice. Points shall not be awarded for novice students.

(b) A bonus for distinguished performance shall be calculated as required by this paragraph.

1. The bonus formula shall consider both the percent of students scoring at distinguished and at novice so that a bonus for distinguished student performance shall not overcompensate for novice student performance.

2. Each percent of students scoring distinguished shall receive an additional one-half (.5) point and each percent of students scoring novice shall receive a negative one-half (.5) point.

3. The value generated for novice shall be combined with the value generated for distinguished.

4. Except as provided in subparagraph 6. of this subsection, for schools and districts with a higher distinguished value, the difference between the two (2) values shall be added to the

achievement calculation as a bonus for distinguished.

5. For schools and districts with a higher novice value, points shall not be added to the achievement calculation.

6. The distinguished bonus shall not allow the content area value for a school or district to exceed 100 percent.

(c) The following chart shall be used to calculate the points in accordance with paragraphs (a) and (b) of this subsection:

Proficiency Levels	Points Awarded for Each Percent of Students
Novice	0
Apprentice	.5
Proficient	1
Distinguished	1
Bonus for Distinguished (offset by Novice)	.5 for each percentage of distinguished) MINUS.5 for each percentage of novice)

(d)1. In accordance with KRS 158.860(7) and KRS 158.6453(5)(e), a district or school council may determine that high school end-of-course examination results be used for a percentage of a student's final grade in the course.

2. Beginning in the 2011-2012 academic year, end-of-course examinations shall be administered in reading, mathematics, science, and social studies, in accordance with the vendors secured through the state procurement process.

3. If the district or school council's policies do not include end-of-course examination grades in the grading policy or if the end-of-course examination grade percentage is less than twenty (20) percent, the district shall submit an annual report to the Commissioner of Education that provides justification for not using end-of-course examinations for at least twenty (20) percent of a student's final grade in the course.

4. Beginning with the 2012-2013 academic year, the report shall be submitted to the Commissioner of Education on or before December 31.

(2) Gap shall be reported in next-generation learners as established in this subsection.

(a) A single gap group called the non-duplicated gap group shall be created. This group shall consist of an aggregate, non-duplicated count of students in the following demographic categories:

1. African American;
2. Hispanic;
3. American Indian or Native American;
4. Limited English proficiency;

5. Students in poverty based on qualification for free or reduced price lunch; and

6. Students with disabilities that have an Individualized Education Program (IEP).

(b) 1. For each tested content area, students scoring proficient or higher in the non-duplicated gap group shall be summed.

2. The sum shall yield a single gap number of students[proficient or higher] with:

- a. No student counting more than one (1) time; and
- b. All students in the included groups counted once.[3. The individual content area gap percentages shall be averaged for an overall gap percentage.]

(c) The non-duplicated gap group shall have a minimum of ten (10) students per content area in the school or district in order to report gap data.

(d)[A maximum total of 500 points shall be awarded for non-duplicated gap calculation.] The points for the non-duplicated gap calculation shall be distributed equally among the content areas tested.

(e) Reduction of novice student calculation. Annual novice reduction targets shall be calculated for student groups with a minimum of ten (10) novice students. Points shall be awarded based on the percentage of the annual goal met in the following demographic categories and the non-duplicated gap group:

1. African American;
2. Hispanic;

3. American Indian or Native American;

4. Limited English proficiency;

5. Students in poverty based on qualification for free or reduced price lunch;

6. Students with disabilities that have an Individualized Education Program (IEP); and

7. Non-duplicated gap group.

(f) The calculations shall be made using the novice reduction in reading and mathematics.

(g) The novice reduction gap groups shall have a minimum of ten (10) students per content area in the school or district in order to report gap data.

(h)[A maximum of 500 points shall be awarded for the novice reduction calculation.] The points shall be distributed equally between the content areas tested in reading and mathematics.

(i) Gap shall be computed equally using non-duplicated gap group and reduction of novice calculations.

(3) [Individual student] Growth shall be reported in next-generation learners as established in this subsection.

(a) [Individual student] Growth shall be computed equally based on points from a student growth percentile model and a categorical growth model.

(b) [At elementary and middle schools,] Calculations shall include scores from students with data from reading assessments across two (2) years and mathematics assessments across two (2) years.

(c)[At high school, calculations shall include scores from students with data from college readiness reading and mathematics assessments across two (2) years.

(d) Student growth percentile calculations.

1. One (1) point shall be awarded for each percent of students that shows typical or high growth in reading and one (1) point shall be awarded for each percent of students that shows typical or high growth in mathematics.

2. Typical yearly growth shall be at or above the fortieth (40th) student growth percentile.

3. Points shall not be awarded for students showing lower than typical growth.

(d)[(e) For elementary, middle, and high schools, total points shall be fifty (50)][100][for each content area of reading and mathematics for a total of 100][200].

(f) Categorical growth model calculations shall use the following formula: the sum of the number of students moving from one (1) performance level[category] to a higher level[category], and the number of students remaining at proficient and distinguished, divided by the total number of students.

(e) Points for growth shall be distributed equally between [(g) For elementary, middle, and high schools, total points shall be fifty (50) for] each content area of reading and mathematics[for a total of 100].

(4) Readiness[College and career readiness] shall be reported in next-generation learners as established in this subsection.

(a) A readiness percentage for each high school shall be calculated by dividing the number of high school graduates that have successfully met at least one (1) indicator of readiness, as listed in paragraph (b) of this subsection, by the total number of graduates. An individual student shall only be attributed to the calculation one (1) time.

(b) The indicators of readiness shall include the percent of students meeting:

1. The Kentucky Council on Postsecondary Education's System-wide Benchmarks on the ACT in Reading, English and Mathematics established in "College Readiness Indicators", incorporated by reference in 13 KAR 2:020;

2. The Kentucky Council on Postsecondary Education's College Placement Test Benchmarks established in "College Readiness Indicators", incorporated by reference in 13 KAR 2:020; or

3. The academic and technical career-ready measures as recognized by the Kentucky Board of Education.

(c)1. An individual student shall earn a bonus of one-half (.5)

point in the calculation of the readiness percentage if the student met:

- a. Either the:
 - (i) System-wide Benchmarks on the ACT in Reading, English and Mathematics as established in 13 KAR 2:020; or
 - (ii) College Placement Test Benchmarks as established in 13 KAR 2:020; and

b. The technical career-ready measures as recognized by the Kentucky Board of Education.

2. The bonus shall not allow the calculation of the readiness percentage for a school or district to exceed 100 percent.

(d) For middle schools, a readiness for college percentage shall be calculated by determining the percentage of students who meet the[ACT-EXPLORE] benchmarks for reading, English, and mathematics on the high school readiness test that is administered in grade eight (8) and that are linked statistically to the ACT test[as established by ACT, Inc. based on the data from the national administrations of the ACT-EXPLORE].

(e) For middle schools, the percent of students in each tested area of reading, English, and mathematics meeting the benchmark score shall be averaged. This value shall be reported as the middle school college readiness percentage.

(5) Graduation rate shall be reported in next-generation learners as established in this subsection.

(a) The graduation rate shall be computed using the cohort graduation rate[In accordance with the requirements in "Briefing Packet: Graduation Rate Data 2010 State Trends", the graduation rate shall be computed using the:

1. Averaged freshman graduation rate for the years of 2011-2012 and 2012-2013; or
2. The cohort graduation rate beginning with the 2013-2014 year].

(b) The graduation rate for each school and district shall be reported publicly by the Department of Education in the next-generation learners component.[Graduation rate data shall be lagged one (1) year for reporting.]

(6) The total points for next-generation learners shall be awarded as follows:

(a) The total number of points earned in each category of achievement, gap,[individual-student] growth, readiness[for college or career], and graduation rate shall be weighted in the following manner:

Grade Range	Achievement	Gap	Growth	Readiness [for College or Career]	Graduation Rate	Total
Elementary	33.3[30]	33.3 [30]	33.3 [40]	n/a	n/a	99.9 [100]
Middle	28	28	28	16	n/a	100
High	20	20	20	20	20	100

(b) The total number of points in next-generation learners shall contribute to the classification of[classify] schools and districts as established in 703 KAR 5:225[into one (1) of three (3) classifications:

1. Distinguished;
2. Proficient; and
3. Needs improvement.

(c) Within each of the three (3) classifications, public reports by the Department shall indicate the direction in which school and district performance is moving compared to the prior year report.

(d) In accordance with KRS 158.6455, the Kentucky Board of Education shall amend this administrative regulation or promulgate a new administrative regulation to determine the placement of schools and districts into one (1) of three (3) classifications and the establishment of goals using a standard-setting process utilizing results from the first operational administration of new assessments in 2011-2012. The process shall:

1. Be advised by the National Technical Advisory Panel on Assessment and Accountability; School Curriculum,

~~Assessment and Accountability Council; and the Office of Education Accountability;~~

~~2. Use accepted technical procedures and involve Kentucky school and district administrators and teachers; and~~
~~3. Be reviewed by the Kentucky Board of Education. Following its review, the Kentucky Board of Education shall approve the final cut scores and goals that determine placement in one (1) of the three (3) classifications by administrative regulation].~~

(c)[(e)] If data cannot be calculated for any category of next-generation learners, the weights shall be redistributed using an equal proportion to categories that shall be reported for the school or district.

(7)(a) Students enrolled for a full academic year shall be included in the calculations for achievement, gap, individual student growth, and readiness for college or career for a school and district.

(b) Graduation rate calculations shall be based on the students' final enrollment[include both students enrolled and students earning diplomas]. [Section 5. Incorporation by Reference. (1) "Briefing Packet: Graduation Rate Data 2010 State Trends", August 2, 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Capital Plaza Tower, 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 of Education
 ROGER L. MARCUM, Chairperson

APPROVED BY AGENCY: April 14, 2015

FILED WITH LRC: April 15, 2015 at 9 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes state assessment and accountability requirements.

(b) The necessity of this administrative regulation: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools and districts, complies with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specific details, descriptions, measurements and calculations for establishing the Next-Generation Learners component of the state assessment and accountability system for Kentucky public schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific details, descriptions, measurements and calculations for establishing the statewide assessment program that measures the achievement of students, schools and districts, complies with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes references to the ACT

Explore assessment that will no longer be available for purchase; adds to the Gap calculation a novice reduction target for individual student subgroups; adds to the Growth calculation a categorical growth formula that recognizes when students move to a higher performance level or remain at Proficient or Distinguished performance levels; and changes the elementary level weights to an equal thirty-three and three-tenths (33.3) percent for Achievement, Gap and Growth.

(b) The necessity of the amendment to this administrative regulation: The amendment provides specific improvements to the state assessment and accountability program that measures the achievement of students, schools and districts, complies with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability as required by KRS 158.6453.

(c) How the amendment conforms to the content of the authorizing statute: This amendment provides specific details, descriptions, measurements and calculations for establishing the Next-Generation Learners component of the state assessment and accountability system for Kentucky public schools.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides specific improvements to the state assessment and accountability program created and implemented by the Kentucky Board of Education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky that have schools with grade three (3) or higher and supporting staff in the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The amendment will impact schools and districts and the Kentucky Department of Education by providing the detail necessary to implement the state assessment and accountability system.

(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 Kentucky Department of Education, schools and districts shall implement the specific details of the assessment and accountability system.

(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 the schools, districts or the Kentucky Department of Education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The schools and districts will show continuous improvement as measured by the state assessment and accountability system.

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

(a) Initially: Additional costs are not anticipated.

(b) On a continuing basis: Additional costs are not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Additional costs are not anticipated. State and federal funds to the extent any additional costs are incurred.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? School districts

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453; KRS 158.6455

(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? Amendment adds no additional costs.

(d) How much will it cost to administer this program for subsequent years? Amendment adds no additional 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: Regulation does not generate revenue or establish fees.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(Amended After Comments)

703 KAR 5:225. School and district accountability, recognition, support, and consequences.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455, 20 U.S.C. 7861

STATUTORY AUTHORITY: KRS 158.6453, [i:] 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools, and districts; complies with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor; and ensures accountability. KRS 158.6455 requires the Kentucky Board of Education, following the revision of academic standards and development of a student assessment program, to create an accountability system to classify schools and districts, including a formula for accountability, goals for improvement, and rewards and consequences. This administrative regulation establishes the statewide system of accountability, recognition, support, and consequences, and meets requirements of the U.S. Department of Education to receive approval of a state-level waiver of specific requirements of the federal No Child Left Behind Act of 2001 pursuant to 20 U.S.C. 7861.

Section 1. Definitions. (1) "Annual measurable objective" or "AMO" means the improvement goal for each school or district calculated from the total[everall] score of the Next-generation learners component.

(2) "Comprehensive District Improvement Plan" or "CDIP" means a plan developed by the local school district with the input of parents, faculty, staff, and representatives of school councils from each school in the district, based on a review of relevant data that includes targets, strategies, activities, and a time schedule to support student achievement and student growth, and to eliminate achievement gaps among groups of students.

(3) "Comprehensive School Improvement Plan" or "CSIP" means a plan developed by the school council or successor pursuant to KRS 160.346 with the input of parents, faculty, and staff, based on a review of relevant data that includes targets,

strategies, activities, and a time schedule to support student achievement and student growth, and to eliminate achievement gaps among groups of students.

(4) "District of distinction" means a highest-performing district that:

(a) Meets its current year AMO~~[starting in 2012-2013]~~, student participation rate, and graduation rate goal;

(b) Has a graduation rate above eighty (80)~~[sixty (60)]~~ percent for the prior two (2) years;

(c) Does not have a school categorized as a focus school or priority school; and

(d) Scores at the ninety-fifth (95th) percentile or higher on the Overall Score.

(5) "Focus district" means a district that has a non-duplicated student gap group score in the bottom ten (10) percent of non-duplicated student gap group scores for all districts. Focus calculations shall combine two (2) years of data.

(6) "Focus school" means a school that has a non-duplicated student gap group score in the bottom ten (10) percent of non-duplicated student gap group scores for all elementary, middle, and high schools; schools with an individual student subgroup~~[within assessment grades]~~ by level falls in the bottom five (5) percent for individual subjects~~[with a score in the third (3rd) standard deviation below the state average for all students]~~; or high schools that have a graduation rate that has been less than eighty (80)~~[sixty (60)]~~ percent for two (2) consecutive years. Focus calculations shall combine two (2) years of data; focus calculations for new or reconfigured schools shall use one (1) year of data.

(7) "Graduation rate goal" means the annual graduation rate goal set by the department for each high school and district that measures progression toward the statewide goal of ninety-eight (98) percent by 2024~~[2022]~~ and is computed by dividing, by ten (10)~~[eleven (11)]~~, the difference between the 2014~~[2014]~~ baseline percent and ninety-eight (98) percent.

(8) "High-progress district" means a district that:

(a) Meets its current year AMO~~[starting in 2012-2013]~~, student participation rate, and graduation rate goal;

(b) Has a graduation rate above eighty (80)~~[sixty (60)]~~ percent for the prior two (2) years; and

(c) Has an improvement score indicating the district is in the top ten (10) percent of improvement of all districts as determined by the difference in the two (2) most recent calculations of the overall score.

(9) "High-progress school" means:

(a) A Title I school that:

1. Meets its current year AMO~~[starting in 2012-2013]~~, student participation rate, and graduation rate goal;

2. Has a graduation rate above eighty (80)~~[sixty (60)]~~ percent for the prior two (2) years; and

3. Has an improvement score indicating the school is in the top ten (10) percent of improvement of all Title I elementary, middle, or high schools as determined by the difference in the two (2) most recent calculations of the overall score; or

(b) A Non-Title I school that:

1. Meets its current year AMO~~[starting in 2012-2013]~~ student participation rate, and graduation rate goal;

2. Has a graduation rate above eighty (80)~~[sixty (60)]~~ percent for the prior two (2) years; and

3. Has an improvement score indicating the school is in the top ten (10) percent of improvement of all non-Title I elementary, middle, or high schools as determined by the difference in the two (2) most recent calculations of the overall score.

(10) "Highest-performing district" means a district that:

(a) Meets its current year AMO~~[starting in 2012-2013]~~, student participation rate, and graduation rate goal;

(b) Has a graduation rate above eighty (80)~~[sixty (60)]~~ percent for the prior two years; and

(c) Scores at the ninetieth (90th) percentile or higher on the overall score except that a district shall not qualify as highest-performing if any school in the district is categorized as a focus-school or priority school.

(11) "Highest-performing school" means an elementary, middle, or high school level that:

(a) Meets its current year AMO~~[starting in 2012-2013]~~, student participation rate, and graduation rate goal;

(b) Has a graduation rate above eighty (80)~~[sixty (60)]~~ percent for the prior two (2) years; and

(c) Scores at the ninetieth (90th) percentile or higher on the overall score.

(12) "Mean" means the sum of the values divided by the number of values.

(13) "Next-generation instructional programs and supports" means a component of the state-wide accountability system for Kentucky public schools and districts based on reviews of instructional programs.

(14) "Next-generation learners" means a component of the state-wide accountability system for Kentucky public schools and districts based on student data.

(15) "Next-generation professionals" means a component of the state-wide accountability system for Kentucky public schools and districts based on teacher and administrator data.

(16) "Next-generation schools and districts" means a component of the state-wide accountability system that reports performance data for schools and districts.

(17) "Non-duplicated student gap group score" means an aggregate, non-duplicated count of achievement scores of student groups that include African/American, Hispanic, American Indian, Limited English proficiency, students in poverty based on qualification for free and reduced price lunch, and students with disabilities who have an Individualized Education Program (IEP).

(18) "Overall score" means the score resulting from a compilation of the accountability components listed in Section 2 of this administrative regulation that determines placement of a school or district in a classification for recognition, support, or consequences.

(19) "Participation rate" means the percent of all students and the student subgroups in the school or district that participate in annual statewide assessments, with a goal of ninety-five (95) percent.

(20) "Percentile" means the value of a variable below which a certain percent of numbers fall.

(21) "Priority district" means a district that has an overall score in the bottom five (5) percent of overall scores for all districts that have failed to meet the AMO for the last three (3) consecutive years.

(22) "Priority school" means a school that has an overall score in the bottom five (5) percent of overall scores by level for all schools that have failed to meet the AMO for the last three (3) consecutive years~~[been identified as a persistently low-achieving or PLA school as defined by KRS 160.346]~~.

(23) "Progressing" means a designation attached to a school or district's classification as proficient, distinguished, or needs improvement to indicate that the school has met its AMO, student participation rate for the all students group and each subgroup, and has met its graduation rate goal.

(24) "School level" means the standard configuration of grade levels that form elementary, middle, and high schools as established in 703 KAR 5:240, Section 5.

(25) "School of Distinction" means a highest-performing elementary, middle, or high school that:

(a) Meets its current year AMO~~[starting in 2012-2013]~~, student participation rate,~~and~~ graduation rate goal and shall not be identified as a focus school;

(b) Has a graduation rate above eighty (80)~~[sixty (60)]~~ percent for the prior two (2) years; and

(c) Scores at the ninety-fifth (95th) percentile or higher on the overall score.

(26) "Standard deviation" means a measure of the dispersion of a set of data from its average.

(27) "Student subgroup" means a student group that includes African-American, American Indian, Asian, White, Hispanic, English language learners, students in poverty on qualification for free or reduced price lunch, or students with disabilities who have an Individualized Education Program (IEP).

Section 2. Statewide System of Accountability, Recognition,

Support, and Consequences. (1) The accountability system established by 703 KAR chapter 5 shall be called Unbridled Learning: College and Career Ready for All.

(2) An overall score shall be used to classify schools and districts for recognition, support, and consequences. The overall score shall be a compilation of the following accountability components:

(a) Next-Generation Learners, as established in 703 KAR 5:200;

(b) Next-Generation Instructional Programs and Support, as established in 703 KAR 5:230; and

(c) Next-Generation Professionals, as established in an administrative regulation that will be promulgated by the Kentucky Board of Education to establish the requirements for Next-Generation Professionals.

Section 3. Weighting of Components Comprising the Overall Score. (1) The timeline and weighting of each component as a percentage of the overall score shall occur as follows:

Year	Component	Percentage of Overall Score
[2011-2012]	[Next-Generation Learners]	[100 percent]
[2012-2013,] [and] [2013-2014, and] 2014-2015]	Next-Generation Learners	Seventy-seven (77) percent
	Next-Generation Instructional Programs and Support	Twenty-three (23) percent
2015-2016 [2014-2015] and subsequent years	Next-Generation Learners	Seventy (70) percent
	Next-Generation Instructional Programs and Support	Twenty (20) percent
	Next-Generation Professionals	Ten (10) percent

(2) If data cannot be calculated for any component, the weights shall be distributed equally to the other components that shall be reported for the school or district.

Section 4. Classifications, Annual Measurable Objectives, and Goals. (1) A school level or district shall be classified based on the overall score in accordance with the requirements established in this subsection.

(a) By level of elementary, middle, or high, a distribution of scores from the overall score shall be computed in order to determine the percentiles associated with each overall score;

(b) The overall score associated with specific percentiles shall classify a school level or district as follows:

Percentile based on Overall Score	School or District Classification
At or above ninety (90)	Distinguished
At or above seventy (70)	Proficient
Below seventy (70)	Needs Improvement

(c) The overall score associated with specific percentiles used to classify a school or district as distinguished, proficient, or needs improvement shall be recalculated as the components of the accountability system listed in Section 2 of this administrative regulation are added. When all components have been added, the overall score associated with specific percentiles used to classify a school or district as distinguished, proficient, or needs improvement shall remain constant for a period of five (5) years before calculation of the overall score associated with specific percentiles shall be re-established.

(2)~~The mean and standard deviation shall be recalculated and the AMO for each school or district shall be reset as the components of the overall score are added. When all three (3)~~

~~components of the overall score have been included, the AMO for each school and district shall be set for a five (5) year period before the mean and standard deviation are re-established.]~~

(3)~~] Each school level or district shall receive an AMO. The method for determining the AMO shall be as follows:~~

~~(a) Using the total[overall] score of next-generation learners, a mean and standard deviation shall be computed for the elementary, middle, and high school levels; and~~

~~(b) The mean and standard deviation shall be recalculated as adjustments of next-generation learners component are made[the components of the accountability system are added and shall follow the timeline established in Section 3 of this administrative regulation].~~

~~(3)[(4)](a) The AMO goal for a school level or district classified as needs improvement shall be to increase the total score by one-third (1/3)[overall score by .07] of a standard deviation in a five (5) year period[annually] **and shall not be set lower than 1.0.**~~

~~(b) The AMO goal for a school level or district classified as proficient or distinguished shall be one-half (1/2) the goal of a needs improvement school or district[to increase the overall score by .035 of a standard deviation] annually **and shall not be set lower than 0.5.**~~

~~(4)[(5)] Each school level or district classified as distinguished, proficient, or needs improvement that meets its AMO goal, student participation rate, and graduation rate goal shall be further classified as progressing.~~

~~(5)[(6)] For a school level with a changed school service area as established in 703 KAR 5:240, Section 6, the AMO shall be recalculated based on current students. A school or district may submit a plan to recalculate the AMO as established in this subsection.~~

~~(a) A school or a district may request that individual students be tracked across schools or that the district AMO be used for the school.~~

~~(b) The Department shall approve the plan and shall assure accurate calculations and the inclusion of all students.~~

~~(c) Upon approval, the plan shall be implemented and remain in effect until an additional change in school service area occurs.~~

~~(d) The granting of a request for a different method to recalculate an AMO shall include a requirement that each affected school and district waive in writing its right to make the request the basis of a subsequent appeal of a school's classification.~~

~~(e) The intent to submit a plan to recalculate the AMO shall be received by the department by June 30 of the year prior to which the AMO recalculation shall occur.~~

~~(6)[(7)] A focus school identified using the non-duplicated student gap group score method shall be determined in accordance with the requirements established in this subsection.~~

~~(a) The non-duplicated student gap group shall be ranked for all schools in the state.~~

~~(b) The schools in the lowest ten (10) percent of the non-duplicated student gap group scores by level shall be called focus schools.~~

~~(c) Additional Title I schools shall be added to the list as needed to ensure that the list includes at least ten (10) percent of the Title I schools.~~

~~(d) Non-duplicated student gap groups by school shall have at least ten (10) students in order for the subject area calculation to occur.~~

~~(7)[(8)] A focus school identified using the bottom five (5) percent[third (3rd) standard deviation] method shall be determined as established in this subsection.~~

~~(a) By level of elementary, middle, or high, individual student subgroups shall be ranked on the percentage[the state average] of proficient and distinguished students for all schools in the state in each subject area of reading, mathematics, science, social studies, and writing[shall be computed, and a standard deviation by subject area for all students shall be computed].~~

~~(b) Student subgroups shall number at least twenty-five (25) students in order for the calculation to occur.~~

~~(c) A school having an individual student subgroup by level and subject that falls below the bottom five (5) percent[third (3rd) standard deviation] cut score shall be identified as a focus school.~~

Section 5. Recognition. (1) Recognition categories shall include Schools or Districts of Distinction, Highest-Performing Schools or Districts, and High-Progress Schools or Districts. Schools and districts in these categories shall receive notification from the Commissioner of Education within five (5) days of release of the annual accountability data, identifying the category of recognition and the rewards for which they are eligible.

(2)(a) Each recognized school or district shall be authorized to use a department-approved web logo and other promotional materials as may be designated by the department reflecting the category of recognition earned.

(b) Subject to availability of funds, financial rewards may be used in conjunction with other recognition activities, and may include funding for special professional growth opportunities or support to enable recognized schools or districts to partner with and mentor a lower-performing school or district.

(c) Highest-performing and high-progress schools and districts shall receive special recognition as determined by the Commissioner of Education.

(3) A school or district identified for recognition shall continue to meet eligibility criteria in order to retain its designation and receive recognition for that category.

(4) A school or district identified as a priority school or district or a focus school or district shall not be eligible for recognition as a highest-performing school or district or a school or district of distinction, but may receive recognition as a high-progress school or district, if it meets the definition established in Section 1 of this administrative regulation and the requirements of this section.

(5) In order to qualify for recognition[beginning in 2012-2013], a school or district shall meet the AMO goal, graduation rate goal, and student participation rate, and each high school's graduation rate shall be above eighty (80)[~~sixty (60)~~] percent.

Section 6. Supports and Consequences. (1) Supports and consequences categories shall include Priority Schools and Districts and Focus Schools and Districts.

(2) A priority school or district shall undergo the education recovery processes established in KRS 160.346 and 703 KAR 5:180, in addition to the requirements and consequences established in this administrative regulation.

(3) A focus school or district shall be required to revise its CSIP or CDIP consistent with the requirements of this section and Section 9 of this administrative regulation.

(4) A school or district that is identified as a priority or focus school or district shall receive notification from the Commissioner of Education within five (5) days of release of the annual accountability data, identifying its category and the required supports and consequences that shall apply.

(5) A school or district that is identified as a priority or focus school or district for the first time shall revise its CSIP or CDIP within ninety (90) days of receiving the notice from the Commissioner of Education.

Section 7. Continuing Consequences for Schools and Districts that Remain in Priority or Focus Status for More Than One (1) Year. (1) To exit the priority status, the school or district shall:

(a) Meet AMO goals for three (3) consecutive years;

(b) No longer be identified by the applicable percent calculation of being in the lowest five (5) percent; and

(c) Score at or above an eighty (80)[~~a seventy (70)~~] percent graduation rate for three (3) consecutive years.

(2) To exit the focus status, the requirements of this subsection shall be met.

(a) A focus school in the non-duplicated student gap group category shall:

1. Be above the lowest ten (10) percent category;

2. Show improvement in the non-duplicated student gap group; and

3. Meet AMO for two (2) years in a row.

(b) A focus school in the bottom five (5) percent[~~third standard deviation~~] category shall have the individual subgroup that triggered the school's placement in the category to:

1. Rise above the bottom five (5) percent[~~third standard~~

~~deviation~~] cut score;

2. Show improvement in the individual subgroup that triggered the school's placement[~~non-duplicated student gap group~~]; and

3. Meet AMO for two (2) years in a row.

(c) A focus school in the category due to graduation rate shall:

1. Have a graduation rate higher than eighty (80)[~~seventy (70)~~] percent; and

2. Meet AMO for two (2) years in a row.

(d) A focus district in the non-duplicated student gap group category shall be above the lowest ten (10) percent category.

(3)(a) A school or district that is identified as a priority school or district for two (2) or more consecutive times, or a school or district that remains in the focus school or district category for three (3) consecutive years, shall revise its CSIP or CDIP as specified in Section 9 of this administrative regulation within ninety (90) days of receiving notice from the Commissioner of Education.

(b) The superintendent and the council shall review, revise, and agree upon the CSIP.

(c) The CSIP or CDIP shall be posted to the appropriate school or district Web site.

(4)(a) In addition to the requirements of this section, a priority school or district that is identified for three (3) or more consecutive times, or a focus school or district that is identified for four (4) or more consecutive years, shall revise its CSIP or CDIP as specified in Section 9 of this administrative regulation.

(b) The superintendent and the council shall review, revise, and agree upon the CSIP, which shall then be electronically transmitted to KDE within ninety (90) days of receiving notice from the Commissioner of Education.

(c) The CSIP or CDIP shall be posted to the appropriate school or district Web site.

(d) The school or district shall engage in the following actions:

1. Participate in a set of improvement strategies outlined by an accreditation process;

2. If directed by the department, receive the assignment of a high-achieving partner school or district of similar demographics for mentor activities as directed by the department; and

3. Accept ongoing assistance and resources throughout the year as assigned or approved by the department.

Section 8. Monitoring. (1) The department shall review and approve all submissions required by this administrative regulation.

(2) The department shall monitor implementation of each CDIP or CSIP and shall provide guidance based upon information gathered from the following:

(a) Progress reports from the school through the district;

(b) Data reviews;

(c) On-site observation; and

(d) Other information supplied at the option of the district or school.

(3) In addition to the activities undertaken by the Department, each school district shall monitor compliance of individual schools within the district.

Section 9. Comprehensive School and District Improvement Plan Process. (1) Each school or district shall annually develop, review, and revise a comprehensive school or district improvement plan.

(2) The structure of a school or district comprehensive improvement plan shall include:

(a) Executive summary that shall include a vision and a mission;

(b) Needs assessment that shall include:

1. A description of the data reviewed and the process used to develop the needs assessment;

2. A review of the previous plan and its implementation to inform development of the new plan; and

3. Perception data gathered from the administration of a valid and reliable measure of teaching and learning conditions;

(c) Process for development that shall include:

1. Analysis of data to determine causes and contributing factors;

2. Prioritization of needs; and

3. Development of goals, objectives, strategies, and activities based on the needs assessment and root cause analysis, that shall include targets or measures of success, timelines, persons responsible, a budget that includes resources needed and source of funding, and a process for meaningful stakeholder communications and input;

(d) A set of assurances, approved by and on file with the local board of education, with a signed declaration by the superintendent that all schools in the district are in compliance with the requirements of the statutes and administrative regulations included in those assurances; and

(e) A process for annual review and revision by the school or district.

(3) Continuous improvement and capacity building shall drive the development of the plan.

(4) Other required components in the process shall include:

(a) A standards-based process for measuring organizational effectiveness that shall include purpose and direction, governance and leadership, teaching and assessing for learning, resources and support systems, and using results for continuous improvement;

(b) A data driven self-evaluation based on the standards, including a means to gather meaningful stakeholder input;

(c) A written improvement plan based on the issues identified in the self-evaluation;

(d) A set of assurances that includes a determination of compliance with each assurance and the ability to upload any supporting documentation needed;

(e) Electronic submission of all elements of the plan;

(f) Monitoring implementation of the plan through implementation and impact checks; and

(g) Evaluation of the effectiveness based on the strategies and activities in the plan.

(5) A CSIP shall also include the elements required of schools by KRS 158.649(5).

(6) A CSIP or CDIP for a priority or focus school or district shall also address the following:

(a) Curriculum alignment for schools within the district and within each individual school, ensuring the instructional program is:

1. Research-based;

2. Rigorous;

3. Aligned with the Kentucky Core Academic Standards as established in 704 KAR 3:303; and

4. Based on student needs;

(b) Provision of time for collaboration on the use of data to inform evaluation and assessment strategies to continuously monitor and modify instruction to meet student needs and support proficient student work, if a priority or focus school;

(c) Activities to target the underperforming areas of achievement, gap, growth, college and career readiness, or graduation rate;

(d) Activities to target demonstrators of weakness in program reviews;

(e) Activities to target areas of need identified in teacher and leader effectiveness measures;

(f) School safety, discipline strategies, and other non-academic factors that impact student achievement, such as students' social, emotional, and health needs, if a priority or focus school;

(g) Design of the school day, week, or year to include additional time for student learning and teacher collaboration, if a priority or focus school;

(h) Specific strategies to address gaps in achievement and graduation rates between the highest-achieving student performance group and the lowest-achieving student performance group, if a focus school or district; and

(i) Short-term, monthly plans for the first ninety (90) days of implementation, and the establishment of teacher turnaround teams with intensive year-round training focused on teacher effectiveness and school improvement in the professional development component of its plan, if a priority school.

(7) A priority or focus district shall use a variety of relevant sources that shall include perception data gathered from the administration of a valid and reliable measure of teaching and

learning conditions to inform the needs assessment required by the CDIP. A district containing a priority or focus school shall assist those schools in using these data to inform the needs assessment required by the CSIP.

(8) The Commissioner's Raising Achievement and Closing Gaps Council and the Commissioner's Parents Advisory Council shall provide guidance to focus schools and districts as they conduct their needs assessments and revise their CSIPs and CDIPs.

(9) A priority school shall document meaningful family and community involvement in selecting the intervention strategies that shall be included in the revised CSIP.

(10) The CDIP for a district with a priority or focus school shall include the support to be provided to the priority or focus school by the district. The priority or focus school's CSIP shall include the support that will be provided by the district to the school.

(11) The CDIP for each district shall be posted to the district's Web site. The CSIP for each school shall be posted to the school's Web site.

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: April 14, 2015

FILED WITH LRC: April 15, 2015 at 9 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the statewide system of accountability, recognition, support, and consequences, and meets requirements of the U.S. Department of Education to receive approval of a state-level waiver of specific requirements of the federal No Child Left Behind Act of 2001 pursuant to 20 U.S.C. 7861.

(b) The necessity of this administrative regulation: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools and districts, complies with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability. KRS 158.6455 requires the Kentucky Board of Education, following the revision of academic standards and development of a student assessment program, to create an accountability system to classify schools and districts, including a formula for accountability, goals for improvement, and rewards and consequences.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specific details for establishing an accountability system for Kentucky public schools that classify schools and districts, and provide for rewards, consequences, and support to Kentucky public schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific details for establishing an accountability system to classify schools and districts including goals for improvement, rewards, consequences, and supports to Kentucky public schools.

(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 raises the minimum graduation rate from sixty (60) to eighty (80) percent; provides for the Annual Measurable Objective to be calculated using data from the Next-Generation Learners component; bases Focus identification on two (2) years of data when available; redefines Focus schools as those in the bottom five (5) of performance with individual student groups instead of a third standard deviation methodology; requires Schools of Distinction to have no Focus groups identified; and defines Priority schools as having an overall score in the bottom five (5) percent of overall scores by level for all schools that have failed to meet AMO for the last three (3) years.

(b) The necessity of the amendment to this administrative regulation: The amendment provides specific details regarding classification and labeling of schools, goals for improvement, rewards, consequences, and supports.

(c) How the amendment conforms to the content of the authorizing statute: The amendment provides specific details for establishing an accountability system for Kentucky public schools that classify schools and districts and provide for rewards and consequences.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides specific guidance for the implementation of the accountability system.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky and supporting staff in the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The amendment will impact schools and districts and the Kentucky Department of Education by providing the detail necessary to consistently implement the state accountability system.

(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 Kentucky Department of Education, schools and districts shall implement the specific requirements of the assessment and accountability system.

(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 the schools, districts or the Kentucky Department of Education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The schools and districts will experience consistent application of the accountability system and have guidance to make continuous improvement in the accountability system.

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

(a) Initially: Additional costs are not anticipated.

(b) On a continuing basis: Additional costs are not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Additional costs are not anticipated. State and federal funds to the extent any additional costs are incurred.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453; KRS 158.6455

(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? Amendment adds no additional costs.

(d) How much will it cost to administer this program for subsequent years? Amendment adds no additional 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: Regulation does not generate revenue or establish fees.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Amended After Comments)

902 KAR 20:091. Facilities specifications, operation and services; community mental health center.

RELATES TO: KRS 17.500, 198B.260, 202A.011(4), 202B.010(6), 205.6313, 210.370, 210.410, 210.450, 216B.010, 216B.015, 216B.030, 216B.105, 216B.990, 222.211, 309.080, 309.130, 311.560(4), 314.011(8), 314.042(8), 319.056, 319.064, 319C.010, 320.210(2), 335.080, 335.100, 335.300, 335.500, 439.3401, 645.020(5), 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 – 1320d-8, 42 U.S.C. 290ee-3

STATUTORY AUTHORITY: KRS 210.450(1), 216B.010, 216B.042

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 require the Kentucky Cabinet for Health and Family Services to regulate health facilities and services. KRS 210.450(1) requires the secretary to promulgate administrative regulations to establish[prescribing] standards for qualification of personnel, quality of professional service, and personnel management operations. This administrative regulation establishes licensure requirements for the operation and services, and facility specifications of a community mental health center. In addition, this administrative regulation establishes standards for community mental health centers which elect to provide primary care services pursuant to KRS 210.410 and KRS 205.6313.

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 psychiatric nurse as defined by subsection (15) of this section;

(h) A physician assistant licensed under KRS 311.840 to 311.862;

(i) A marriage and family therapist licensed and practicing in accordance with KRS 335.300;

(j) A professional clinical counselor licensed and practicing in accordance with KRS 335.500; or

(k) 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); or

(f) Licensed professional art therapist associate as defined by KRS 309.130(3).

(3) "Center" means a community mental health center.

(4) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(5) "Client" means an individual described by KRS 210.410(2).

(6) "Community mental health center" means a program established pursuant to KRS Chapter 210.

(7) "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.

(8)(6) (2) "Clinical psychologist" means a clinical psychologist certified or licensed pursuant to KRS 319.050(7), 319.056(2), (4), or 319.064(5).

(3) "Crisis stabilization unit" means a community-based facility operated by or under contract with a center to provide emergency services as described in Section 8 of this administrative regulation to no more than twelve (12) clients who require overnight stays.

(9)(7) (4) "Designated regional service area" means the geographical area to be served by the community mental health center.

(10)(8) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(11)(9) "Licensed behavior analyst" is defined by KRS 319C.010(6).

(12)(10) (5) "Licensed marriage and family therapist" means an individual licensed in accordance with KRS 335.300(2).

(6) "Licensed professional clinical counselor" means and individual licensed in accordance with KRS 335.500(3).

(7) "Licensee" means the governing body legally responsible for the community mental health center.

(13)(11) "Mechanical restraint" means any device attached or adjacent to a client's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body.

(14)(12) "Mental health associate" is defined by 907 KAR 1:044, Section 1(6).

(15) "Patient" means a client, as described by KRS 210.410(2), or any other individual who seeks primary care services from a community mental health center.

(16)(13) "Peer support specialist" means a paraprofessional who meets the application, training, examination, and supervision requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240.

(17)(14) (8) "Plan of care" means a written plan that delineates the services to be provided to a client, and includes the short- and long-term goals of the plan.

(18)(15) (9) "Psychiatric nurse" means a registered nurse

who:

(a) Has a master's of science degree in nursing with a specialty in psychiatric or mental health nursing;

(b) Is a graduate of a four (4) year educational program with a bachelor of science degree in nursing and a minimum of one (1) year of experience in a mental health setting;

(c) Is a graduate of a three (3) year educational program with two (2) years of experience in a mental health setting; or

(d) Is a graduate of a two (2) year educational program with an associate degree in nursing and three (3) years of experience in a mental health setting.

(19)(16) "Professional equivalent" is defined by 907 KAR 1:044, Section 1(7)(10) "Qualified social worker" means a social worker with a master's degree from an accredited school of social work who is licensed or exempt from licensure pursuant to KRS Chapter 335.

(11) "Time out" means 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 behavior.

(20) "Time out" means 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. Scope of Operation and Services. (1) A community mental health center;

(a) Shall provide a comprehensive range of accessible and coordinated behavioral health (mental health and substance abuse services) and [mental retardation] services for individuals with an intellectual or developmental disability, including direct or indirect [mental health or mental retardation] services[,] to the population of a designated regional service area, as required by KRS 210.370 to 210.480; and

(b) May provide primary care services:

1. As permitted by KRS 210.410; and

2. In accordance with the requirements established in Section 7 of this administrative regulation.

(2) A center's services, including primary care services if provided, shall be available to the client population described by KRS 210.410(2).

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for:

1. The center;

2. The establishment of administrative policy; and

3. Compliance with federal, state, and local law pertaining to the operation of the center.

(b) To obtain or renew a license to operate a center, the licensee shall comply with the requirements of this administrative regulation and the requirements of relevant statutes and administrative regulations.

(2) Executive director. The licensee shall designate an executive director, qualified by training and experience, who shall be responsible for:

(a) The total program of the center and its affiliates in accordance with the center's written policies; and

(b) Evaluation of the program as it relates to the client's needs.

(3) Policies. The licensee shall establish written policies for the administration and operation of the center which shall be available to staff and which shall include:

(a) A description of the organizational structure specifying the:

1. Responsibility, function, and interrelations of each organizational unit; and

2. [the] Lines of administrative and clinical authority;

(b) The appropriate method and procedure for storage, dispensing and administering of a drug or biological agent;

(c) Client grievance procedure;

(d) Confidentiality and use of client records in accordance with federal, state, and local statutes and regulations, including subsection (4) of this section; and

(e) Personnel policy, including:

1. A job description and qualifications for each personnel category;

2. Wage scale, hours of work, vacation and sick leave;
3. A plan for orientation of personnel to the policies and objectives of the center, ~~and for~~ on-the-job training, if necessary, **and ongoing in-service training programs related to the employee's job activities;** and

4. Annual~~Periodic~~ evaluation of employee performance.

(4) Client records. A client record shall be maintained for each individual receiving services.

(a) Each entry shall be current, dated, signed, and indexed according to the service received.~~;~~

(b) Ownership.

1. Client records shall be the property of the center.

2. The original client record shall not be removed from the center except by court order or subpoena.

3. Copies of a client record or portions of the record may be used and disclosed as established by paragraph (d) of this subsection.

(c) A client record shall be retained for at least six (6)~~five (5)~~ years or, in the case of a minor, three (3) years after the client reaches the age of majority, whichever is longer.

(d) Confidentiality and security: use and disclosure.

1. The center 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 1320-8, 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.

2. The center may use and disclose client records. Use and disclosure shall be as established or required by:

a. HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164; or

b. 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

3. A center may establish higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320-8, 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.

(e)~~;~~ (c) Each client record shall be kept in a locked file and treated as confidential. Information contained in a client record shall:

1. Be disclosed to an authorized person; and

2. Not be disclosed to an unauthorized person;

(d) Each client record shall contain:

1. An identification sheet;

2. Information on the purpose for seeking a service;

3. A history of findings and treatments rendered;

4. Screening information pertaining to the problem;

5. Staff notes on services provided;

6. Pertinent medical, psychiatric and social information;

7. Disposition;

8. Assigned status;

9. Assigned personnel~~[therapists]~~; and

10. A termination summary~~[study]~~ recapitulating findings and events during treatment, clinical impressions, and condition on termination.

Section 4. Staff Requirements.(1)~~(5)~~ Personnel.] A community mental health center shall employ the following full-time personnel:

(a) An executive director as required by Section 3(2) of this administrative regulation who:

1. May serve in a dual role as the center's program director;

2. Shall **meet the education requirements established by the center's governing board for the executive director, or have a master's degree in business administration or a human services field or a bachelor's degree in a human services field, including:**

a. Social work;

b. Sociology;

c. Psychology;

d. Guidance and counseling;

e. Education;

f. Religion;

g. Business administration;

h. Criminal justice;

i. Public administration;

j. Child care administration;

k. Christian education;

l. Divinity;

m. Pastoral counseling;

n. Nursing;

o. Public health; or

p. Another human service field related to working with children with severe emotional disabilities or clients with severe mental illness; and

3.a. Shall have two (2) years of prior supervisory experience in a human services program for an executive director with a master's degree;~~or~~

b. 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 for an executive director with a bachelor's degree; or

c. Shall meet the experience requirements established by the center's governing board for the executive director;

(b)~~(a)~~ 1. A program director who:

1. Shall be a:

a. Psychiatrist;

b. Certified~~or licensed~~ psychologist **with autonomous functioning, licensed psychological practitioner, or licensed psychologist;**

c. Psychiatric nurse;

d. Licensed professional clinical counselor;

e. Licensed marriage and family therapist; or

f. Licensed clinical~~Qualified~~ social worker or certified social worker;

2. May serve as~~;~~ 2. The program director may be the executive director; and

3. Shall be responsible for:

a.] maintenance of the center's therapeutic milieu;~~and~~

b. **Assuring that treatment plans developed in accordance with Section 5(3) of this administrative regulation are implemented;**

(c) A medical director~~(b)~~ 1. A board-certified or board-eligible psychiatrist] who shall:

1. Be a board certified or board eligible psychiatrist licensed in the state of Kentucky;

2.~~[a.]~~ Be responsible for treatment planning; and

3.~~[b.]~~ Provide psychiatric service as indicated by client needs; and

c.] Supervise and coordinate the provision of psychiatric services by the center;

(d) A licensed psychologist or licensed psychological practitioner pursuant to KRS 319.050, 319.056, or 319.064;

(e) A sufficient number of personnel to provide services as described in Section 5 of this administrative regulation; and

(f) A records librarian or a designated staff person who shall assure that client records are maintained and that information is immediately retrievable.

(2) Background checks.

(a) The executive director and all personnel of a center shall:

1. Have a criminal record check performed upon initial hire through the Administrative Office of the Courts or the Kentucky State Police;

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

5:120.

(b) A center 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 center shall perform annual criminal record and registry checks as described in paragraph (a) of this subsection on a random sample of at least fifteen (15) percent of all personnel **who have not been subject to the annual background check during the previous three (3) year period**. [2. This position may be filled by more than one (1) psychiatrist if the total hours worked are equivalent to one (1) full-time position;

(c) A clinical psychologist who shall provide evaluation and screening services for the client and individual or group therapy;

(d) A licensed professional clinical counselor who shall provide evaluation and screening services for the client and individual or group therapy;

(e) A licensed marriage and family therapist who shall provide evaluation and screening services for the client and individual or group therapy;

(f) A psychiatric nurse who shall provide or supervise nursing service for psychiatric care;

(g) A qualified social worker who shall provide social services as required; and

(h) A person who shall assure that client records are maintained and that information is immediately retrievable].

Section 5.4. Services. (1) The center shall provide services in the designated regional service area directly or through contract.

(2) Direct services. The center shall provide services as described in subsection (4) of this section and offer a sufficiently wide range of treatment to meet client needs, which may include behavioral health services described in subsection (5) of this section[including:

(a) Individual therapy;

(b) Family therapy;

(c) Group therapy;

(d) Play therapy;

(e) Behavior modification; and

(f) Chemotherapy].

(3) Plan of care.

(a) Each client receiving direct treatment under the auspices of a community mental health center shall have an individual plan of care signed by an independently licensed behavioral health professional[a clinically licensed or certified professional provider of the treatment].

(b) 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.

(4) The center shall provide:

(a)1. Partial hospitalization or psychosocial rehabilitation services pursuant to KRS 210.410(1)(c)[A therapeutic program for a person who requires less than twenty-four (24) hour a day care, and more than outpatient care (i.e., partial hospitalization or day care)].

2. A psychiatrist shall be present on a regularly scheduled basis to provide consultant services to staff;

(b)1. Inpatient services pursuant to KRS 210.410(1)(a) through affiliation with a licensed[community] hospital for a person requiring full-time inpatient care.

2. A center that does not have an affiliation contract in effect shall be considered to be in compliance with this requirement if the center documents a good faith effort to enter into an affiliation contract;

(c)1. Outpatient services pursuant to KRS 210.410(1)(b)[service] on a regularly scheduled basis with arrangements made for a nonscheduled visit during a time of increased stress or crisis.

2. The outpatient service shall provide diagnosis and evaluation of a psychiatric problem and a referral to other services or agencies as indicated by the client's needs;

(d)1. Emergency services pursuant to KRS 210.410(1)(d)[service] for the immediate evaluation and care of a

person in a crisis situation on a twenty-four (24) hour a day, seven (7) day a week basis.

2. All components of the emergency service shall be coordinated into a unified program that enables a client receiving an emergency service to be readily transferred to another service of the center as client needs dictate; and

(e) Consultation and education services pursuant to KRS 210.410(1)(e) for individuals,[for an individual and various] community agencies, and groups to increase the visibility, identifiability, and accessibility of the center and to promote services for intellectual disabilities and mental health disorders, substance use disorders, or co-occurring disorders[through the distribution of relevant mental health knowledge].

(5) Rehabilitative mental health and substance use services, which may be provided by a center in accordance with a plan of care, include the following:

(a) Screening which shall be provided by a behavioral health professional, behavioral health professional under clinical supervision, professional equivalent, mental health associate, 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, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, professional equivalent, mental health associate, 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, **or an individual who meets the requirements of KRS Chapter 319 related to the necessary credentials to perform psychological testing**; 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 center;

b. As an immediate relief to the presenting problem or threat; and

c. In a face-to-face, one (1) on one (1) encounter **which may be provided as a telehealth consultation**;

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;

c. Professional equivalent;

d. Mental health associate; or

e. 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;

4. Be a multi-disciplinary team based intervention that ensures access to acute mental health and substance use services 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;

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;

c. Professional equivalent;

d. Mental health associate; or

e. Certified alcohol and drug counselor; and

7. 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 youth 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 program'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; **and/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 professional equivalent, a mental health associate, 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, professional equivalent, mental health associate, or 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 face-to-face therapeutic intervention with the client provided in accordance with the client's plan of care, **and may be provided as a telehealth consultation**;

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, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, professional equivalent, mental health associate, or 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, **and may be provided as a telehealth consultation**;

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, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, professional equivalent, mental health associate, or 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, **which may be provided as a telehealth consultation, and shall be** provided through scheduled therapeutic visits between the therapist, the client **unless the corresponding current procedural terminology code establishes that the recipient is not present**, 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, a behavioral health professional under clinical supervision, professional equivalent, mental health associate, or certified alcohol and drug counselor;

(l) Collateral outpatient therapy which shall consist of a face-to-face behavioral health consultation **and may be provided as a telehealth 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, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, professional equivalent, mental health associate, or 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, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, professional equivalent, or mental health associate to:

1. Assist a client in creating an individualized plan for services needed for maximum reduction of the effects of a mental health disorder;

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) 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, professional equivalent, mental health associate, or a certified alcohol and drug counselor;

(o) 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, behavioral health professional under clinical supervision, professional equivalent, or mental health associate; and

3. Have adequate staffing to ensure that no caseload size exceeds ten (10) participants per team member;

(p) 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;

e. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;

f. Professional equivalent; or

g. Mental health associate;

(q) 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;
c. Peer support specialist;
d. Professional equivalent; or
e. Mental health associate;
(r) Partial hospitalization which shall:
1. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, professional equivalent, mental health associate, or certified alcohol and drug counselor;
2. Be a short-term (average of four (4) to six (6) weeks), less than twenty-four (24) hour, intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to substance use disorder, mental health disorder, or co-occurring disorder;
3. Be provided to an adult or a child;
4. Ensure that admission criteria for partial hospitalization is based on an inability to adequately treat the individual through community-based therapies or intensive outpatient services;
5. Consist of individual outpatient therapy, group outpatient therapy, family outpatient therapy, or medication prescribing and monitoring;
6. Typically be provided for at least four (4) hours per day and focused on one (1) primary presenting problem, which may include substance use, sexual reactivity, or another problem; and
7. Include the following personnel for the purpose of providing medical care if necessary:
a. An advanced practice registered nurse;
b. A physician assistant or physician available on site; and
c. A board-certified or board-eligible psychiatrist available for consultation;~~or~~
(s) Residential **treatment** services for substance use disorders as described in Section 6 of this administrative regulation;
(t) 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 who meets the requirements of 908 KAR 2:260; 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;
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; or
(u) Pregnant women substance use prevention services or substance use case management services.
(6) Quality assurance and utilization review.
(a) The center shall have **an on-going, written**~~a~~ quality assurance and utilization~~and~~ review program ~~that~~**designed to**:
1. **Includes effective mechanisms for reviewing and evaluating client care and, if applicable, patient care in order to identify problems or opportunities to improve care;**
2. **Provides for appropriate responses to findings;**
3. **Assigns responsibility for monitoring and evaluating client and, if applicable, patient care;**
4. **Delineates the scope of care provided by the center;**
5. **Identifies the aspects of care that the center provides;**
6. **Identifies indicators and appropriate clinical criteria that can be used to monitor these aspects of care;**
7. **Collects and organizes data for each indicator;**
8. **Contains written procedures for taking appropriate corrective action;**
9. **Assesses the effectiveness of the actions taken to correct problems and documents the improvement in care; and**
10. **Communicates relevant information to other individuals, departments, or services as to the quality assurance program**~~Enhance treatment and care through the ongoing object assessment of services provided, including the correction of identified problems; and~~
2. **Provide an effective mechanism for review and**~~plan for the~~**evaluation of the service needs of each client**.
(b) The need for continuing ~~services~~~~a service element for each individual~~ shall be evaluated ~~immediately upon a change in a client's service needs or a change in the client's condition~~~~with sufficient frequency~~ to ensure that proper arrangements have been made for:
1. Discharge;
2. ~~for~~ Transfer;~~to other elements of service;~~ or
3. Referral to another service provider, if appropriate.
(7)~~(6)~~ Medications.
(a) 1. If a center uses electronic prescribing, the center shall maintain a paper copy of each prescription;
2. If a center does not use electronic prescribing, the center shall document each prescription on a form designated specifically for medications;~~A treatment involving medication prescribing and monitoring~~~~or chemotherapy~~~~shall be administered under the direction of a licensed psychiatrist, licensed physician, or an advanced practice registered nurse who meets the requirements established in 201 KAR 20:057~~~~or other qualified practitioner, acting within the scope of his practice~~~~, and:~~
(a) All medication prescribing and monitoring~~or chemotherapy~~~~used in treatment shall be recorded in designated sections of the health record~~~~the staff notes on a special medications chart in the client record~~~~;~~
(b) Documentation~~A copy~~ of **each**~~the~~ prescription shall be kept in the client record;
(c) Blood or another laboratory test or examination shall be performed in accordance with accepted medical practice~~on each individual receiving medication prescribed or administered by the center~~;
(d) Drug supplies shall be stored under proper sanitary, temperature, light and moisture conditions;
(e) Medication kept by the center shall be properly labeled;
(f) 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; and
(g) Medication kept in the center shall be kept in a locked cabinet.
1. A controlled substance shall be kept under double lock (e.g., in a locked box in a locked cabinet).
2. There shall be a controlled substances record, in which is recorded:
a. The name of the patient;
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 limits of his statutory scope of practice; and

d. The name of the nurse who administered it, or staff who supervised the self-administration.

3. Except for medication to be self-administered in a crisis stabilization unit, access to the locked cabinet shall be restricted to a designated medication nurse or other authorized personnel. Medication to be self-administered in a crisis stabilization unit shall be made available to the patient at the time of administration.

Section 6. Residential Treatment Services for Substance Use Disorders. (1) If a center licensed under this administrative regulation provides residential services to clients with a substance use disorder, the center 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 center 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 7. Primary care services. (1) Basic services. The center may provide a variety of preventive, diagnostic, and therapeutic services by appropriately licensed or certified health professionals to meet the usual physical health care needs of:

(a) The center's clients as described by KRS 210.410(2) to help ensure continuity of care; and

(b) Other individuals seeking primary care services from the center.

(2) Referrals. If a center provides primary care services to its clients, the center shall provide appropriate referrals for clients who require services that are above the level of basic primary care services not provided by the center.

(3) Policies.

(a) Administrative policies. A center that provides primary care services shall have written administrative policies **in addition to the requirement established in Section 3(3) of this administrative regulation (established by the licensee covering all aspects of the center's operation)**, including:

1. A description of organizational structure **for the delivery of primary care services**, staffing, and allocation of responsibility and accountability;

2. A description of referral linkages with inpatient facilities and other providers;

3. Policies and procedures for the guidance and control of personnel performances;

4. A description of **primary care** services directly provided by the center;

5. A description of the administrative and patient health records and reports; and

6. A policy to specify the provision of emergency medical services.

(b) Patient care policies **[for clients of the center]**.

1. Patient care policies shall be developed by the center's medical director required by subsection (4)(b) of this section and other professional staff for all medical aspects of the center's program, including written protocols for standing orders, rules of practice, and medical directives that apply to services provided by the center.

2. The protocols shall be signed by the medical director.

3. A system shall be established to ensure that, if feasible, the patient shall be always cared for by the same health professional or health team, to assure continuity of care.

(c) Patient rights policies. The center shall adopt written policies regarding the rights and responsibilities of patients. These patient rights policies shall assure that each patient shall be:

1.a. Informed of these rights and of all rules and requirements of 902 KAR Chapter 20 governing patient conduct and responsibilities, including a procedure for allowing the patient to voice a grievance or recommend changes in policies and services.

b. Upon the patient's request, a grievance or recommendation shall be conveyed within a reasonable time to a decision making level within the organization with the authority to take corrective action;

2. Informed of services available at the center;

3. Informed of his or her medical condition, unless medically contraindicated as documented in his or her health record;

4. Afforded the opportunity to participate in the planning of his or her medical treatment and to refuse to participate in experimental research;

5. Encouraged and assisted to understand and exercise his or her patient rights;

6. Assured confidential treatment of his or her records and shall be afforded the opportunity to approve or refuse release of the records to any individual not involved in the patient's care, except as required by applicable law or third-party payment contract; and

7. Treated with consideration, respect, and full recognition of his or her dignity and individuality, including privacy in treatment and in the care of his or her personal health needs.

(4) Personnel.

(a) Primary care provider team. Each center that provides primary care services shall be staffed with at least:

1. One (1) full-time advanced practice registered nurse or physician assistant; and

2. One (1) physician who:

a. Except in extraordinary circumstances as documented in the center's records, shall be present no less than once in every two (2) week period to provide medical direction, medical care services, consultation, and supervision; and

b. Shall be available through direct telecommunication for consultation, assistance with medical emergencies, or patient referral. If a center is staffed with a full-time physician who provides medical care services on-site, the requirement for at least one (1) full-time advanced practice registered nurse or physician assistant shall be waived.

(b) Medical Director. A medical director responsible for oversight of a center's primary care services shall:

1. Be a licensed physician;

2. Be responsible for all physical health aspects of the **center[clinic]**;

3. Provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311; and

4. If the medical director responsible for the physical health aspects of the **center[clinic]** is not a board certified or board eligible psychiatrist licensed in Kentucky, coordinate care and treatment decisions with the center's psychiatrist for all primary care services delivered to the center's **[behavioral health]** clients.

(c) Physicians. A physician employed by or under contract with the center to perform services as described in paragraph (a)2 of this subsection shall be:

1. Qualified to practice general medicine, including as a general practitioner, family practitioner, obstetrician – gynecologist, pediatrician, or internist; and

2. A member of the medical staff or hold courtesy staff privileges at one (1) or more hospitals with which the center has a

formal transfer agreement.

(d) In-service training.

1. All center personnel who provide primary care services shall participate in ongoing in-service training programs relating to their respective job activities.

2. The training programs shall include:

a. Thorough job orientation for new personnel; ~~and~~

b. Regular in-service training emphasizing professional competence and the human relationship necessary for effective health care; **and**

c. On-the-job training, if necessary.

(5)(a) The confidentiality and retention of client records shall be maintained in accordance with Section 3(4) of this administrative regulation.

(b) The center shall maintain a health record for each patient. The health record shall include:

1. The patient's medical and social history, including data obtained from other providers;

2. A description of each primary care[medical] visit or contact, including the condition or reason necessitating the visit or contact, assessment, diagnosis, services provided, medications and treatments prescribed, and disposition made;

3. Reports of all laboratory, x-ray, and other test findings; **and**

4. Documentation of all referrals made, including the reason for the referral, to whom the patient was referred, and any information obtained from the referral source.

(c) Transfer of records. The center shall:

1. Establish systematic procedures to assist in continuity of care if the patient moves to another source of care; **and**

2. Upon proper release, transfer health records or an abstract if requested.

(6) Linkage agreements.

(a) The center shall have linkages through written agreements with providers of other levels of care that may be medically indicated to supplement the services available in the center. These linkages shall include:

1. Hospitals; **and**

2. Emergency medical transportation services in the service area.

(b) Linkage agreements with inpatient care facilities shall incorporate provisions for:

1. Appropriate referral and acceptance of patients from the center;

2. Appropriate coordination of discharge planning with center staff; **and**

3. The ~~center to receive a copy of the~~ discharge summary for each patient referred to **be requested by** the center.

(c) The written transfer agreements shall include designation of responsibility for:

1. Transfer of information;

2. Provision of transportation;

3. Sharing of services, equipment, and personnel;

4. Provision of total care or portions thereof in relation to center and agency capability; **and**

5. Patient record confidentiality pursuant to all applicable federal and state law.

(d) A linkage agreement shall not be required to transfer health records to any other treating health care facility or provider.

(7) Quality assurance program. The center shall have an ongoing, written quality assurance program **established in accordance with Section 5(6)(a) of this administrative regulation[approved by the licensee that:**

(a) Includes effective mechanisms for reviewing and evaluating patient care in order to identify problems or opportunities to improve care;

(b) Provides for appropriate responses to findings;

(c) Assigns responsibility for monitoring and evaluating patient care;

(d) Delineates the scope of care provided by the center;

(e) Identifies the aspects of care that the center provides;

(f) Identifies indicators and appropriate clinical criteria that can be used to monitor these aspects of care;

(g) Collects and organizes data for each indicator;

~~(h) Contains written procedures for taking appropriate corrective action;~~

~~(i) Assesses the effectiveness of the actions taken to correct problems and documents the improvement in care; and~~

~~(j) Communicates relevant information to other individuals, departments, or services as to the quality assurance program].~~

Section 8.[5-] Crisis Stabilization. (1) Emergency services provided in a crisis stabilization unit shall include the following:

(a) A mental status evaluation and physical health questionnaire of the client upon admission;

(b) A treatment planning process;

(c) Procedure for crisis intervention; **and**

(d) Discharge and aftercare planning processes.

(2) A program shall have a written policy concerning the operation of a crisis stabilization unit including:

(a) Staffing.

1. At least one (1) direct-care staff member shall be assigned direct-care responsibility for:

a. Every four (4) clients during normal waking hours; **and**

b. Every six (6) clients during normal sleeping hours;

2. Administrative oversight of the program shall be provided by a staff member who shall be:

a. A person licensed or certified to provide mental health services independent of clinical supervision;

b. A qualified mental health professional as defined in KRS 202A.011(12); **or**

c. A person qualified to be program director under Section 4(1)(b)[3(5)(a)] of this administrative regulation.

3. The center shall provide a training program for direct care staff pertaining to the care of a client in a crisis stabilization unit.

(b) Criteria to assure that each client in a crisis stabilization program shall be:

1. In either one (1) of two (2) separate programs, child or adult, separated by physical location. A children's program may serve a resident up to age twenty-one (21) if it is more developmentally appropriate for that resident;

2. In need of short-term behavior management and at risk of placement in a higher level of care;

3. Able to take care of his own personal needs, if an adult;

4. Medically able to participate in services; **and**

5. Served in the least restrictive environment available in the community.

(c) Referrals for physical health services to include diagnosis, treatment, and consultation for acute or chronic illnesses occurring during the client's stay in the crisis stabilization unit or for problems identified during the admission assessment.

(d) Rights of a crisis stabilization client, to include:

1. A description of the client's rights and the means by which these rights are protected and exercised.

2. At the point of admission, the program shall provide the statement of rights and responsibilities to the:

a. Client; **and**

b. In addition to the client, client's[his] parents,[if he is a child, his] guardian, or other legal representative ~~if the client is a minor or incapacitated[with a clearly written and readable statement of rights and responsibilities].~~

3. The statement shall:

a. Be written in language that is understandable;

b. Be read to the client **or if the client is a minor, client's[and his] parents,[if he is a child, his] guardian, or other legal representative if requested or if either cannot read;** **and**

c. ~~shall~~ Cover the following:

(i)[a-] The right to treatment, regardless of race, religion, or ethnicity;

(ii)[b-] The right to recognition and respect of personal dignity in the provision of all treatment and care;

(iii)[c-] The right to be provided treatment and care in the least restrictive environment possible;

(iv)[d-] The right to an individualized plan of care;

(v)[e-] The right of the client, including the client's[and his]

parents or guardian if the client is a minor, [if he is a child, or his legal representative,] to participate in treatment planning;

(vi)[f-] The nature of care, procedures, and treatment provided[that he shall receive];

(vii)[g-] The right to an explanation of risks, side effects, and benefits of all medications and treatment procedures used; and

(viii)[h-] 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.

4.[3-] The statement of rights and responsibilities of clients shall be written in language which is understandable to the client, and his parents, if he is a child, his guardian or other legal representative, and shall be posted in appropriate areas of the facility.

5.[4-] The written policies and procedures [policy and procedure] concerning client [the clients'] rights shall assure and protect the client's [client] personal privacy within the constraints of his or her plan of care, including These rights to privacy shall include;

- 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.

6.[5-] 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 [and his parents, if he is a child, or his guardian or other legal representative, shall receive a full explanation]. A limitation to a privacy right shall be documented in the client's record.

7. Information shall be provided to [6-] the client, or the client's parent or guardian if the client is a minor, regarding [and his parents, if he is a child, his guardian, or other legal representative, shall be informed of] the use and disposition of a product of special observation and audio visual techniques, which may include the following [such as]:

- a. One (1) way vision mirror;
- b. Audio recording;
- c. Video tape recording;
- d. Television;
- e. Movie; or
- f. Photograph.

8.a.[7-] Written policy and procedure developed in consultation with professional and direct-care staff shall provide for behavior management of a child client, including the use of a time-out room.

b.[The policy and procedure for use of a time-out room shall be approved by the Department for Mental Health and Mental Retardation.] Behavior management techniques shall be explained fully to each client and the client's parent [his parents], or [his] guardian, or other legal representative if the client is a child or otherwise incapacitated.

9.[8-] The facility shall prohibit cruel and unusual behavioral management measures, including corporal punishment, the use of a seclusion room, and mechanical restraint [as defined in 902 KAR 20:320].

10.[9-] Written policy shall prohibit a client from administering a disciplinary measure upon another client and shall prohibit a person other than professional or direct-care staff from administering a disciplinary measure to a child client.

(e) If therapeutic holds are used [The use of therapeutic holds] as a safe behavioral management technique, the facility shall have a [-The] policy which shall describe:

1. Criteria for appropriate use of therapeutic holds;
2. Documentation requirements; and
3. The requirement for completion of a training course approved by the Department for Behavioral Health, Developmental and Intellectual Disabilities [of Mental Health and Mental Retardation,] prior to using therapeutic holds.

(f) The requirement that a licensed psychiatrist shall be available to evaluate, provide treatment and participate in treatment planning on a regular basis.

(g) The procedure for proper management of pharmaceuticals,

consistent with the requirements of Section 4(6) of this administrative regulation.

(h) Except for a program accredited by the Joint Commission [for Accreditation of Health Organizations] or the Commission on Accreditation of Rehabilitation Facilities, general procedures that address the following:

1. Procedures to be followed by staff in the event of a medical emergency of a client;

2. Proper nutrition;

3. Emergency preparedness;

4. Security; and

5. School attendance for children.

(3) Facility requirements for a crisis stabilization unit.

(a) A living unit shall be located within a single building and shall include:

1. 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:

(i) Be at least thirty-six (36) inches wide and at least five (5) feet in length;

(ii) [shall] Be long and wide enough to accommodate the client's size;

(iii) [-d. A bed shall] Have a mattress cover, two (2) sheets, a pillow, and bed covering as is required to keep the client comfortable;

(iv) [-e. A bed shall] Be equipped with a support mechanism and a clean mattress; and

(v) [-f. A bed shall] 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.[g-] There shall be separate sleeping quarters for males and females.

e.[h-] 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 licensure agency and the Department of Housing, Buildings and Construction.

2. Bathrooms.

a. For every eight (8) residents, each living unit shall have at least one (1):

(i) Wash basin with hot and cold water;

(ii) [-one (1)] Flush toilet; [-] and

(iii) [one (1)] Bath or shower with hot and cold water [for every eight (8) resident clients].

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.

3. Living area.

a. The living area shall provide comfortable seating for all clients housed within the living unit.

b. Each living unit shall be equipped with a:

(i) Working sink; and

(ii) [-] Stove and refrigerator, unless a kitchen is directly available within the same building as the living unit.

c. A living unit shall house a maximum of sixteen (16) [twelve (12)] clients.

Section 9[6]. Facility Specifications. (1) A facility housing a community mental health center or a crisis stabilization unit shall be a general purpose building of safe and substantial construction and shall be in compliance with applicable state and local laws relating to zoning, construction, plumbing, safety, and sanitation. The following shall apply if relevant and as adopted by the respective agency authority:

(a) Requirements for fire safety pursuant to 815 KAR 10:060; and

(b) Requirements for making a building or facility accessible to and usable by an individual with disabilities, pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

(2) Prior to occupancy, the facility shall have final approval from appropriate agencies.

(3) A facility shall be currently approved by the Department of Housing, Buildings and Construction in accordance with 815 KAR

10:060, before relicensure is granted by the licensure agency.

MARYELLEN B. MYNEAR, Inspector General

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 9, 2015

FILED WITH LRC: April 10, 2015 at 1 p.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Maryellen B. Myneer, Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for the licensure of community mental health centers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum requirements for the licensure of community mental health centers which provide behavioral health services to treat, support, and encourage individuals with mental health disorder, substance use disorder, or a co-occurring disorder to achieve and maintain the highest possible level of health and self-sufficiency. This administrative regulation also sets forth standards for community mental health centers which elect to provide primary care services as a result of the passage of HB 527 from the 2014 Session of the General Assembly.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 which requires the Cabinet for Health and Family Services to promulgate administrative regulations that establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health 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 the minimum licensure requirements necessary for the operation of community mental health centers.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates 902 KAR 20:091 for compliance with HB 527 from the 2014 Session of the General Assembly which allows community mental health centers to provide primary care services. This amendment also expands the list of behavioral health services which may be provided in community mental health centers, updates confidentiality requirements for compliance with HIPAA and applicable federal regulations, clarifies the credentials required of a center's executive director, clarifies the background check requirements for center employees, and makes technical changes to help ensure compliance with the drafting requirements of KRS Chapter 13A. Further, the amendments made as a result of public comments include adding a definition of "client", "community mental health center", "patient", and "time out" to Section 1; adding language to ensure that center staff who deliver behavioral health services participate in ongoing in-service training programs related to the employee's job activities; adding language to allow an executive director to meet the education and experience requirements established by the center's governing board; clarifying that the center's medical director maintains responsibility for treatment planning; clarifying that staff who have submitted to a background check during the previous three (3) year period not be part of the random sample of employees selected for a new background check; clarifying that a telehealth consultation may be provided for crisis intervention, individual outpatient therapy, group outpatient therapy, family outpatient therapy, and collateral outpatient therapy; adding targeted case management, pregnant women substance use prevention services, and pregnant women substance use case management services to the list of services

which may be provided by a center; clarifying the requirements for a center's quality assurance program; and establishing requirements for electronic prescribing.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update 902 KAR 20:091 for compliance with HB 527, codified at KRS 210.410 and 205.6313, as well as expand the list of behavioral health services which may be provided in community mental health centers. The amended after comments regulation is necessary to address comments received during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment and amended after comments administrative regulation conforms to KRS 210.410 and 205.6313 by including standards for community mental health centers which elect to provide primary care services, and conforms to KRS 222.211 which allows community mental health centers to be utilized for the delivery of substance abuse treatment services.

(d) How the amendment will assist in the effective administration of the statutes: This amendment and amended after comments administrative regulation will assist in the effective administration of the statutes by allowing community mental health centers to provide primary care services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are fourteen (14) community mental health centers in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Under this amendment and amended after comments administrative regulation, community mental health centers may provide primary care services pursuant to HB 527 from the 2014 Session of the General Assembly, and may provide any of the behavioral health services identified in the expanded list of services allowable in community mental health care centers. Additionally, the centers must comply with the background check requirements established via this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Undeterminable, however, community mental health centers may obtain background checks on staff for twenty (20) dollars per check. At least one center is currently securing background checks under the Cabinet's state and FBI fingerprint check program established by 906 KAR 1:190.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Community mental health centers will be able to increase revenue by providing primary care services in addition to behavioral health services. Moreover, this amendment and amended after comments administrative regulation will help increase patient access to primary care services in addition to a wide array of behavioral health services.

(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 to the Office of Inspector General for implementing this administrative regulation.

(b) On a continuing basis: There is no additional cost to the Office of Inspector General for implementing this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation will be from agency funds and state general funds.

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

(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.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities which elect to be regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? There are fourteen (14) community mental health centers in the state.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function. KRS 210.410 requires community mental health centers to provide designated services as well as allows the centers to provide primary care services. KRS 222.211(1) allows the cabinet to utilize community mental health centers and other existing facilities and services to assure the provision of prevention, intervention, and treatment services for juveniles and adults to address the problems of tobacco addiction and alcohol and other drug abuse within individuals, families, and communities.

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 Cabinet.

(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 for the Cabinet in subsequent years.

(c) How much will it cost to administer this program for the first year? There is no additional cost to the Office of Inspector General for implementing this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost to the Office of Inspector General for implementing this administrative regulation 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:

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Amended After Comments)

902 KAR 20:400. Limited services clinics.

RELATES TO: KRS 311.550(12), 314.011(7), 29 C.F.R. 1910.1030, 45 C.F.R. 160, 164

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 licensure requirements for the operation of and services provided by limited services clinics.

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

(2) "Cabinet" means the Cabinet for Health and Family

Services.

(3) "Clinic" means a limited services clinic.

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

Section 2. Licensure Application and Fee. (1) An applicant for licensure as a limited services clinic shall complete and submit to the Office of the Inspector General an Application for License to Operate a Health Facility or Service, pursuant to 902 KAR 20:008, Section 2(1)(f).

(2) The initial and annual fee for licensure as a limited services clinic shall be \$500.

Section 3. Scope of Operations and Services. (1) A limited services clinic shall:

(a) Be located in a nonmobile facility;

(b) Not have an extension or satellite;

(c) Except for the provision of health care services at an off-site location for the purpose of community vaccination or a health screening drive, assure that limited health services as described in subsection (3) of this section are provided to patients exclusively at the facility's location;

(d) Not provide services to a child younger than twenty-four (24) months of age; and

(e) Provide appropriate referrals for each patient who requires care and treatment that is beyond the scope of services provided by the clinic.

(2) If a clinic is located within a retail location, the clinic shall have policies and procedures which ensure that patients are informed that they are not required to purchase any recommended or prescribed item from the host retail location.

(3) Health care services provided by a clinic shall:

(a) Be limited to conditions that may be safely and efficiently treated on an outpatient basis; and

(b) Include assessment, diagnosis, treatment, or counseling concerning any of the following:

1. Upper respiratory infection;

2. Sinus infection;

3. Allergy symptoms;

4. Acute bronchitis;

5. Ear infection or ear ache;

6. Ear wax removal;

7. Sore throat;

8. Influenza, excluding pregnant women;

9. Cold;

10. Coughs;

11. Laryngitis;

12. Breathing treatments with nebulizer;

13. Nausea, diarrhea, and vomiting;

14. Fever, excluding patients who have had a fever longer than seventy-two (72) hours;

15. Early Lyme Disease;

16. Pink eye or sty;

17. Skin infection or skin condition, which may include insect bites, rashes, ringworm, poison oak or ivy, scabies, hives, or impetigo;

18. Minor burn;

19. Skin tag removal;

20. Head lice;

21. Scalp rash;

22. Swimmer's itch;

23. Athlete's foot;

24. Cold sores;

25. Shingles;

26. Tick or insect bites;

27. Abrasions;

28. Minor cut closure with liquid skin adhesive;

29. Splinter removal;

30. Sprains or strains;

31. Urinary infection for females only, age twelve (12) to sixty-five (65);

32. Patient education and counseling, ~~including patient education regarding diabetes, hyperlipidemia, and hypertension~~;

33. Sports physical;

34. Camp physical;
35. School physical;
36. Vaccinations for patients age eleven (11) and older;
37. Influenza vaccinations for patients age twenty-four (24) months and older;
38. Pre-employment health screening;
39. Tobacco cessation therapy;
40. Skin wart removal;[or]
41. Tuberculosis testing;
42. Hypertension;
43. Hypercholesterolemia;
44. Congestive heart failure;
45. Asthma;
46. Chronic obstructive airways disease;
47. Diabetes mellitus; or
48. Hyper- or hypothyroidism.
- (4) If a clinic provides chronic disease management services for hypertension, hypercholesterolemia, congestive heart failure, asthma, chronic obstructive airways disease, diabetes mellitus, or hyper- or hypothyroidism, the clinic shall:
 - (a) Act as a source of patient and caregiver education by providing counseling and information regarding:
 1. Disease management;
 2. Medication use and compliance;
 3. Lifestyle modification;
 4. Community resources; and
 5. Any other issue as appropriate and within the scope of training and knowledge of the practitioner;
 - (b) Within one (1) business day:
 1. [i] Schedule a follow-up appointment for the patient, upon the patient's consent, with a primary care provider; or
 2. Assist the patient with scheduling a follow-up appointment, if requested, with a primary care provider, which may include providing the patient with a list of primary care practices in the area that are accepting new patients;
 - (c) Ask the patient whether he or she gives consent for the clinic's practitioner to contact the patient's physician specialist or primary care provider to discuss the patient's treatment plan [Assure that the chronic disease management services provided by the clinic are consistent with a treatment plan established, signed, and reviewed] a minimum of once every twelve (12) months[by the physician specialist who is responsible for the care of the patient];
 - (d) Send a visit-specific report by facsimile or electronically to the patient's physician specialist or primary care provider, if available and with patient consent, no later than one (1) business day[within three (3) business days] after the patient receives chronic disease management services from the clinic;
 - (e) Participate in the Kentucky Health Information Exchange (KHIE) pursuant to the requirements of 900 KAR 9:010; and
 - (f) Make arrangements for the delivery of the services the clinic provides during the hours it is not open, at least through an answering service referring patients to another provider of the same services that is as geographically close as possible and is open at those hours. A clinic may provide a taped message that directs patients to a toll-free number which enables the patient to speak directly with a practitioner. These arrangements shall be reflected in a written policy which shall be made available to the clinic's patients.
- (5) This administrative regulation shall not limit a clinic's ability to:
 - (a) Order a laboratory test specific to a patient's presenting symptoms for a condition described in subsection (3) of this section. Only CLIA (Clinical Laboratory Improvement Amendments) waived testing may be performed on-site in a limited services clinic;
 - (b) Provide treatment, testing, screening, or monitoring for a patient pursuant to a patient's designated plan of care or order from a practitioner other than the practitioner who is staffing the limited services clinic;
 - (c) Provide episodic treatment for an acute exacerbation of a chronic condition that does not rise to the level of an emergency;
 - (d) Make an initial diagnosis of a patient's chronic illness and

refer to an appropriate practitioner, where interim treatment, including the prescribing of medication, shall not exceed thirty (30) days unless further directed by the patient's appropriate practitioner; or

(e) Write a prescription for a patient's maintenance medication for a period of time not to exceed thirty (30) days. The clinic shall document its effort to contact the prescriber.

~~(6) [(5)]~~(a) If the cabinet receives a request from an individual representing a clinic or the clinic's management entity for modification of the list of services established in subsection (3) of this section, the cabinet shall appoint and convene an advisory committee.

(b) The committee shall include at least one (1) representative from the:

1. Kentucky Hospital Association;
2. Kentucky Medical Association;[and]
3. Convenient Care Association;[and]
4. Kentucky Board of Nursing; and
5. **Kentucky Coalition of Nurse Practitioners and Nurse**

Midwives.

(c) The committee shall review each request for modification of the list established in subsection (3) of this section and make recommendations to the cabinet regarding approval or denial of the request.

(d) The committee shall convene no sooner than eighteen (18) months from the date of adoption of this administrative regulation if a request for modification of the list is received within the eighteen (18) month period following adoption of this administrative regulation.

(e) After the committee is initially convened and makes its first set of recommendations to the cabinet, the committee shall reconvene no sooner than every eighteen (18) months thereafter to review requests and make recommendations regarding any requests received during the previous eighteen (18) month period.

(f) If the cabinet accepts all or any part of the committee's recommendation to modify the list of services established in subsection (3) of this section, the cabinet shall file an amendment to this administrative regulation within forty-five (45) days of the committee's recommendation.

Section 4. Administration and Operation. (1) Licensee.

(a) A licensee shall be an entity or individual whose clinic:

1. Provides limited health care services as described by Section 3(3) of this administrative regulation; and

2. Is legally responsible for the clinic and for compliance with all federal, state, and local laws and administrative regulations pertaining to the operation of the clinic.

(b) A licensee shall establish written policies for the administration and operation of the clinic.

(c) A licensee shall establish lines of authority and designate a clinic director who shall:

1. Be employed by or under contract with the licensee;
2. Be principally responsible for the daily operation of the clinic; and

3. Maintain oversight of the clinical activities and administrative functions in the clinic.

(2) Policies.

(a) Administrative policies. A clinic shall have written administrative policies which shall:

1. Be maintained on the premises of the clinic or maintained in an electronic format, available for copying to a disk or printing at the clinic;

2. Be subject to review, inspection, and copying by the cabinet; and

3. Cover all aspects of the clinic's operation, including:

a. A description of organizational structure, staffing, and allocation of responsibility and accountability, including the medical director's responsibilities described in subsection (3)(f) of this section if the clinic provides chronic disease management services;

b. Clinical practice guidelines for diagnosing and treating patients in each of the service categories provided by the clinic to ensure the proper identification of patients whose needs are beyond the clinic's scope of services;

- c. Guidelines for referring an individual whose needs exceed the clinic's services;
- d. Policies and procedures for determining if physician consultation is required;
- e. Policies and procedures for the guidance and control of personnel performances;
- f. Procedures to be followed if the clinic performs any functions related to the storage, handling, and administration of drugs and biologicals; and
- g. Procedures for the submission of a patient's written or verbal grievance to the clinic. The grievance process shall specify time frames for review of the grievance and the provision of a response.
- (b) Patient rights policies.
 - 1. A clinic shall:
 - a. Adopt written policies regarding the rights and responsibilities of patients;
 - b. Display publicly at the clinic a copy of its written policy regarding the rights and responsibilities of patients; and
 - c. Provide a copy of the clinic's patients rights policies upon request by an individual who seeks services there.
 - 2. A clinic's patient rights policies shall assure that each patient is:
 - a. Informed of services available at the clinic;
 - b. Provided a right to information regarding the charge to the patient for each service offered by the clinic and whether the clinic accepts payment for the proposed services from third-party payors, including insurance, Medicare, or Medicaid;
 - c. Informed of his or her medical condition, unless medically contraindicated as documented in his or her medical record;
 - d. Notified of all relevant treatment or maintenance courses of action and given the opportunity to participate in the clinical decision-making process;
 - e. Informed that he or she may voice a grievance or recommend changes in policies and services;
 - f. Assured confidential treatment of his or her records and is afforded the opportunity to approve or refuse the release of those records to an individual not involved in his or her care, except as required by third-party payment contract or otherwise permitted by applicable law; and
 - g. Treated with consideration, respect, and full recognition of his or her dignity and individuality, including privacy in treatment and in the care of his or her personal health needs.
- (3) Personnel.
 - (a)1. During a clinic's operating hours, the clinic shall have present at least one (1) advanced practice registered nurse, physician, or physician assistant approved for off-site supervision according to KRS 311.860.
 - 2. The clinic shall employ additional staff or ancillary personnel as needed to ensure the safe and efficient delivery of services provided by the clinic.
 - (b)1. Clinic personnel shall attend in-service training programs relating to their respective job duties. These training programs shall include:
 - a. Thorough job orientation for new personnel; and
 - b. Regular in-service training programs, emphasizing competence and professionalism necessary for effective health care.
 - 2. A written document describing the training programs completed by all clinic employees shall be maintained on the premises of the clinic.
 - (c) During a clinic's hours of operation, at least one (1) health care professional shall be at the clinic who has:
 - 1. Training in basic cardiac life support for health care providers; and
 - 2. Training in the treatment of anaphylactic reaction.
 - (d) A clinic or its management entity shall maintain a written job description for each position that shall be reviewed and revised as necessary.
 - (e) A clinic or its management entity shall maintain current personnel records for each employee. An employee's personnel record shall include the following:
 - 1. Employee's name, address, and social security number;
 - 2. Evidence that the health care professional has a valid

- license or other valid credential required for the professional to be able to practice;
- 3. Record of training and experience; and
- 4. Record of performance evaluations.
- (f) If a clinic provides chronic disease management services for hypertension, hypercholesterolemia, congestive heart failure, asthma, chronic obstructive airways disease, diabetes mellitus, or hyper- or hypothyroidism, the clinic shall designate a Kentucky-licensed physician to serve as the clinic's medical director. The physician may serve as the medical director for more than one (1) clinic and shall:
 - 1. Assist the clinic in developing policies, procedures, and treatment plan recommendations to assist in quality patient care;
 - 2. Participate in quality assurance and improvement activities, including **monthly electronic chart audits completed by the medical director of each clinic in which at least ten (10) percent of the clinic's patient records shall be randomly selected for review and a minimum of fifty (50) electronic chart audits each month, completed by the medical director, in which** at least fifty (50) percent of the **records reviewed[audits]** shall be **randomly** drawn from the clinic's chronic disease management patient records, for a minimum of twenty-five (25) but not to exceed fifty (50) chart audits;
 - 3. Maintain documentation of the quality assurance and improvement activities required by subparagraph 2 of this paragraph;
 - 4. Promptly respond to clinical questions from the advanced practice registered nurse or physician assistant who renders clinical services in the clinic;
 - 5. Ensure that the clinic for which he or she serves as medical director is:
 - a. Certified by the Convenient Care Association; or
 - b. Accredited by:
 - (i) The National Committee for Quality Assurance;
 - (ii) The Accreditation Association for Ambulatory Health Care;
 - (iii) The Utilization Review Accreditation Committee;
 - (iv) The Joint Commission; or
 - (v) Other nationally recognized accrediting organization with comparative standards; and
 - 6. Provide in-service and educational sessions to the clinic's health care practitioners **or assure that the clinic's practitioners have completed continuing education requirements related to chronic disease management.**
- (g)1. A clinic or its management entity shall maintain the materials required by this subsection and make the materials immediately available to the cabinet or its duly appointed representative upon request.
- 2. The materials shall be subject to review, inspection, and copying by the cabinet or its duly appointed representative.
- (4) Medical records.
 - (a) A clinic shall maintain medical records that contain the following:
 - 1. Medical history relevant to services provided by the clinic;
 - 2. Description of each medical visit or contact, including a description of the:
 - a. Condition or reason for the visit or contact;
 - b. Assessment;
 - c. Diagnosis;
 - d. Services provided;
 - e. Medications and treatments prescribed; and
 - f. Disposition made;
 - 3. Reports of physical examinations, laboratory, and other test findings; and
 - 4. Documentation of referrals made, including the reason for the referral and to whom the patient was referred.
 - (b) A clinic shall maintain confidentiality of patient records at all times pursuant to and in accordance with federal, state and local laws and administrative regulations including the privacy standard promulgated pursuant to Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. 160 and 164.
 - (c) A clinic shall:
 - 1. Establish systematic procedures to assist in continuity of care if the patient moves to another source of care;

2. Transfer medical records or an abstract upon request, subject to required releases and authorizations; and

3. Have a specific location designated for the storage and maintenance of the clinic's medical records or maintain scanned copies of the original medical records in an electronic format or maintain electronic health records, available for copying to a disk or printing at the clinic.

(d) A licensee shall safeguard the clinic's medical records and their content against loss, defacement, and tampering.

(e) Medical records shall be maintained by the clinic for a period of six (6) years following the last treatment, assessment, or visit made by the patient, or three (3) years after the patient reaches age eighteen (18), whichever is longer.

(5) Quality assurance program. A clinic shall:

(a) Have a written quality assurance program that:

1. Includes effective mechanisms for reviewing and evaluating patient care; and

2. Provides for appropriate responses to findings; and

(b) Maintain a copy of the written quality assurance plan on the premises of the clinic.

Section 5. Provision of Services. (1) Posting requirements. A clinic shall post the following information on the door patients use to enter the clinic or prominently near the clinic's entrance:

(a) The clinic's hours of operation;

(b) The clinic's name; and

(c) A list of services provided by the clinic, accompanied by a statement which advises that the clinic is not equipped to provide emergency treatment for life threatening conditions.

(2) Visits. A clinic shall:

(a) Provide each patient with a copy of the visit summary sheet at the conclusion of the visit; and

(b) Upon request by the patient, send a copy of the visit summary sheet or visit-specific medical record, including documentation of any vaccinations administered by the clinic, by facsimile or electronically to the patient's primary care practitioner at no charge to the patient, or provide a paper copy of the visit summary sheet to the patient to deliver to the patient's primary care practitioner.

(3) Referral. If an individual seeks or is in need of care and treatment in excess of services beyond the scope of limited services offered by the clinic, the clinic:

(a) Shall immediately advise the individual that he or she should seek services elsewhere; and

(b) May make a referral on behalf of the individual.

(4) Equipment. Equipment used for direct patient care shall comply with the following:

(a) The licensee shall establish and follow a written preventive maintenance program to ensure that equipment is operative and properly calibrated;

(b) All personnel engaged in the operation of the equipment shall have adequate training and be currently licensed, registered, or certified in accordance with applicable state statutes and administrative regulations; and

(c) A written plan shall be developed and maintained to provide for training of personnel in the safe and proper usage of the equipment.

Section 6. Compliance with Applicable Statutes and Regulations. Each health care professional who provides services at a clinic shall act at all times in compliance with:

(1) Obligations or requirements associated with his or her respective professional license or credential; and

(2) Applicable federal, state, and local laws and administrative regulations including the privacy standard promulgated pursuant to Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. 160 and 164.

Section 7. Physical and Sanitary Environment. (1) Accessibility. A clinic shall meet requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to federal, state, and local laws.

(2) Fire safety. A clinic shall be approved by the state Fire

Marshal's office before licensure is granted by the cabinet.

(3) Physical location and overall environment.

(a) A clinic shall have at least one (1) exam room.

(b) The condition of the physical location and the overall environment shall be maintained in such a manner that the safety and well-being of patients, personnel, and visitors are assured.

(c) The premises shall have a waiting room or seating for waiting patients near the entrance to the clinic.

(d) The clinic shall develop written infection control policies that are consistent with Centers for Disease Control guidelines, available at www.cdc.gov/ncidod/dhqp/guidelines.html, and include:

1. Prevention of disease transmission to and from patients, visitors, and employees, including:

a. Universal blood and body fluid precautions;

b. Precautions against airborne transmittal of infections; and

c. Work restrictions for employees with infectious diseases; and

2. Cleaning, disinfection, and sterilization methods used for equipment and the environment.

(e) The clinic shall provide in-service education programs on the cause, effect, transmission, prevention, and elimination of infections.

(f) The clinic's facility, equipment, and surroundings shall be kept in a condition of good repair, neat, clean, free from accumulation of dirt, rubbish, and foul, stale, or musty odors.

(g) Hazardous cleaning solutions, compounds, and substances shall be:

1. Labeled;

2. Stored in closed metal containers;

3. Kept separate from other cleaning materials; and

4. Kept in a locked storage area apart from the exam room.

(h) The clinic shall be kept free from insects and rodents, and their nesting places.

(i) Garbage and trash:

1. Shall be removed from the premises regularly; and

2. Containers shall be cleaned regularly as needed.

(j) A clinic shall establish and maintain a written policy for the handling and disposal of wastes, including any infectious, pathological, and contaminated wastes, which shall include the following:

1. Sharp wastes shall be segregated from other wastes and placed in puncture-resistant containers immediately after use.

2. A needle or other contaminated sharp shall not be recapped, purposely bent, broken, or otherwise manipulated by hand as a means of disposal, except as permitted by the Centers for Disease Control and the Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).

3. A sharp waste container shall be incinerated on or off-site or rendered nonhazardous.

4. Any nondisposable sharps shall be placed in a hard walled container for transport to a processing area for decontamination.

(k)1. Disposable waste shall be:

a. Placed in a suitable bag or closed container so as to prevent leakage or spillage; and

b. Handled, stored, and disposed of in such a way as to minimize direct exposure of personnel or patients to waste materials.

2. The clinic shall establish specific written policies regarding handling and disposal of waste material.

(l)1. A clinic shall provide a hand washing facility in each exam room with:

a. Hot and cold water and blade type operating handles;

b. Knee or foot controls; or

c. Motion activated technology.

2. A soap dispenser, disposable towels or electronic hand dryers, and a waste receptacle shall be provided at each hand washing sink.

(m)1. If a clinic is located on the premises of another entity and does not have toilet facilities located within the clinic, the clinic may share toilet facilities with the other entity.

2. A clinic that shares toilet facilities with another entity shall establish policies and procedures to protect the privacy and dignity

of the patient.

(n) A licensee owned or operated incinerator used for the disposal of waste shall be in compliance with all applicable Kentucky statutes and administrative regulations.

MARYELLEN B. MYNEAR, Inspector General

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 9, 2015

FILED WITH LRC: April 10, 2015 at 1 p.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Maryellen B. Mynear

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for licensure as a limited services clinic.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for the operation of limited services clinics.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 which requires the Cabinet for Health and Family Services to promulgate administrative regulations that establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health 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 the minimum licensure requirements for the operation of limited services clinics.

(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 original amendment of this administrative regulation expands the scope of services that may be provided in a limited services clinic to include chronic disease management services for hypertension, hypercholesterolemia, congestive heart failure, asthma, chronic obstructive airways disease, diabetes mellitus, and hyper- or hypothyroidism. Upon consideration of comments received during the public comment period, the Cabinet is amending this administrative regulation to clarify that a clinic must schedule a follow-up appointment for a chronic disease management patient upon patient consent, or assist the patient in scheduling an appointment if requested; clarify that the clinic must ask the patient whether he or she consents to the clinic's practitioner making contact with the patient's physician specialist or primary care provider to discuss the patient's treatment plan at least once in every twelve (12) month period; require the visit-specific report to be sent to a chronic disease management patient's physician specialist or primary care provider upon consent by the patient and within one (1) business day of the clinic visit; clarify that ten (10) percent of the clinic's patient records be subject to a monthly electronic chart audit and at least fifty (50) percent of the audits shall be drawn from the clinic's chronic disease management patient records, for a total of at least twenty-five (25), but not to exceed fifty (50) chart audits each month; and clarify that continuing education credits related to chronic disease management are sufficient to satisfy the in-service training requirement.

(b) The necessity of the amendment to this administrative regulation: The original amendment and "amended after comments" administrative regulation is necessary to establish standards for limited services clinics which opt to provide chronic disease management services.

(c) How the amendment conforms to the content of the authorizing statutes: The original amendment and "amended after comments" administrative regulation conform to KRS 216B.042 by establishing licensure standards and procedures to ensure safe,

adequate, and efficient health facilities and health services.

(d) How the amendment will assist in the effective administration of the statutes: The original amendment and "amended after comments" administrative regulation will assist in the effective administration of the statutes by setting forth the licensure requirements for limited services clinics.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are fifty-four (54) retail based clinics licensed by the Office of Inspector General as limited services clinics in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Under this "amended after comments" administrative regulation, limited services clinics which opt to provide chronic disease management services will be required to act as a source of patient and caregiver education; upon consent by the patient, schedule follow-up appointments with primary care providers on behalf of a patient treated by the clinic for a chronic disease; ask the patient whether he or she consents to the clinic's practitioner making contact with the patient's physician specialist or primary care provider to discuss the patient's treatment plan at least once in every twelve (12) month period; and send a visit-specific report to the patient's physician specialist within one (1) business day. Additionally, limited services clinics which provide chronic disease management services will be required to participate in the Kentucky Health Information Exchange; provide off-hour coverage, at least through an answering service referring patients to another provider of the same services that is as geographically close as possible and open during the hours the clinic does not operate; designate a Kentucky-licensed physician to serve as the clinic's medical director charged with certain responsibilities, including monthly chart audits; and be certified by the Convenient Care Association or accredited by a designated accrediting organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Providing chronic disease management services in the limited services clinic setting is optional.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Expanding the scope of services which may be offered in limited services clinics across the state is expected to enhance patient access to medical care.

(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 to the Office of Inspector General for implementing this administrative regulation.

(b) On a continuing basis: There is no additional cost to the Office of Inspector General for implementing this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation will be from agency funds and state general funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities which elect to be regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The original amendment and this "amended after comments" administrative regulation will impact limited services clinics which opt to provide chronic disease management services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first 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 original amendment and "amended after comments" administrative regulation will not generate additional revenue for the Cabinet.

(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 original amendment and "amended after comments" administrative regulation will not generate additional revenue for the Cabinet in subsequent years.

(c) How much will it cost to administer this program for the first year? There is no additional cost to the Office of Inspector General for implementing this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost to the Office of Inspector General for implementing this administrative regulation 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:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Community Alternatives

(Amended After Comments)

907 KAR 1:044. Coverage provisions and requirements regarding community mental health center behavioral health services.

RELATES TO: KRS 194A.060, 205.520(3), 205.8451(9), 422.317, 434.840-434.860, 42 C.F.R. 415.208, 431.52, 431 Subpart F

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 210.450, 42 U.S.C. 1396a-d,

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid Program coverage provisions and requirements regarding community mental health center (CMHC) behavioral health services provided to Medicaid recipients.

Section 1. Definitions. (1) "Community mental health center" or "CMHC" means a facility which meets the community mental health center requirements established in 902 KAR 20:091.

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

(3) "Enrollee" means a recipient who is enrolled with a managed care organization.

(4) "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.

(5) "Federal financial participation" is defined in 42 C.F.R. 400.203.

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

(7) "Mental health associate" means an individual who meets the mental health associate requirements established in the Community Mental Health Center Behavioral Health Services Manual.

(8) [(7)] "Professional equivalent" means an individual who meets the professional equivalent requirements established in the Community Mental Health Center Behavioral Health Services Manual.

(9) [(8)] "Provider" is defined by KRS 205.8451(7).

(10) [(9)] "Qualified mental health professional" means an individual who meets the requirements established in KRS 202A.0011(12).

(11) [(10)] "Recipient" is defined by KRS 205.8451(9).

Section 2. Requirements for a Psychiatric Nurse. A registered nurse employed by a participating community mental health center shall be considered a psychiatric or mental health nurse if the individual:

(1) Possesses a Master of Science in nursing with a specialty in psychiatric or mental health nursing;

(2)(a) Is a graduate of a four (4) year nursing educational program with a Bachelor of Science in nursing; and

(b) Possesses at least one (1) year of experience in a mental health setting;

(3)(a) Is a graduate of a three (3) year nursing educational program; and

(b) Possesses at least two (2) years of experience in a mental health setting;

(4)(a) Is a graduate of a two (2) year nursing educational program with an associate degree in nursing; and

(b) Possesses at least three (3) years of experience in a mental health setting; or

(5) Possesses any level of education with American Nursing Association certification as a psychiatric or mental health nurse.

Section 3. Community Mental Health Center Behavioral Health Services Manual. The conditions for participation, services covered, and limitations for the community mental health center behavioral health services component of the Medicaid Program shall be as specified in:

(1) This administrative regulation; and

(2) The Community Mental Health Center Behavioral Health Services Manual.

Section 4. Covered Services. (1) Behavioral health services covered pursuant to this administrative regulation and pursuant to the Community Mental Health Center Behavioral Health Services Manual shall be include:

(a) rehabilitative mental health and substance use disorder services including:

(a) [4-] Individual outpatient therapy;

(b) [2-] Group outpatient therapy;

(c) [3-] Family outpatient therapy;

(d) [4-] Collateral outpatient therapy;

(e) [5-] Therapeutic rehabilitation services;

(f) [6-] Psychological testing;

(g) [7-] Screening;

(h) [8-] An assessment;

(i) [9-] Crisis intervention;

(j) [10-] Service planning;

(k) [11-] A screening, brief intervention, and referral to treatment;

(l) [12-] Mobile crisis services;

(m) [13-] Assertive community treatment;

- (n)[14.] Intensive outpatient program services;
- (o)[15.] Residential crisis stabilization services;
- (p)[16.] Partial hospitalization;
- (q)[17.] Residential services for substance use disorders;
- (r)[18.] Day treatment;
- (s)[19.] Comprehensive community support services;
- (t)[20.] Peer support services; or
- (u)[21.] Parent or family peer support services[; or
- (b) ~~Physical health services including:~~
- 1. ~~Physical examinations; or~~
- 2. ~~Medication prescribing and monitoring].~~

(2)(a) To be covered under this administrative regulation, a service listed in subsection (1) of this section shall be:

- 1. Provided by a community mental health center that is:
 - a. Currently enrolled in the Medicaid Program in accordance with 907 KAR 1:672; and
 - b. Except as established in paragraph (b) of this subsection, currently participating in the Medicaid Program in accordance with 907 KAR 1:671;[and]
- 2. Provided in accordance with:
 - a. This administrative regulation; and
 - b. The Community Mental Health Center Behavioral Health Services Manual; and
- 3. Medically necessary.

(b) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

Section 5. Electronic Documents and Signatures. (1) The creation, transmission, storage, or other use of electronic signatures and documents shall comply with requirements established in KRS 369.101 to 369.120 and all applicable state and federal laws and regulations.

(2) A CMHC choosing to utilize electronic signatures shall:

- (a) Develop and implement a written security policy which shall:
 - 1. Be complied with by each of the center's employees, officers, agents, and contractors; and
 - 2. Stipulate which individuals have access to which electronic signatures and password authorization;
- (b) Ensure that electronic signatures are created, transmitted, and stored securely;
- (c) Develop a consent form that shall:
 - 1. Be completed and executed by each individual utilizing 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
- (d) Provide the department, immediately upon request, with:
 - 1. A copy of the provider's electronic signature policy;
 - 2. The signed consent form; and
 - 3. The original filed signature.

Section 6. 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, on the same day of service.

(2) For example, if a recipient is receiving a behavioral health service from an independently enrolled behavioral health service provider, the department shall not reimburse for the same service provided to the same recipient by a community mental health center on the same day of service.

Section 7. Records Maintenance, Protection, and Security. (1)

A provider shall maintain a current health record for each recipient.

(2) 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 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, if available, 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 independent provider to comply with the requirements of:

- (i) This administrative regulation;
- (ii) The provider's licensure board;
- (iii) State law; or
- (iv) Federal law;

2. Documentation of the:

a. Screening if the community mental health center performed the screening;

- b. Assessment; and
- c. Disposition;[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;

(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 if the recipient is enrolled with a managed care organization;

3. Made available for inspection and copying by Cabinet for Health and Family Services' personnel;

4. Readily accessible; and

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

(c) Document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(3) The individual who provided the service shall date and sign the health record within forty-eight (48) hours of[on] the date that the individual provided the service.

(4)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least six (6)[five (5)] years from the date of the service or until any audit dispute or issue is resolved beyond six (6)[five (5)] years.

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

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

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

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

(5) A provider shall comply with 45 C.F.R. Part 164.

(6) 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.

(7)(a) A provider'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.
2. Notes shall not be erased or illegibly marked out.
- (c)1. Notes recorded by a mental health associate working under supervision or a professional equivalent working under supervision shall be co-signed and dated by a licensed 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.
- (8) Immediately following a screening of a recipient, the provider 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.
- (9)~~(a) A recipient's treatment plan 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:
 - (a) Rendering practitioner; and
 - (b) Recipient or recipient's representative [provider].
- (10)(a) Notes regarding services to a recipient shall:
 1. Be organized in chronological order;
 2. Dated;
 3. 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 provider 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 nonreimbursable contacts shall:
 1. Be recorded in the notes; and
 2. Not be reimbursable.
- (11)(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
 3. Individual's condition upon termination and disposition.
 - (b) A health record relating to an individual who was terminated from receiving services shall be fully completed within ten (10) days following termination.
 - (12) 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.
 - (13)(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

CMHC[provider] shall, if the recipient gives the CMHC[provider] written consent to do so, ~~forward a copy or summary of the recipient's health record to the health care facility or other provider who is receiving the recipient~~ within ten (10) business days of the transfer or referral, transfer the recipient's **health** records in a manner that complies with the **health** 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. 290ee-3; and

b. 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 CMHC shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's **health** records in a manner that complies with the **health** 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. 290ee-3; and

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

(14)(a) If a CMHC'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 a provider, the health records regarding recipients to whom the CMHC has provided services shall:

1. Remain the property of the CMHC; and

2. Be subject to the retention requirements established in subsection (4) of this section.

(b) A CMHC shall have a written plan addressing how to maintain health records in the event of a provider's death.

Section 8. Medicaid Program Participation Compliance. (1) A CMHC 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 CMHC receives any duplicate payment or overpayment from the department or managed care organization, regardless of reason, the CMHC shall return the payment to the department or managed care organization that issued the duplicate payment or overpayment.

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

1. Interpreted to be fraud or abuse; and

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

Section 9. Third Party Liability. A provider shall comply with KRS 205.622.

Section 10. Auditing Authority. The department or the managed care organization in which an enrollee is enrolled shall have the authority to audit any:

(1) Claim;

(2) Health[, Medical] record[.]; or

(3) Documentation associated with the[any] claim or health[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. Appeal Rights. (1) An appeal of an adverse action by the department regarding 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.

Section 13. Incorporation by Reference. (1) The "Community Mental Health Center Behavioral Health Services Manual", December~~May~~ 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, 6th Floor West, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 9, 2015

FILED WITH LRC: April 9, 2015 at 4 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 coverage provisions and requirements regarding Medicaid Program community mental health center (CMHC) services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the coverage provisions and requirements regarding Medicaid Program CMHC services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the coverage provisions and requirements regarding Medicaid Program CMHC 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 establishing the coverage provisions and requirements regarding Medicaid Program CMHC 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 clarifies that this administrative regulation sets the requirements for behavioral health services provided in a community mental health center; removes a reference to physical health services; changes the term "treatment plan" to "plan of care"; extends the timeframe for maintaining a health record of a recipient who received services from a CMHC from five (5) years to six (6) years; clarifies that notes recorded by a behavioral health practitioner working under supervision must be co-signed by the supervising professional within thirty (30) days (previously no timeframe was stated); establishes that the transfer of a health record of a recipient transferring to a residential crisis stabilization unit, psychiatric hospital, psychiatric distinct part unit of an acute care hospital, or to an acute care hospital shall be done within forty-eight (48) hours in contrast to the ten (10) day timeframe for other such transfers; and amends the incorporated material by synchronizing provisions with the latest behavioral health state plan amendment approved by the Centers for Medicare and Medicaid Services (CMS.) The amendment after comments clarifies that a CMHC does not have to document a screening given to a recipient if the CMHC did not perform the screening; clarifies that health records must be signed by the practitioner who provided the service within forty-eight (48) hours; changes the term "record" to "health record" in a few places for consistency; clarifies that a duplicate payment or overpayment

received by a provider must be returned to the managed care organization which sent the duplicate payment or overpayment; clarifies that managed care organizations have the authority to audit health records and associated documentation; and amends the material incorporated by reference – the Community Mental Health Center Behavioral Health Services Manual. Amendments to the incorporated material include adding licensed clinical alcohol and drug counselors (LCADCs) and licensed clinical alcohol and drug counselor associates (LCADCAs) as authorized practitioners contingent and effective upon approval by the Centers for Medicare and Medicaid Services (CMS); establishing that a CMHC must meet the staffing requirements established in the Office of Inspector General's CMHC licensure requirements administrative regulation (902 KAR 20:091); revising the staffing section of the manual from addressing minimum and additional staff requirements to a section listing all authorized staff along with corresponding qualifications; adding certified psychologists with autonomous functioning to the professionals authorized to supervise staff; adding certified psychologists to those who can provide certain services as well as supervise mental health associates; restricting licensed psychological associates to working under the supervision of a board-approved licensed psychologist; clarifying that supervision means "billing supervision" and defining "billing supervision" and "billing supervisor"; establishing that a billing supervision arrangement cannot violate or substitute for clinical supervision rules established by respective licensure boards; correcting the plan of care requirements establishing that a thirty (30) day review of a plan of care is only required for residential services for substance use disorders and intensive outpatient program services - for all other services the requirement is a review every six (6) months; inserting a reference to the psychology chapter of Kentucky Revised Statutes – KRS Chapter 319 – regarding psychological testing requirements; inserting an option for CMHCs to utilize electronic prescribing; inserting provisions regarding substance use treatment for pregnant women that were inadvertently omitted; inserting a few exceptions to the requirement that face-to-face contact between a practitioner and recipient is required in order for the service to be reimbursable; adding peer support specialists to those authorized to provide mobile crisis services; correcting the list of those who can supervise comprehensive community support associates and certified alcohol and drug counselors as only billing supervisors are authorized to supervise those practitioners; clarifying staff note requirements; replacing the term "client" with "recipient"; and clarifying non-covered services consistent with other related behavioral health administrative regulations.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify provisions and to synchronize provisions with those currently approved by CMS (in order to ensure receipt of federal funding for CMHC behavioral health services.) The amendment after comments to the administrative regulation is necessary to clarify requirements. Additionally, amendments to the incorporated material are necessary for clarity as well as to synchronize requirements (shared by representatives of the Kentucky Psychological Association and Kentucky Board of Examiners of Psychology) with requirements established in Kentucky law. Adding licensed clinical and alcohol drug counselors and licensed clinical and alcohol drug counselor associates (contingent and effective upon approval by the Centers for Medicare and Medicaid Services) to the authorized practitioners is necessary in response to legislation (HB 92 of the 2015 Regular Session of the General Assembly) which created these two (2) behavioral health professionals.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying provisions and synchronizing provisions with those currently approved by CMS (in order to ensure receipt of federal funding for CMHC behavioral health services.) The amendment after comments conforms to the content of the authorizing statutes by clarifying requirements. The amendment after comments conforms to the content of the authorizing statutes by clarifying requirements and also by synchronizing psychological practice requirements with those

established in Kentucky law.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by clarifying provisions and synchronizing provisions with those currently approved by CMS (in order to ensure receipt of federal funding for CMHC behavioral health services.) The amendment after comments will assist in the effective administration of the authorizing statutes by clarifying requirements. The amendment after comments will assist in the effective administration of the authorizing statutes by clarifying requirements and also by synchronizing psychological practice requirements with those established in Kentucky law.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Community mental health centers will be affected by this amendment as will Medicaid recipients who receive services from CMHCs. There are fourteen (14) such centers.

(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. CMHCs will have to keep health records regarding recipients for at least six (6) years rather than five (5) years; transfer health records (when applicable) to urgent settings within forty-eight (48) hours; and ensure that supervising professionals sign notes recorded by practitioners working under supervision within thirty (30) days.

(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 is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). CMHCs and Medicaid recipients receiving services from CMHCs will benefit by the department's continued receipt of federal funding from CMS for CMHC behavioral health services.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates no additional cost as a result of the amendment.

(b) On a continuing basis: The response in paragraph (a) above 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), 42 U.S.C. 1396d(a)(2).

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. 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. 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. 42 U.S.C. 1396d(a)(2) requires Medicaid program coverage of: "(A) outpatient hospital services, (B) consistent with State law permitting such services, rural health clinic services (as defined in subsection (l)(1)) and any other ambulatory services which are offered by a rural health clinic (as defined in subsection (l)(1)) and which are otherwise included in the plan, and (C) Federally-qualified health center services (as defined in subsection (l)(2) and any other ambulatory services offered by a Federally-qualified health center and which are otherwise included in the plan."

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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? DMS does not anticipate additional revenues for state or local government as a result of the amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The response to question (a) also applies here.

(c) How much will it cost to administer this program for the first year? DMS does not anticipate additional costs as a result of the

amendment.

(d) How much will it cost to administer this program for subsequent years? The response to question (c) above 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 1:046. Community mental health center primary care services.

RELATES TO: KRS 205.520, 210.410.

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6313, 42 C.F.R. 440.130, 42 U.S.C. 1396d(a)(13)(C)

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 ~~[Department for]~~ Medicaid Program's[Services] coverage provisions and requirements regarding primary care services provided in a community mental health center to Medicaid recipients.

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

(2) "Community mental health center" or "CMHC" means a facility which meets the community mental health center requirements established in 902 KAR 20:091.

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

(4) "Enrollee" means a recipient who is enrolled with a managed care organization.

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

(6) "Injectable drug" means an injectable, infused, or inhaled drug or biological that:

(a) Is not excluded as a non-covered immunization or vaccine;

(b) Requires special handling, storage, shipping, dosing, or administration; and

(c) Is a rebatable drug.

(7) "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.

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

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

(10) "Rebatable drug" means a drug for which the drug's manufacturer has entered into or complied with a rebate agreement in accordance with 42 U.S.C. 1396r-8(a).

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

Section 2. General Requirements. (1) For the department to reimburse for a primary care service provided by a community mental health center under this administrative regulation, the:

(a) CMHC shall be currently:

1. Enrolled in the Medicaid Program in accordance with 907 KAR 1:672;

2. Participating in the Medicaid Program in accordance with 907 KAR 1:671; and

3. Licensed in accordance with 902 KAR 20:091; and

(b) Service shall:

1. Be medically necessary;

2. Meet the coverage and related requirements established in this administrative regulation; and

3. Be provided by:

a. A physician;

b. An advanced practice registered nurse; or

c. A physician assistant.

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

(3) A CMHC 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. The physical health services covered pursuant to 907 KAR 3:005 shall be covered:

(1) Under this administrative regulation; and

(2) In accordance with the requirements established in 907 KAR 3:005 except that primary care services provided in a community mental health center shall only be provided by:

(a) A physician;

(b) An advanced practice registered nurse; or

(c) A physician assistant.

Section 4. Service Limitations. The limitations established in 907 KAR 3:005 for physical health services shall apply to primary care services provided in a CMHC under this administrative regulation.

Section 5. Prior Authorization Requirements. The prior authorization requirements

established in 907 KAR 3:005 for physical health services shall apply to services provided in a CMHC under this administrative regulation.

Section 6. Injectable Drugs. An injectable drug listed on the Physician Injectable Drug List that is administered in a CMHC shall be covered.

Section 7. No Duplication of Service. (1) The department shall not reimburse for a primary care service provided to a recipient by more than one (1) provider of any program in which primary care services are covered during the same time period.

(2) For example, if a recipient is receiving a primary care service from a rural health clinic enrolled with the Medicaid Program, the department shall not reimburse for the same primary care service provided to the same recipient during the same time period by a community mental health center.

Section 8. Records Maintenance, Protection, and Security. (1) A provider shall maintain a current health record for each recipient.

(2) 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.

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

(4)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

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

(5) A provider shall comply with 45 C.F.R. Part 164.

Section 9. Medicaid Program Participation Compliance. (1) A provider shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672; and
- (c) All applicable state and federal laws.

(2)(a) If a provider receives any duplicate payment or overpayment from the department or a managed care organization, regardless of reason, the provider shall return the payment to the department or managed care organization in accordance with 907 KAR 1:671.

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

- 1. Interpreted to be fraud or abuse; and
- 2. Prosecuted in accordance with applicable federal or state law.

Section 10. Third Party Liability. A provider shall comply with KRS 205.622.

Section 11. 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 provider that chooses to use electronic signatures shall:

- (a) Develop and implement a written security policy that shall:
 - 1. Be adhered to by each of the provider's employees, officers, agents, or contractors;
 - 2. Identify each electronic signature for which an individual has access; and
 - 3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
- (b) Develop a consent form that shall:
 - 1. Be completed and executed by each individual using an electronic signature;
 - 2. Attest to the signature's authenticity; and
 - 3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

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

- 1. A copy of the provider's electronic signature policy;
- 2. The signed consent form; and
- 3. The original filed signature.

Section 12. Auditing Authority. The department or managed care organization in which an enrollee is enrolled shall have the authority to audit any:

- (1) Claim;
- (2) ~~Health~~; ~~medical~~ record; ~~or~~
- (3) Documentation associated with any claim or ~~health~~~~medical~~ record.

Section 13. 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 14. Appeal Rights. (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.

Section 15. Incorporation by Reference. (1) The "Physician Injectable Drug List", February 21, 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a) At 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>. 907 KAR 1:046

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 9, 2015

FILED WITH LRC: April 9, 2015 at 4 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 coverage provisions and requirements regarding community mental health center (CMHC) primary care services covered by the Medicaid Program. Key requirements include that the authorized primary care practitioners are physicians, physician assistants, and advanced practice registered nurses; that any physical health service or limit established for Medicaid-program physician's services (pursuant to 907 KAR 3:005) shall also apply primary care services provided in CMHCs; and that the prior authorization requirements established in 907 KAR 3:005 shall also apply to CMHC primary care services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the coverage provisions and requirements regarding CMHC primary care services covered by the Medicaid Program as authorized by KRS 205.6313.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes (including KRS 205.6313) by establishing the coverage provisions and requirements regarding CMHC primary care services covered by the Medicaid Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes (including KRS 205.6313) by establishing the coverage provisions and requirements regarding CMHC primary care services covered by the Medicaid Program.

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

(a) How the amendment will change this existing administrative regulation: The amendment after comments inserts a missing word; clarifies that if a provider receives a duplicate payment from a managed care organization (MCO) the provider is required to return the overpayment to the MCO; clarifies that MCOs have auditing rights to health records of Medicaid recipients enrolled with them; and replaces the term "medical record" with "health record" in a couple of places to ensure consistency.

(b) The necessity of the amendment to this administrative regulation: The amendment after comments is necessary for clarity.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment after comments conforms to the content of the authorizing statutes by adding clarity.

(d) How the amendment will assist in the effective administration of the statutes: The amendment after comments will assist in the effective administration of the authorizing statutes by adding clarity.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Community mental health centers will be affected by this amendment as will Medicaid recipients who receive services from CMHCs. There are fourteen (14) such centers.

(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. CMHCs that wish to provide primary care services to Medicaid recipients will have to do so according to the requirements such as having staff authorized to provide such services (physicians, advanced practice registered nurses, or physician assistants.)

(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 is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). CMHCs that wish to provide primary care services to Medicaid recipients will benefit by being enabled to receive reimbursement for such services.

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

(a) Initially: Due to the uncertainty of how many CMHCs will elect to expand their scope of services to include primary care services and to the uncertainty of when such CMHCs will meet the associated licensure requirements established by the Office of Inspector General, DMS is unable to project a cost associated with this action.

(b) On a continuing basis: The response to (a) above 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. There is no federal mandate that community mental health centers provide primary care services.

2. State compliance standards. KRS 205.6313 requires the Medicaid Program to reimburse for primary care services provided by a licensed physician, advanced practice registered nurse, or physician assistant employed by a community mental health center.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate that community mental health centers provide primary care services.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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), and KRS 205.6313.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The response to question (a) also applies here.

(c) How much will it cost to administer this program for the first year? Due to the uncertainty of how many CMHCs will elect to expand their scope of services to include primary care services and to the uncertainty of when such CMHCs will meet the associated licensure requirements established by the Office of Inspector General, DMS is unable to project a cost associated with this action.

(d) How much will it cost to administer this program for subsequent years? The response in (c) above 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 1:102. Advanced practice registered nurse services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. Part 493, 42 U.S.C. 1396a, b, c, d, [EO 2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: [EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds [for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes the provisions relating to advanced practice registered nurse services covered by the Medicaid Program [for which payment shall be made by the Medicaid Program in behalf of both the categorically needy and the medically needy].

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

(2) "Common practice" means an arrangement through a contractual partnership in which a physician and an APRN jointly administer health care services.

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

(4) "Department" means the Department for Medicaid Services or its designated agent. [(4) "Emergency medical condition" means a medical condition that manifests itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson,

who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of a bodily organ or part.]

(5) "Enrollee" means a recipient who is enrolled with a managed care organization.

(6) "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.

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

(8) "Global period" means the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

(9) "Incidental" means that a medical procedure:

(a) Is performed at the same time as a primary procedure; and

(b) Is clinically integral to the performance of the primary procedure.

(10) "Injectable drug" means an injectable, infused, or inhaled drug or biological that:

(a) Is not excluded as a non-covered immunization or vaccine;

(b) Requires special handling, storage, shipping, dosing, or administration; and

(c) Is a rebatable drug.

(11) "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(12) "Locum tenens APRN" means an APRN:

(a) Who temporarily assumes responsibility for the professional practice of an APRN participating in the Kentucky Medicaid Program; and

(b) Whose services are billed under the Medicaid participating APRN's provider number.

(13) "Locum tenens physician" means a substitute physician:

(a) Who temporarily assumes responsibility for the professional practice of an APRN participating in the Kentucky Medicaid Program; and

(b) Whose services are billed under the Medicaid participating APRN's provider number.

(14) "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.

(15) "Emergency services" means covered inpatient or outpatient services, including emergency ambulance transport, furnished by a qualified provider if the services are needed to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard. (6) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130[shall be:

(a) Provided in accordance with 42 C.F.R. 440.230;

(b) Reasonable and required to identify, diagnose, treat, correct, cure, ameliorate, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;

(c) Clinically appropriate in terms of amount, scope and duration based on generally-accepted standards of good medical practice;

(d) Provided for medical reasons rather than primarily for the convenience of the recipient, caregiver, or the provider;

(e) Provided in the most appropriate location, with regard to generally-accepted standards of good medical practice, where the service may for practical purposes be safely and effectively provided;

(f) Needed, if used in reference to an emergency medical service, to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard; and

(g) If applicable, provided in accordance with early and periodic screening, diagnosis, and treatment (EPSDT) requirements established in 42 U.S.C. 1396d(r) and 42 C.F.R. Part 441 Subpart

B for individuals under twenty-one (21) year of age].

(16) "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with one (1) another during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CPT codes; or

(d) Are described in Current Procedural Terminology as inappropriate coding of procedure combinations.

(17) [(7)] "New patient" means a recipient[one] who has not received professional services from the provider within the past[a] three (3) years[year-period].

(18) "Provider" is defined by KRS 205.8451(8).

(19) "Provider group" means a group of at least:

(a) Two (2) individually licensed APRNs who:

1. Are enrolled with the Medicaid Program individually and as a group; and

2. Share the same Medicaid group provider number; or

(b) One (1) APRN and at least one (1) physician who:

1. Are enrolled with the Medicaid Program individually and as a group; and

2. Share the same Medicaid group provider number[(8)

"Prudent layperson standard" means the criterion used to determine the existence of an emergency medical condition whereby a prudent layperson, who possesses an average knowledge of health and medicine, determines that a medical condition manifests itself by acute symptoms of sufficient severity (including severe pain) that the person could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of a bodily organ or part].

(20) "Rebatable drug" means a drug for which the drug's manufacturer has entered into or complied with a rebate agreement in accordance with 42 U.S.C. 1396r-8(a).

(21) [(9)] "Recipient" is defined by KRS 205.8451(9)[means an individual who has been determined by the Kentucky Department of Community-Based Services to be eligible to have the Kentucky Medicaid Program make reimbursement for covered services].

(22) "Timely filing" means receipt of a Medicaid claim by the department:

(a) Within twelve (12) months of the date the service was provided;

(b) Within twelve (12) months of the date retroactive eligibility was established; or

(c) Within six (6) months of the Medicare adjudication date if the service was billed to Medicare.

Section 2. Conditions of Participation. (1) To participate in the Medicaid program as a provider, an APRN or provider group shall comply with:

(a) 907 KAR 1:005, 907 KAR 1:671, and 907 KAR 1:672; and

(b) The requirements regarding the confidentiality of personal records pursuant to 42 U.S.C. 1320d to 1320d-8 and 45 C.F.R. Parts 160 and 164.

(2) A provider:

(a) Shall bill the:

1. Department rather than the recipient for a covered service; or

2. Managed care organization in which the recipient is enrolled if the recipient is an enrollee;

(b) May bill the recipient for a service not covered by Medicaid if the provider informed the recipient of non-coverage prior to providing the service; and

(c) 1. Shall not bill the recipient for a service that is denied by the department on the basis of:

a. The service being incidental, integral, or mutually exclusive to a covered service or within the global period for a covered service;

b. Incorrect billing procedures including incorrect bundling of

services:

- c. Failure to obtain prior authorization for the service; or
- d. Failure to meet timely filing requirements; and
- 2. Shall not bill the enrollee for a service that is denied by the managed care organization in which the recipient is enrolled if the recipient is an enrollee on the basis of:
 - a. The service being incidental, integral, or mutually exclusive to a covered service or within the global period for a covered service;
 - b. Incorrect billing procedures including incorrect bundling of services;
 - c. Failure to obtain prior authorization for the service if prior authorization is required by the managed care organization; or
 - d. Failure to meet timely filing requirements.
- (3)(a) If a provider receives any duplicate payment or overpayment from the department or managed care organization, regardless of reason, the provider shall return the payment to the department or managed care organization **that issued the duplicate payment or overpayment.**
- (b) Failure to return a payment to the department or managed care organization in accordance with paragraph (a) of this subsection may be:
 - 1. Interpreted to be fraud or abuse; and
 - 2. Prosecuted in accordance with applicable federal or state law.
- (4)(a) A provider shall maintain a current health record for each recipient.
 - (b)1. 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.
- 2. The individual who provided the service shall date and sign the health record within seventy-two (72) hours from the date that the individual provided the service.
- (5)(a) Except as established in paragraph (b) or (c) of this subsection, a provider shall maintain a health 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 longer 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) or (b) of this section, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.
- (6) If a provider fails to maintain a health record pursuant to subsection (4) or (5) of this section, the department shall:
 - (a) Not reimburse for any claim associated with the health record; or
 - (b) Recoup from the provider any payment made associated with the health record.
- (7) A provider shall comply with 45 C.F.R. Part 164.
- (8)(a) ~~may participate in Kentucky Medicaid by complying with the terms and conditions established in 907 KAR 1:671 and 907 KAR 1:672.~~ (2) A service provided by an APRN to a ~~Kentucky Medicaid~~ recipient shall be substantiated by **health[medical]** records signed by the APRN which correspond to the date and service reported on the claim submitted for payment to ~~the~~:
 - 1. Department if the claim is for a service to a recipient who is ~~not an enrollee; or~~
 - 2. Managed care organization in which the recipient is enrolled if the recipient is an enrollee ~~Kentucky Medicaid~~.
- (b) If rendering services to a recipient in a hospital, ~~an~~ (3) ~~In addition to the requirements established in subsection (2) of this section, the~~ APRN shall document in the **health[medical]** record of ~~the~~ ~~a~~ hospitalized ~~Kentucky Medicaid~~ recipient that the APRN performed one (1) or more of the following:
 - 1. ~~(a)~~ A personal review of the recipient's medical history;
 - 2. ~~(b)~~ A physical examination;
 - 3. ~~(c)~~ A confirmation or revision of the recipient's diagnosis;

- 4. ~~(d)~~ A visit with the recipient; or
- 5. ~~(e)~~ A discharge service for the recipient.

Section 3. APRN Covered Services. (1)(a) An APRN covered service shall be:

- 1. ~~(a)~~ A medically-necessary service furnished by an APRN through face-to-face ~~direct-practitioner-patient~~ interaction between the **APRN[practitioner]** and the recipient except as established in paragraph (c) of this subsection; and
- 2. ~~(b)~~ A service which is:
 - a. ~~1.-~~ Within the legal scope of practice of the APRN as specified in:
 - (i) 201 KAR 20:057; and
 - (ii) 201 KAR 20:059; and
 - b. ~~Any service covered pursuant to 907 KAR 3:005 shall be covered under this administrative regulation if it meets the requirements established in paragraph (a) of this subsection.~~
- (c) Face-to-face interaction between the **APRN[practitioner]** and recipient shall not be required for:
 - 1. A radiology service;
 - 2. An imaging service;
 - 3. A pathology service;
 - 4. An ultrasound study;
 - 5. An echographic study;
 - 6. An electrocardiogram;
 - 7. An electromyogram;
 - 8. An electroencephalogram;
 - 9. A vascular study;
 - 10. A telephone analysis of an emergency medical system or a cardiac pacemaker if provided under APRN direction;
 - 11. A sleep disorder service;
 - 12. A laboratory service; or
 - 13. Any other service that is customarily performed without face-to-face interaction between the **APRN[practitioner]** and the recipient.
- (2) ~~The~~ Administration of anesthesia by an APRN shall be a covered service. (3) prescribing of drugs by an APRN shall be in accordance with 907 KAR 1:019.
- (3) ~~If a specific brand of prescription is determined by the APRN to be medically necessary for a patient, the certification procedure shall conform with the requirements established in 907 KAR 3:005.~~
- (4)(a) The cost of the following injectables administered in a physician or independent practitioner's office shall be covered:
 - 1. Rho (D) immune globulin injection;
 - 2. Injectable anticancer chemotherapy administered to a recipient in accordance with 907 KAR 3:005;
 - 3. Depo-Provera contraceptive injection if provided in an office setting;
 - 4. Penicillin G and ceftriaxone injectable antibiotics; and
 - 5. Epidural injection if administered in accordance with the requirements established in 907 KAR 3:005.
- (b) The cost of injectables not specified in paragraph (a) of this subsection shall be covered in accordance with 907 KAR 1:019, Section 2.
- (5) An outpatient laboratory procedure performed by an APRN who has been certified in accordance with 42 C.F.R. Part 493 shall be covered.
- (6) An obstetrical and gynecological service shall be covered as follows:
 - (a) An annual gynecological examination;
 - (b) Prenatal care; (c) A covered delivery service provided in a:
 - (a) Hospital, which shall include:
 - 1. Admission to the hospital;
 - 2. Admission history;
 - 3. Physical examination;
 - 4. Anesthesia;
 - 5. Management of uncomplicated labor;
 - 6. Vaginal delivery; and
 - 7. Postpartum care; or
 - (b) Freestanding birth center shall include:
 - 1. Delivery services in accordance with 907 KAR 1:180.

Section 3(3); and

2. Postnatal visits in accordance with 907 KAR 1:180, Section 3(3).

(4)(d) A routine newborn service to an infant born to a Kentucky Medicaid eligible recipient;

(e) An insertion of an intrauterine device (IUD), including the cost of the device, or removal of the IUD; or

(f) The insertion of an implantable contraceptive capsule, including the cost of the contraceptive capsule and related supplies, or removal of the contraceptive capsule. (7) An EPSDT screening service shall be covered if provided in compliance with the periodicity schedule established in 907 KAR 11:034[shall be covered].

(5) Behavioral health services established in 907 KAR 15:010 that are provided by an APRN or provider group that is the billing provider for the services shall be:

(a) Provided in accordance with 907 KAR 15:010; and

(b) Covered in accordance with 907 KAR 15:010[(8) The standard for determining the existence of an emergency medical condition and the need for emergency services shall be:

(a) In accordance with 42 U.S.C. 1396u-2; and

(b) Based on the prudent layperson standard].

(6) An injectable drug that is listed on the Physician Injectable Drug List and that is administered by an APRN or provider group shall be covered.

Section 4. Service Limitations and Exclusions. (1)(a) A limitation on a service provided by a physician in accordance with 907 KAR 3:005 shall apply to services covered under this administrative regulation.

(b) A service that is not covered pursuant to 907 KAR 3:005 shall not be covered under this administrative regulation[if the service is provided by an APRN].

(2) The same service performed by an APRN and a physician on the same day within a common practice shall be considered as one (1) covered service.

(3)(a) Except as established in paragraph (b) of this subsection, coverage of a psychiatric service provided by an APRN shall be limited to four (4) psychiatric services per APRN, per recipient, per twelve (12) months.

(b) A service designated as a psychiatry service CPT code that is provided by an APRN with a specialty in psychiatry shall not be subject to the limit established in paragraph (a) of this subsection.

(4) The department shall not cover more than one (1) of the following evaluation and management services per recipient per provider per date of service:

(a) A consultation service;

(b) A critical care service;

(c) An emergency department evaluation and management service;

(d) A home evaluation and management service;

(e) A hospital inpatient evaluation and management service;

(f) A nursing facility service;

(g) An office or other outpatient evaluation and management service; or

(h) A preventive medicine service.

(5) Except for any cost sharing obligation pursuant to 907 KAR 1:604, a:

(a) Recipient shall not be liable for payment of any part of a Medicaid-covered service provided to the recipient; and

(b) Provider shall not bill or charge a recipient for any part of a Medicaid-covered service provided to the recipient.

(6)(a) In accordance with 42 C.F.R. 455.410, to prescribe medication, order a service for a recipient, or refer a recipient for a service, a provider shall be currently enrolled and participating in the Medicaid program.

(b) The department shall not reimburse for a:

1. Prescription prescribed by a provider that is not currently:

a. Participating in the Medicaid program pursuant to 907 KAR 1:671; and

b. Enrolled in the Medicaid program pursuant to 907 KAR 1:672; or

2. Service:

a. Ordered by a provider that is not currently:

(i) Participating in the Medicaid program pursuant to 907 KAR 1:671; and

(ii) Enrolled in the Medicaid program pursuant to 907 KAR 1:672; or

b. Referred by a provider that is not currently:

(i) Participating in the Medicaid program pursuant to 907 KAR 1:671; and

(ii) Enrolled in the Medicaid program pursuant to 907 KAR 1:672.

Section 5. Prior Authorization Requirements. The prior authorization requirements established in 907 KAR 3:005 shall apply to services provided under this administrative regulation.

Section 6. Locum Tenens. ~~[(4)]~~ The department shall cover services provided by a locum tenens APRN or locum tenens physician under this administrative regulation:

(1) If the service meets the requirements established in this administrative regulation; and[.]

(2) In accordance with:

(a) 201 KAR 20:056; and~~[If an APRN for whom a locum tenens APRN is substituting has a specialty, the locum tenens APRN shall have the same or a similar specialty.]~~

~~(b) 201 KAR 20:057[The department shall not reimburse for services provided by a locum tenens APRN who does not have the same or a similar specialty as the APRN for whom the locum tenens APRN is substituting].~~

Section 7. 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 speech-language pathology service from a speech-language pathologist enrolled with the Medicaid Program under 907 KAR 8:030, the department shall not reimburse for the same service provided to the same recipient on the same day by another provider enrolled with the Medicaid Program.

Section 8. Third Party Liability. A provider 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 provider that chooses to use electronic signatures shall:

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

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

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

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

(b) Develop a consent form that shall:

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

2. Attest to the signature's authenticity; and

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

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

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 10. Auditing Authority. The department **or the managed care organization in which an enrollee is enrolled** shall have the authority to audit any:

(1) Claim;

(2) Health[, Medical] record[.]; or

(3) Documentation associated with the claim or

health[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. Appeal Rights. [(1)] An appeal of a [negative action taken by the] department decision regarding:

- (1) A recipient who is not enrolled with a managed care organization based upon an application of this administrative regulation [A Medicaid beneficiary] shall be in accordance with 907 KAR 1:563; or
- (2) An enrollee based upon an application of this administrative regulation shall be in accordance with 907 KAR 17:010.

Section 13. Incorporation by Reference. (1) "Physicians Injectable Drug List", February 21, 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

- (a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.; or
- (b) Online at the department's Web site at www.chfs.ky.gov/dms/incorporated.htm. [(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.
- (3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:674-]

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 9, 2015

FILED WITH LRC: April 9, 2015 at 4 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 Medicaid program coverage provisions and requirements regarding advanced practice registered nurse (APRN) services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Medicaid program coverage provisions and requirements regarding APRN services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the Medicaid program coverage provisions and requirements regarding APRN 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 establishing the Medicaid program coverage provisions and requirements regarding APRN 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 include creating a locum tenens (substitute provider) option for APRN practices; authorizing APRNs to form provider groups with physicians; incorporating by reference

a list of injectable drugs covered in an APRN setting; clarifying that behavioral health services provided by an APRN that are covered pursuant to 907 KAR 15:010 (Coverage provisions and requirements regarding behavioral health services provided by independent providers) shall be provided and covered pursuant to 907 KAR 15:010; clarifying that all services covered pursuant to 907 KAR 3:005 (physicians services) shall be covered via this administrative regulation if the given service is within the scope of an APRN's licensure; and clarifying that DMS will not reimburse for a prescription prescribed by a provider that is not currently enrolled and participating in the Medicaid Program or for a service ordered or referred by a provider that is not currently enrolled and participating in the Medicaid Program. The amendment after comments deletes a requirement that if an APRN serves as a locum tenens for an APRN that has a specialty the locum tenens APRN must have a same or similar specialty; inserts a requirement, in lieu of the aforementioned requirement, that a locum tenens must be in accordance with 201 KAR 20:056 and 201 KAR 20:057 (Kentucky Board of Nursing administrative regulations); changes the term "medical record" to "health record" for consistency; and replaces the term "practitioner" with "APRN" in a couple of places; and clarifies that a duplicate payment or overpayment received by a provider must be returned to the managed care organization which sent the duplicate payment or overpayment.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish a locum tenens option for APRNs to enhance recipient access to services; to establish the option for an APRN to form a provider group with a physician to allow APRNs and providers more flexibility in establishing practices (which is expected to enhance recipient access to services); to update the injectable drugs covered under the Medicaid program by incorporating by reference the Physician Injectable Drug List; and to clarify provisions. The clarification regarding DMS not reimbursing for a prescription unless the prescriber is currently enrolled and participating in the Medicaid Program and not reimbursing for a service ordered or referred unless the provider who ordered or referred the service is currently enrolled and participating in the Medicaid Program is necessary to comply with a federal mandate. The locum tenens amendments are necessary as the prior requirement exceeded requirements placed on APRNs by the Kentucky Board of Nursing. The other amendments are necessary for consistency or clarity in language.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by modernizing Medicaid standards for APRN practices; clarifying provisions, and complying with a federal mandate. The locum tenens amendments conform to the content of the authorizing statutes by synchronizing requirements with those established by the Kentucky Board of Nursing. Other amendments conform to the content of the authorizing statutes by adding clarity.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by modernizing Medicaid standards for APRN practices; clarifying provisions, and complying with a federal mandate. The locum tenens amendments will assist in the effective administration of the authorizing statutes by synchronizing requirements with those established by the Kentucky Board of Nursing. Other amendments conform to the content of the authorizing statutes by adding clarity.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The administrative regulation affects advanced practice registered nurses enrolled in the Medicaid program. Currently, there are 4,104 individual APRNs enrolled in Kentucky's Medicaid Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment: No action is required by providers.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): APRNs will benefit by being able to form a provider group with a physician, by being able to employ a locum tenens APRN to take over one's practice temporarily if necessary, and by the expansion of more injectable drugs covered in an APRN setting.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates no additional cost as a result of the amendment.

(b) On a continuing basis: DMS anticipates no additional cost as a result of the amendment.

(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: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(19), 42 C.F.R. 447.26, 42 C.F.R. 445.410.

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. 42 U.S.C. 1396a(a)(19) requires Medicaid programs to provide care and services consistent with the best interests of Medicaid recipients. 42 C.F.R. 455.410 requires state Medicaid Programs to require health care professionals who order services for Medicaid recipients or refer recipients to services to be currently enrolled and participating in the Medicaid Program.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect APRNs enrolled in the Medicaid program.

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), 42 C.F.R.

445.410.

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? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

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

(c) How much will it cost to administer this program for the first year? DMS anticipates no additional cost as a result of the amendment.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no additional cost as a result of the amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Behavioral Health, Developmental and Intellectual Disabilities Division for Behavioral Health (Amended After Comments)

908 KAR 2:220. Adult peer support specialist[services].

RELATES TO: KRS [200.503(2), 202A.011(12), 210.005(2), (3),] 210.010, 210.040, 210.370-485

STATUTORY AUTHORITY: KRS 12.455, 194A.030, 194A.050, 210.450, 222.211.

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 protect the health of Kentucky citizens and to implement programs mandated by federal law or to qualify for the receipt of federal funds. KRS 210.450 authorizes the secretary[of the Cabinet for Health and Family Services] to promulgate administrative regulations governing qualifications of personnel, standards for personnel management operations and consultation in ascertaining local needs for community programs for mental health or individuals with an intellectual disability[and mental retardation programs]. KRS 222.211 authorizes the secretary[of the cabinet] to promulgate administrative regulations to assure that there is the provision of prevention, intervention, and treatment services for both juveniles and adults to address the problems of addiction to alcohol and other drug abuse within individuals, families, and communities.

This administrative regulation establishes the minimum eligibility[and] training, and supervision requirements for an adult peer support specialist[specialists].

Section 1. Definitions. (1) "Adult peer support" means emotional support that is provided by an adult peer support specialist to others with similar mental health, substance use, or co-occurring mental health and substance use disorders in order to achieve a desired social or personal change.

(2) "Adult peer support specialist services" means structured and scheduled non-clinical, therapeutic activities provided to a consumer by an adult peer support specialist in accordance with this administrative regulation.

(3) "Adult peer support specialist" means a self-identified consumer of mental health, substance use, or co-occurring mental health and substance use disorder services who has successfully completed the adult peer support specialist training.

(3) "Adult peer support specialist services" means structured and scheduled non-clinical, therapeutic activities provided to a consumer by an adult peer support specialist in accordance with this administrative regulation.

(4) ["Applicant" means an individual seeking to complete the peer support specialist training.

(5) "Consumer" means an individual who receives adult peer support services.

(5)(6) "Department" or "DBHDID" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.

(6)(7) "Recovery" means a process of change through which a consumer improves in health and wellness, lives a self-directed life, and strives to reach full potential.

(7)(8) "Regional community mental health center" or "CMHC" means the board established by KRS 210.380 and governed by KRS 210.370 to 210.485[(2) "Application" means completing the Kentucky Peer Specialist Training Application form and the Kentucky Peer Specialist Training Short Essay Form and submitting them to the Department for Mental Health and Mental Retardation Services.

(3) "Certificate" means a document verifying completion of the training requirements for peer specialists as outlined in this administrative regulation.

(4) "Child with a severe emotional disability" is defined by KRS 200.503(2).

(5) "Client" means an individual who receives services from any organization outlined in Section 8 of this administrative regulation.

(6) "Community Mental Health-Mental Retardation Board" means the board established by KRS 210.380 and governed by KRS 210.370 to 210.485.

(7) "Department" means the Department for Mental Health and Mental Retardation Services (DMHMRS).

(8) "Paraprofessional" means an individual who does not meet the educational requirement for a mental health professional and who is working under the supervision of a Qualified mental health professional.

(9) "Peer specialist" means a paraprofessional who has fulfilled the requirements of this administrative regulation.

(10) "Qualified mental health professional" or "QMHP" is defined by KRS 202A.011(12).

(11) "Severe mental illness" means the conditions defined by KRS 210.005 (2) and (3)].

Section 2. Eligibility. An adult peer support specialist[applicant] shall:

(1) Be eighteen (18) years of age or older;

(2) Have a current or past diagnosis of a mental health, substance use, or co-occurring mental health and substance use disorders[severe mental illness or a severe emotional disability];

(3)[(2)] Have received or be receiving treatment;

(4)[and (3)] Have a minimum educational requirement of a high school diploma or General Equivalence Diploma[Educational Development] (GED) certificate;

(5) Demonstrate a pattern[Establish signs] of recovery from a mental health, substance use, or co-occurring mental health and substance use disorders;

(6) Successfully complete[the] adult peer support specialist training approved by the department or receive a training waiver for this requirement in accordance with Section 5 of this administrative regulation; and

(7) Successfully complete, maintain, and submit to the department documentation of a minimum of six (6) hours of related training or education in each subsequent year.

Section 3. Department[Department's] Responsibilities. The department shall:

(1)[Approve the adult peer support specialist training;

(2)] Approve or deny at least a thirty (30) hour adult peer

support specialist training curriculum based on[from] a nationally recognized model[curriculum], through a procedure published on the department's Web site, which shall include modules on the following:

(a) Problem solving;

(b) Wellness recovery action plan;

(c) Stages in the recovery process;

(d) Effective listening skills;

(e) Establishing recovery goals; and

(f) Using support groups to promote and sustain recovery;

(2)[(3)] Maintain a record of all approved adult peer support training providers on the department's Web site;

(3)[(4)] Maintain a record of all individuals[adult peer support specialists] who have successfully completed the adult peer support specialist training or who have received a training waiver in accordance with subsection (4) of this section and Section 5 of this administrative regulation; and

(4) The department shall review all requests to waive the training requirement and may:

(a) Approve, in writing, the request based on the documentation provided by the individual; or

(b) Deny, in writing, the request if the individual fails to demonstrate compliance with any portion of this administrative regulation[(5) Maintain a record of approved adult peer support specialists][Make application forms available through:

(a) Written or verbal request to DMHMRS;

(b) The DMHMRS website;

(c) Community Mental Health-Mental Retardation Boards;

(d) DMHMRS state-operated or contracted facilities; and

(e) Consumer and family organizations;

(2) Provide notification of trainings to include:

(a) Date;

(b) Time; and

(c) Place;

(3) Provide training from a standard curriculum with the following core competencies:

(a) The shift from maintenance to recovery;

(b) The emergence of psychosocial rehabilitation as the road to recovery;

(c) The role and conduct of a peer specialist in the recovery process;

(d) Using one's recovery story;

(e) The power of negative program environments;

(f) Creating program environments that promote recovery;

(g) Beliefs and values that promote and support recovery;

(h) Impact of diagnosis on one's self-image;

(i) Mental illness, diagnosis and medications;

(j) Dissatisfaction as an avenue for change;

(k) Facing one's fears;

(l) Combating negativity;

(m) Problem solving;

(n) The role of spirituality in recovery and stress reduction exercises;

(o) Creating a wellness recovery action plan;

(p) Stages in the recovery process;

(q) Power, conflict, and integrity in the workplace;

(r) Effective listening and the art of asking questions;

(s) Determining one's recovery goals;

(t) Using support groups to promote and sustain recovery;

(u) Accomplishing one's recovery goals;

(v) The building blocks of the recovery process; and

(w) Co-occurring mental health and substance use disorders;

(4) Provide each peer specialist a certificate of successful completion of the program;

(5) Maintain documentation of the:

(a) Application;

(b) Competency examinations; and

(c) Examination results; and

(6) Maintain a database of names of peer specialists].

Section 4. Adult Peer Support Specialist Responsibilities. An adult peer support specialist shall:

(1) Use relevant personal stories to assist other consumers through experience;

(2) Serve as a role model to a consumer;

(3) Encourage consumer voice and choice during development and implementation of plans;

(4) Support a consumer by:

(a) Attending team meetings on behalf of the consumer at the request of the consumer; or

(b) Accompanying the consumer to meetings upon the consumer's request;

(5) Empower a consumer to have the confidence to be a self-advocate;

(6) Help providers or other individuals understand the importance of integrating consumer voice and choice in services and support within a system of care;

(7) Promote socialization, recovery, self-advocacy preservation, and enhancement of community living skills for consumers; and

(8) Complete and maintain documentation of a minimum of six (6) ~~contact~~ hours ~~off~~ongoing related training or ~~and~~ education in each subsequent year after successful completion of the adult peer support specialist training or receipt of waiver, and shall submit a list of all trainings in which the adult peer support specialist participated, the provider or presenter of the training, and the number of hours of each training to the department every three (3) years. The submission due date shall be the last day of the month of which the adult peer support specialist's initial certification was completed. To become a peer specialist, an applicant shall:

(1) Complete and submit an application for training to DMHMRS;

(2) Complete the DMHMRS peer specialist training program;

(3) Successfully complete the DMHMRS peer specialist examination; and

(4) Complete and maintain documentation of a minimum of six (6) hours of job related training or education in each subsequent year of employment].

Section 5. Request to Waive the Adult Peer Support Specialist[DMHMRS] Training[Program]. (1) An individual[applicant] requesting[may request] to waive the adult peer support specialist[DMHMRS] training shall:

(a) Provide documentation to the department, on the department's Web site, of successful completion of an adult peer support specialist training sponsored by a federal entity or by another state that is comparable to the adult peer support specialist training in this administrative regulation; and

(b) Provide[Program. An applicant requesting a waiver shall provide the following:

(a) Completion of the application;

(b) Documentation of completion of a peer specialist program sponsored by another state with the core competencies of the DMHMRS training; and

(c) documentation to show that the training has occurred within five (5) years of the waiver request[application date].

(2) The department[DMHMRS] shall review all requests to waive the training requirement and may:

(a) Approve[Grant], in writing, the request based on the documentation provided by the individual[applicant]; or

(b) Deny, in writing, the request if[should] the individual[applicant] fails[fail] to demonstrate compliance with any portion of this administrative regulation.

(3) If an individual[applicant] is denied a training waiver, he or she may apply to complete the adult[DMHMRS] peer support specialist training in accordance with the requirements in Section 2[3] of this administrative regulation.

Section 6. Supervision of an Adult Peer Support Specialist. (1) Adult peer support specialist services shall be provided under the supervision of one (1) of the following professionals:

(a) Physician;

(b) Psychiatrist;

(c) Advanced practice registered nurse;

(d) Physician assistant;

(e) Licensed psychologist;

(f) Licensed psychological practitioner including a certified psychologist or a certified psychologist with autonomous functioning;

(g) Licensed clinical social worker;

(h) Licensed professional clinical counselor;

(i) Licensed marriage and family therapist;

(j) Licensed psychological associate;

(k) Marriage and family therapy associate;

(l) Certified social worker;

(m) Licensed professional counselor associate;

(n) Licensed professional art therapist;

(o) Licensed professional art therapy associate[working in a CMHC];

(p) Professional equivalent working within a CMHC;

(q) Licensed certified alcohol drug counselor;

(r) Licensed certified alcohol drug counselor associate;

(s) Certified alcohol and drug counselor; or

(t)(r) Psychiatric nurse working in a CMHC.

(2)[Individual] Supervision meetings between the supervising professional and adult peer support specialist shall:

(a) Be conducted face-to-face;

(b) Occur no less than twice per month, at least one (1) of which shall be individual[once a week for the first year and monthly thereafter]; and

(c) Be at least thirty (30) minutes in length.

(3) The supervising professional shall maintain a written record off[or] supervision that:

(a) Is dated and signed by the adult peer support specialist and the supervisor for each meeting; and

(b) Includes a description of each supervision meeting[the encounter] that specifies:

1. The topic discussed;

2. Specific action to be taken;

3. An update for any issue previously discussed that required follow-up; and

4. A plan for additional training needs if any were identified[a QMHP; and Face-to-face supervisory meetings shall occur no less frequently than once every two (2) weeks.

Section 7. Scope of Services. A peer specialist shall:

(1) Be a paraprofessional whose primary responsibility is to help clients achieve their own needs and goals;

(2) Provide services which are structured/scheduled activities that promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for adults with severe mental illness or a child with a severe emotional disability; and

(3) Openly share their recovery stories with clients.

Section 8. Employment. A peer specialist may be employed by a:

(a) Community Mental Health – Mental Retardation Board; or

(b) State-operated or contracted facility.

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

(a) "Kentucky Peer Specialist Training Application", 2007 edition; and

(b) "Kentucky Peer Specialist Training Short – Essay Form", 2007 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Mental Health and Mental Retardation Services, 100 Fair Oaks Lane, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.].

MARY REINLE BEGLEY, Commissioner
AUDREY TAYSE HAYNES, Secretary
APPROVED BY AGENCY: April 14, 2015
FILED WITH LRC: April 15, 2015 at 10 a.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: Natalie Kelly or Tanya Dickinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirement for an adult peer support specialist position, specifying qualifications, training, and supervision requirements to behavioral health system providers who may employ an adult peer specialists.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to assure that peer support specialists working within the behavioral health system are appropriately trained and supervised. This administrative regulation is also necessary to comply with a federal mandate and to enhance recipient access to services, and to assist with ensuring compliance to the Interim Settlement Agreement.

(c) How this amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by means of the Secretary of the Cabinet for Health and Family Services responsible for promulgating policies and regulations through the DBHDID regarding services to individuals with disabilities and by involving individuals with disabilities in issues related to services.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statute by establishing criteria whereby peer support specialists can be trained and supervised to meet the behavioral health needs of individuals in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This amendment integrates the peer support service for individuals with mental health, substance use, or co-occurring mental health and substance use disorders. This amendment also ensures conformity with the new guidelines from the Department for Medicaid Services regarding the service and the expanded provider network.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that peer support specialists across the state are appropriately trained and supervised and will assist with ensuring compliance with the Interim Settlement Agreement between the Cabinet for Health and Families and Kentucky Protection and Advocacy.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by means of the Secretary of the Cabinet for Health and Family Services responsible for promulgating policies and regulations through the DBHDID regarding services to individuals with disabilities, and by involving individuals with disabilities in issues related to services.

(d) How the amendment will assist in the effective administration of the statutes: The Amendment will provide requirements for community providers regarding the provision of peer support services across the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

The 14 Regional Community Boards for Mental Health or/and Individuals with an Intellectual Disability (which serve all 120 counties of the Commonwealth).

Additional behavioral health providers approved by the Department for Medicaid Services.

Individuals seeking to become adult peer support specialists (estimated at 100 per year).

Individuals who may receive services from adult peer support specialists (estimated at 1,500 per 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:

The Regional CMHC Boards and additional behavioral health providers will be required to establish systems for recruiting, hiring, and supervising peer support specialists.

Individuals seeking to become peer support specialists will be required to complete the required training and continuing education.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Regional CMHC Boards and other behavioral health providers will incur expenses to provide either approved peer support specialist trainings or the cost of sending their potential peer support specialists to an approved training. In addition, CMHC Boards and other behavioral health providers will be providing salary/benefit costs for the peer support specialists.

It may cost individuals who become peer support specialists some expenses associated with obtaining continuing education requirement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Citizens of the Commonwealth who have behavioral health issues will benefit from the increased availability of qualified individuals who can provide services and supports.

Regional CMHC Boards and other behavioral health providers will benefit by having additional staff to fulfill their mission to serve individuals with behavioral health issues in their regions. CMHC Boards and other behavioral health providers may also become approved providers of the training and collect revenue from others. Individuals who become peer support specialists will benefit from new employment opportunities.

Individuals receiving services from peer support specialists will benefit through access to individuals who may have similar experiences and background and from access to a service that is an evidence based practice.

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

(a) Initially: No additional costs will be incurred to implement this administrative regulation on an initial basis.

(b) On a continuing basis: No additional costs will be incurred to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: state general funds are used to support this program.

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

(9) TIERING: Is tiering applied? Tiering will not be applied since every qualified applicant has an equal chance of applying to become a Department approved Kentucky Peer Support Specialist.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Regional CMHC Boards (Community Mental Health Centers) and additional Behavioral Health Providers.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The following statutes authorize the actions taken by this administrative regulation:

KRS 200.010; 210.040; 210.370-485; 12.455; 210.450; 194A.050; 194A.030

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 new revenues for state or local government in the first year.

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

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and
Intellectual Disabilities
Division for Behavioral Health
(Amended After Comments)

908 KAR 2:230. Kentucky family peer support specialist.

RELATES TO: KRS ~~200.505[42.455, 194A.030, 200.504, 200.503(2), 202.505, 202.508, 202.509, 210.005(2)], 210.010, 210.040, 210.370-485, 222.211[EO 2010-431]~~

STATUTORY AUTHORITY: KRS ~~194A.030, 194A.050, 210.450, 222.211[EO 2010-431]~~

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 protect[, develop, and maintain] the health of Kentucky citizens and to implement programs mandated by federal law or to qualify for the receipt of federal funds[, personal dignity, integrity, and sufficiency of citizens of the Commonwealth and to operate programs and fulfill responsibilities vested in the cabinet]. KRS 210.450 requires the secretary[~~of the Cabinet for Health and Family Services~~] to promulgate administrative regulations governing qualifications of personnel and[.] standards for personnel management for community programs for mental health or individuals with an intellectual disability. KRS 222.211 authorizes the secretary of the cabinet to promulgate administrative regulations to assure that there is the provision of prevention, intervention, and treatment services for both juveniles and adults to address the problems of addiction to alcohol and other drug abuse within individuals, families, and communities[operations and consultation in ascertaining local needs for community mental health and mental retardation programs. EO 2010-431, effective June 15, 2010, changed the name of the department from Department for Mental Health and Mental Retardation Services to Department for Behavioral Health, Developmental and Intellectual Disabilities]. This administrative regulation establishes the minimum eligibility[,and] training, and supervision requirements for a Kentucky family peer support specialist.

Section 1. Definitions. (1) ["Applicant" means an individual seeking to complete the Kentucky family peer support specialist core competency training.

(2) "Child-serving agency" means an agency represented by the State Interagency Council.

(3) "Application" means completing the Kentucky Family Peer Support Specialist Training Application Form and the Kentucky Family Peer Support Specialist Short Essay Form and

submitting them to the department.

(3) "Certificate" means a document verifying completion of the training requirements for Kentucky Family Peer Specialists as outlined in this administrative regulation.

(4) "Child with a severe emotional disability" is defined by KRS 200.503(2).

(5) "Client" means a child or youth with a mental health, substance use, or co-occurring mental health and substance use disability whose parent or family member is receiving family peer support services on behalf of the child or youth[with a severe emotional disability as defined by KRS 200.503(2).

(6) "Community Mental Health – Mental Retardation Board" is defined by KRS 210.370 to 485].

(3)(4)(7) "Core competency[competencies]" means the [established] knowledge and skills in Section 3(3)(4) of this administrative regulation that an individual[applicant][all applicants] must demonstrate in order to successfully complete the Kentucky family peer support specialist training.

(4)(5)(8) "Department" means the Department for Behavioral Health, Developmental and Intellectual Disabilities[is defined by KRS 194A.030(4)].

(5)(6)(9) "Kentucky Family Leadership Academy" or "KFLA" means a prerequisite training to a[the] KFPSS core competency training designed for parents, family members, caregivers, and youth leaders that fosters initial leadership development.

(6)(7)(10) "Kentucky family peer support specialist" or "KFPSS" means an eligible parent, or other family member[caregiver] who has fulfilled the requirements in Section 2 of this administrative regulation[and who is working under the supervision of a mental health professional].

(7)(8) "Lived Experience" means the experience of a parent or other family member in navigating the receipt of services and supports for a child or youth that are directly related to that child's or youth's mental health, substance use, or co-occurring mental health and substance use disability as defined in the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM).

(8) "Regional community mental health center" or "CMHC" means the board established by KRS 210.380 and governed by KRS 210.370 to 210.485.

(9) "State[11] "Mental Health Professional" means a psychiatrist, psychologist, master's level social worker (MSW), master's level clinical counselor, master's level marriage and family therapist, psychiatric nurse or professional equivalent (a minimum of a bachelor's degree in a human services field with two (2) years of experience in mental health related children's services).

(12) "State Interagency Council" is defined by KRS 200.505.

(13) "Statewide family organization" means an organization with whom the department contracts to carry out the activities associated with statewide advocacy and support for children and youth with mental health, substance use, or co-occurring mental health and substance use[severe emotional] disabilities.

(10) "State Interagency Council" is defined by KRS 200.505.

Section 2. Eligibility Criteria. A family peer support specialist[An applicant] shall:

(1) Be eighteen (18) years of age or older;

(2) Be a self-identified parent or other family member who has lived experience with a client who has received services related to the mental health, substance use, or co-occurring mental health and substance use disability from at least one (1) child serving agency[biological parent, adoptive parent, or relative caregiver with permanent legal custody who is raising, or has raised, a child with a severe emotional disability who has been or is a client of at least one state funded service];

(3)(2) Have a minimum educational requirement of a high school diploma or General Equivalency Diploma[Educational Development] (GED) certificate[and]

(4)(3) Have successfully completed a[the] KFLA training approved by the department;

(5)(4) Successfully complete a[the] KFPSS core competency training approved by the department or receive a training waiver for this requirement in accordance with Section 5 of this

administrative regulation; and

~~(6)(5)~~ Successfully complete, maintain, and submit to the department documentation of a minimum of six (6) hours of related training or education in each subsequent year.

Section 3. Department's Responsibility. The department shall assure the following:

(1) Approve ~~a[the]~~ KFLA training based on a standard ~~fifteen (15) hour curriculum through a procedure published on the department's Web site,~~ that includes at a minimum:

- (a) Leadership roles;
- (b) Communication skills;
- (c) Decision making skills;
- (d) Dealing with conflict;
- (e) Effective advocacy; and
- (f) Collaboration and partnership;~~[and]~~

(2) Maintain a record of all approved training providers on the department's Web site[Application forms are available to eligible applicants through:

- (a) Written or verbal request to the department;
 - (b) The department's Web site;
 - (c) Member agencies of the State Interagency Council; and
 - (d) The Statewide Family Organization;
- (2) Provision of state level KFLA training;
- (3) Notification of Kentucky Family Peer Support Specialist training shall include:

- (a) Date(s) of the training;
- (b) Time(s) of the training; and
- (c) Location of the training]; ~~and~~

(3) Approve ~~at least a thirty (30) hour training curriculum to provide[the]~~ KFPSS core competency training based on [(4) Provision of the state Kentucky Family Peer Support Specialist training from] a standard curriculum, through a procedure published on the department's Web site, that includes[with] the following[core competencies]:

- (a) Problem solving;
- (b) Wellness recovery action plan;
- (c) Stages in the recovery process;
- (d) Effective listening skills;
- (e) Establishing recovery goals; and
- (f) Using support group to promote and sustain

recovery[Theoretical Knowledge;

- (b) System of Care expertise;
- (c) Family Support Skills;
- (d) Cultural Competence;
- (e) Communication Skills;
- (f) Organizational Skills;
- (g) Advocacy Skills; and
- (h) Ethics and Values];

(4) Maintain a record of all individuals who have successfully completed a[an] applicant's successful completion of the KFPSS and KFLA training or who have received a training waiver in accordance with subsection (5) of this section and Section 5 of this administrative regulation; and

(5) The department shall review all requests to waive the training requirement and may:

(a) Approve, in writing, the request based on the documentation provided by the individual; or

(b) Deny, in writing, the request if the individual fails to demonstrate compliance with any portion of this administrative regulation[Maintain a record of approved family peer support specialists][(5) Receipt of documentation of successful completion of the Kentucky Family Peer Support Specialist training;

(6) Maintenance of the following documents:

- (a) Application;
- (b) Completion of the KFLA;
- (c) Competency Examinations; and
- (d) Examination results; and

(7) The maintenance of a database with the names of Kentucky Family Peer Support Specialists].

Section 4. Kentucky Family Peer Support Specialist

Responsibilities. A Kentucky family peer support specialist shall:

- (1) Use relevant personal stories to teach through experience;
- (2) Serve as a role model for clients and their families;
- (3) Encourage client and family voice and choice during development and implementation of plans;

(4) Support clients and their families by attending team meetings with them upon request;

(5) Empower a client and family to have the confidence to be self-advocates;

(6) Help providers or other individuals who are working with a client's family understand the importance of integrating family and youth voice and choice in services and supports within a system of care;

(7) Help clients and families enhance relationships with community partners; and

~~(8)[An individual seeking to provide family peer support services shall:~~

~~(1) Complete and submit an application for training to the department;~~

~~(2) Complete the department approved Family Peer Support Specialist training;~~

~~(3) Successfully complete the examination following the training; and~~

~~(4) Complete and maintain documentation of a minimum of six (6) hours of related training or education in each subsequent year after successful completion of the family peer support specialist training or receipt of waiver, and shall submit a list of all trainings in which the family peer support specialist participated, the provider or presenter of the training, and the number of hours of each training to the department every three (3) years. The submission due date shall be the last day of the month of which the family peer support specialist's initial certification was completed.~~

Section 5. Request to Waive the Family Peer Support Specialist Training. (1) An individual[applicant] may request to waive the family peer support specialist training by providing documentation to the department on the department's Web site[with documentation][under the following provisions]:

(a)[Completion of the application;

(b)[Documentation] Of completion of a family peer support specialist training sponsored by a federal entity or by another state with core competencies consistent with that of the Kentucky family peer support specialist training; and

~~(b)[(e) Documentation]~~ To show that the training has occurred within five (5) years ~~before[of]~~ the waiver request[application] date.

(2) The department shall review all requests to waive the training requirement and may:

(a) Approve, in writing, the request based on the documentation provided by the individual[applicant]; or

~~(b)[Approve pending successful completion of the Kentucky Family Peer Support Specialist Core Competency Training exam; or~~

~~(c)] Deny the request in writing if[,—should] the individual[applicant] fails[fail] to demonstrate compliance with any portion of this administrative regulation.~~

(3) If an individual[applicant] is denied a training waiver, the individual[applicant] may apply to complete the Kentucky family peer support specialist core competency training in accordance with the requirements in Section 3(3) of this administrative regulation.

Section 6. Supervision of a Family Peer Support Specialist[Specialists]. (1) Kentucky family peer support services shall be provided under the supervision of one (1) of the following professionals[a mental health professional who shall complete]:

- (a) Physician;
- (b) Psychiatrist;
- (c) Advanced practice registered nurse;
- (d) Physician assistant;
- (e) Licensed psychologist;
- (f) Licensed psychological practitioner including certified

psychologist or[and] certified psychologist with autonomous functioning;

(g) Licensed clinical social worker;

(h) Licensed professional clinical counselor;

(i) Licensed marriage and family therapist;

(j) Licensed psychological associate;

(k) Marriage and family therapy associate;

(l) Certified social worker;

(m) Licensed professional counselor associate;

(n) Licensed professional art therapist;

(o) Licensed professional art therapy[therapist] associate[working in a Community Mental Health Center];

(p) Professional equivalent working in a community mental health center;

(q) Licensed certified alcohol drug counselor;

(r) Licensed certified alcohol drug counselor associate;

(s) Certified alcohol and drug counselor; or

(t)(f) Psychiatric nurse working in a Community Mental Health Center.[Department approved children's targeted-case management training; or

(b) The KFLA; and]

(2) [An][face-to-face][individual] Supervision meetings between the supervising professional and family peer support specialist[meeting] shall;

(a) Be conducted face-to-face;

(b) Occur no less than twice per month, at least one (1) of which shall be individual[once a month]; [and]

(c) Be at least thirty (30) minutes in length; and

(d) Be documented in accordance with subsection (3) of this section.

(3) The supervising professional shall maintain a written record of supervision that:

(a) Is dated and signed by a[the] KFPSS and supervisor for each meeting; and

(b) Includes a description of each meeting[the encounter] that specifies:

1. The topic discussed;

2. Specific action to be taken;

3. An update for an issue that required follow-up; and

4. A plan for additional training needs if any were identified[occur no less than once a month.

Section 7. Scope of Service and Employment. (1) A Family Peer Support Specialist shall:

(a) Be responsible to assist parents or primary caregivers of a client to voice their opinion, needs and goals to benefit the client;

(b) Provide services and structured scheduled activities that:

1. Promote advocacy skills;

2. Increase understanding of the client's disability or disabilities;

3. Enhance the parent or caregiver's ability to participate in the client's treatment team; and

4. Decreases client isolation; and

(c) Share their relevant experiences with other parents and primary caregivers.

(2) A Family Peer Support Specialist may be employed by a:

(a) Community Mental Health – Mental Retardation Board;

(b) State operated or contracted facility; or

(c) Member agency of the State Interagency Council.

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

(a) "Kentucky Family Peer Support Specialist Training Application Form", 2010 edition; and

(b) "Kentucky Peer Support Specialist Short Essay Form", 2010 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copy right law, at the Department for Behavioral Health, Developmental and Intellectual Disabilities at 100 Fair Oaks Lane, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. or via the Statewide Family Organization affiliated with the department].

MARY REINLE BEGLEY, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 14, 2015

FILED WITH LRC: April 15, 2015 at 10 a.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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Natalie Kelly or Tanya Dickinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirement for a family peer support specialist position, specifying qualifications, training, and supervision requirements to behavioral health system providers who may employ peer specialists.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to assure that family peer support specialists working within the behavioral health system are appropriately trained and supervised.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 210.450, in that it establishes qualifications and standards for personnel who participate in meeting behavioral health needs of the citizens of the Commonwealth KRS 200.501.

(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 statute by establishing criteria whereby family peer support specialists can be trained and supervised to meet the behavioral health needs of children and families of the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This amendment integrates the family peer support service for individuals with mental health, substance use, or co-occurring mental health and substance use disorders. This amendment also ensures conformity with the new guidelines from the Department for Medicaid Services regarding the service and the expanded provider network.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that family peer support specialists across the state are appropriately trained and supervised and will assist with ensuring compliance with the Interim Settlement Agreement between the Cabinet for Health and Families and Kentucky Protection and Advocacy.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by means of the Secretary of the Cabinet for Health and Family Services responsible for promulgating policies and regulations through the DBHDID regarding services to individuals with disabilities, and by involving individuals with disabilities in issues related to services.

(d) How the amendment will assist in the effective administration of the statutes: The Amendment will provide requirements for community providers regarding the provision of peer support services across the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: DBHDID operated and contracted the fourteen (14) Regional Behavioral Health/Intellectual Disabilities Boards (which serve all 120 counties of the Commonwealth). Individuals seeking to become family peer support specialists (estimated at 100 per year).

Newly contracted Medicaid group behavioral health providers that would like to offer the service. Individuals who may receive services from family peer support specialists estimated at 1,000 the first year with a 1,000 increase in each subsequent 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: The Regional Community Mental Health Boards and other providers will be required to establish systems for recruiting, hiring, and supervising family peer support specialists.

Individuals seeking to become family peer support specialists will be required to complete the DBHDID application process and training.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regional Community Mental Health Boards will incur the expense necessary to pay salaries and associated costs if they choose to hire a family peer support specialist. It may cost individuals who become family peer support specialists some expenses associated with obtaining continuing education requirement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals will benefit by increased availability of qualified persons who can provide services and supports to families of youth who have behavioral health issues in the Commonwealth. Regional Community Mental Health Boards and other providers will benefit by having additional staff to fulfill their mission to serve individuals with behavioral health issues in their regions. Individuals who become family peer support specialists will benefit from new employment opportunities. Individuals receiving services from family peer support specialists will benefit through access to individuals who may have similar experiences and background.

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

(a) Initially: No additional costs will be incurred to implement this administrative regulation on an initial basis.

(b) On a continuing basis: No additional costs will be incurred to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is 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 will not 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 and does not directly or indirectly increase fees.

(9) TIERING: Is tiering applied? Tiering will not be applied since every qualified applicant has an equal chance of applying to become a Department approved Kentucky Family Peer Support Specialist.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Division of Behavioral Health within the Department for Behavioral Health, Developmental and Intellectual Disabilities and the Regional Behavioral Health and Intellectual Disabilities Boards (Community Mental Health Centers).

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The following statutes authorize the actions taken by this administrative regulation:

KRS 200.503(2), 202A.011(12), 210.005(2) & (3), 210.010, 210.040, 210.370-485.

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 new revenues in the first year.

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

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Behavioral Health, Developmental and Intellectual Disabilities Division for Behavioral Health (Amended After Comments)

908 KAR 2:260. Targeted case manager: eligibility and training.

RELATES TO: KRS 200.503(3), 210.005(2), (3)

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 210.450, 222.211

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 protect the health of Kentucky citizens and to implement programs mandated by federal law or to qualify for the receipt of federal funds. KRS 210.450 requires the secretary to promulgate administrative regulations governing qualifications of personnel and standards for personnel management for community programs for behavioral health or individuals with an intellectual disability. KRS 222.211 authorizes the ~~secretary of the~~ cabinet to promulgate administrative regulations to assure that there is the provision of prevention, intervention, and treatment services for both juveniles and adults to address the problems of addiction to alcohol and other drug abuse within individuals, families, and communities. This administrative regulation establishes the minimum eligibility and training requirements for individuals providing behavioral health targeted case management services to ~~the~~ targeted behavioral health population.

Section 1. Definitions. (1) **"Behavioral health practitioner under supervision" means an individual who is:**

(a)1. A licensed professional counselor associate;

2. A licensed assistant behavior analyst;

3. A certified social worker;

4. A marriage and family therapy associate;

5. A licensed professional art therapist associate;

6. A physician assistant; or

7. A certified alcohol and drug counselor; or

(b) Employed by or under contract with the same billing provider as the billing supervisor.

(2) "Behavioral health professional" means:

(a) An advanced practice registered nurse **as defined by KRS 314.011(7);**

(b) A licensed clinical social worker **as defined by KRS 335.100;**

(c) A licensed marriage and family therapist **as defined by KRS 335.300(2);**

(d) A licensed professional clinical counselor **as defined by KRS 335.500(3);**

(e) A licensed psychological practitioner **as defined by KRS**

319.053;

(f) A licensed psychologist **as defined by KRS 319.010(6) and 201 KAR Chapter 26;**

(g) A licensed professional art therapist **as defined by KRS 309.130(2);**

(h) A physician **as defined by KRS 205.510(11);**

(i) A psychiatrist;

(j) A behavioral health practitioner under supervision **[except for a certified alcohol and drug counselor];**

(k) A registered nurse **as defined by KRS 314.011(5)** working under the supervision of a physician or advanced practice registered nurse;

(l) **A certified alcohol drug counselor as defined by KRS 309.083;**

(m) **A certified psychologist as defined by 201 KAR Chapter 26;**

(n) **A certified psychologist with autonomous functioning as defined by KRS 319.056;**

(o) **A certified social worker as defined by KRS 335.080**

(p) **A licensed professional art therapist associate as defined by KRS 309.130(3);**

(q) **A licensed psychological associate as defined by KRS 319.010(6) and 201 KAR Chapter 26;**

(r) **A marriage and family therapy associate as defined by KRS 335.300(3);**

(s) **A physician assistant as defined by KRS 311.840(3);**

(t) **A licensed clinical alcohol and drug counselor as defined by KRS 309.080(4);**

(u) **A licensed clinical alcohol and drug counselor associate as defined by KRS 309.080(5); or**

(v) An individual with a bachelor's degree **stated in Section 1(4) of this administrative regulation [in a behavioral science program or other human service degree program approved by the department]** who:

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

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

(3)[(2)] "Behavioral science" means:

(a) Psychology;

(b) Sociology;

(c) Social work;

(d) Family studies;

(e) Human services;

(f) Counseling;

(g) Nursing; **[or]**

(h) **Behavioral analysis;**

(i) **Public health;**

(j) **Special education;**

(k) **Gerontology;**

(l) **Recreational therapy;**

(m) **Education;**

(n) **Occupational therapy;**

(o) **Physical therapy;**

(p) **Speech-language pathology;**

(q) **Rehabilitation counseling; or**

(r) **Faith-based education [Another human service degree program approved by the department].**

(4)[(3)] "Case load" means the number of distinct individuals for whom a targeted case manager bills for services from any payor [(Medicaid, managed care organization, or DBHDD)], per month.

(5)[(4)] "Certification" means successful completion of the training requirements in this administrative regulation as documented by the receipt of a certificate of training completion.

(6)[(5)] "Chronic or complex physical health condition" means that:

(a) Significant symptoms of a physical health condition have persisted in a client for a continuous period of at least six (6) months;

(b) The symptoms of the physical health condition significantly impair the client's ability to function:

1. Socially, or

2. Occupationally which, for individuals under the age of twenty-one (21), includes impairment in an educational setting; and

(c) The physical health conditions include disorders under the following categories:

1. Cardiovascular disorders;

2. Respiratory disorders;

3. Genito[-]urinary disorders;

4. Endocrine disorders;

5. Musculoskeletal disorders;

6. Neurological disorders;

7. Immune system disorders;

8. **Gastrointestinal [Obesity];**

9. Cancer; **or**

10. **Hematological [Deaf; or**

11. Blindness].

(7)[(6)] "Client" means an individual identified within a target population.

(8) "Continuing education requirement" means successful completion of the on-going training requirements every three (3) years after the date of certification.

(9)[(7)] "Core components" means the minimum knowledge and skills listed in Section 3(1)[(4)] of this administrative regulation that an individual [applicant] shall demonstrate in order to successfully complete the training and meet eligibility requirements to provide targeted case management services.

(10)[(8)] "Department" means the Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDD).

(11)[(9)] "Face-to-face" means in person, in the same location, and not through an electronic method.

(12)[(10)] "Recertification" means successful completion of the on-going training requirements every three (3) years after the date of certification.

(14)] "Serious mental illness", "severe mental illness", or "SMI" means a diagnosis of a major mental disorder as included in the current edition of the Diagnostic and Statistical Manual of Mental Disorders under:

(a) Schizophrenia spectrum and other psychotic disorders;

(b) Bipolar and related disorders;

(c) Depressive disorders; or

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

(13)[(12)] "Severe emotional disability" or "SED" is defined by KRS 200.503(3).

(14)[(13)] "Substance use disorder" or "SUD" means a primary moderate or severe substance use disorder diagnosis or co-occurring moderate to severe substance use disorder and mental health diagnosis as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(15)[(14)] "Targeted case management services" means services furnished to assist a client [clients] in gaining access to needed medical, social, educational, or other needed services and supports, including:

(a) Assessment of the client's medical, social, and functional status and identification of **the** client's strengths and needs;

(b) Arranging for service delivery from the client's, **the client's legal guardian, or the client's custodial parent's** chosen provider to insure access to required services;

(c) Facilitating access to needed services by explaining the need and importance of services in relation to the client's condition;

(d) Facilitating access, quality, and delivery of necessary services; and

(e) Preparation and maintenance of case record documentation to include care plans, forms, reports, and narratives as appropriate.

(16)[(15)] "Targeted case manager" means an individual who is:

(a) Trained and supervised to perform targeted case management services;

(b) Responsible for conducting a comprehensive assessment and a periodic reassessment of an individual's strengths and needs; and

(c) Responsible for assisting an individual to gain access to identified medical, social, educational, and other service needs.

~~(17)~~~~(46)~~ "Targeted population" means an individual who meets the criteria through diagnosis, duration, and disability for:

- (a) SMI;
- (b) SED;
- (c) SUD; or
- (d) SMI, SED, or SUD and a co-occurring chronic or complex physical health condition.

Section 2. Targeted case manager requirements.

(1) A targeted case manager for individuals with SMI, SED, or SUD shall ~~meet the following educational, experience, and training requirements~~:

(a) Possess a bachelor of arts or science degree in a behavioral science;

(b) Be a certified alcohol and drug counselor who has a bachelor of arts or science degree;

(c) Have provided targeted case management services to a recipient any time from April 1, 2014, to the effective date of this administrative regulation; or

(d) Have supervised the provision of targeted case management services to a recipient any time from April 1, 2014, to the effective date of this administrative regulation;

(e) Have at least one (1) year of full-time employment experience after completing the educational requirements~~(in)~~:

- 1. Working directly with adults in a human service setting; or
- 2. Working directly with individuals under the age of twenty-one (21) in a human service setting;

~~(f)(e) Have~~ Successfully complete a[completed the] department approved targeted case management training within six (6) months of employment as a targeted case manager; and

~~(g)(d) Have~~ Successfully complete a[completed the] department approved continuing education[recertification] requirements every three (3) years thereafter.

(2) A master's degree in a behavioral science may substitute for the one (1) year of full-time employment experience required by subsection (3)(b)1 of this section.

(3) A targeted case manager for individuals with SMI, SED, or SUD and a co-occurring chronic or complex physical health conditions shall be an individual with:

(a) A master's degree in a behavioral science from an accredited college or university and two (2) years of full-time employment experience providing service coordination or linking/referring for community based services for individuals with SMI, SED, or SUD and co-occurring physical or behavioral health disorders or multi-agency involvement[working with SMI, SED, or SUD and a co-occurring chronic or complex physical health condition]; or

(b) A bachelor of arts or science degree from an accredited college or university in a behavioral science and who has:

1. At least five (5) years of full-time employment experience working with an individual with SMI, SED, or SUD and a co-occurring chronic or complex physical health condition;

2. Successful completion of a[Successfully completed the] department approved targeted case management training within six (6) months of employment as a case manager; and

3. Successful completion of continuing education[Successfully completed the department approved recertification] requirements every three (3) years thereafter.

(4) Targeted case managers who are serving individuals with SED, SMI, or SUD shall have:

(a) Individual face-to-face supervision which shall be provided at least monthly for at least one (1) year by a behavioral health professional who has completed the targeted case management training approved by the department; and

(b) Group supervision which shall be provided at least monthly for the duration of employment as a targeted case manager.

(5) The supervisor of a targeted case manager shall maintain documentation of the supervision.

(6) Targeted case managers who are serving an individual with an SED, SMI, or SUD and a co-occurring chronic or complex physical health issue shall have:

(a) Individual~~[face-to-face]~~ supervision which shall be provided at least three (3)[two (2)] times per month, with at least

two (2) of these supervisory contacts on an individual face-to-face basis, for at least three (3) years by a behavioral health professional who has completed the targeted case management training approved by the department; and

(b) Group supervision which shall be provided at least monthly for the duration of employment as a targeted case manager.

(7) Beginning October 1, 2015, a targeted case manager shall not exceed a case load[caseload] size of twenty-five (25) unique clients receiving any service, with the exception of mobile crisis services, crisis intervention services, and screenings[when serving the targeted populations].

(8) A targeted case manager shall:

(a) Only provide targeted case management services to the targeted population for which the targeted case manager meets the educational, experiential[experimental], and training requirements; and

(b) Not provide other behavioral health services in addition to targeted case management services for the same client.

Section 3. Training Requirements. (1) To receive certification to provide behavioral health targeted case management services, a targeted case manager shall successfully complete the following department approved training and continuing education[recertification] requirements:

(a) The core components of the targeted case management curriculum shall be at least twelve (12) hours and shall include:

- 1. Core targeted case management functions and guiding principles;
- 2. Engaging consumers and family members;
- 3. Behavioral health crisis management;
- 4. Strengths-based case management;
- 5. Ethics;
- 6. Behavioral health diagnosis and understanding treatment;
- 7. Integrated care;
- 8. Advocacy skills and empowering consumers and families;
- 9. Cultural awareness;
- 10. Developmental perspectives across the life span; and
- 11. Documentation and billing; and

(b) At least an additional six (6) hours of specialized training for the target population he or she is serving, which shall include the skills required to address the specific needs of each respective target population.

(2) A targeted case manager shall complete continuing education[recertification] requirements every three (3) years.

(3) Required continuing education[Recertification] shall consist of acquiring at least six (6) hours of relevant[approved] continuing education each year in training topics directly related to:

- (a) Case management;
- (b) Behavioral health; or
- (c) Each respective target population.

(4) A[To be recertified,] targeted case manager shall submit a list of all continuing education trainings in which the targeted case manager participated, the provider or presenter of the training, and the number of hours of each training to the Department every three (3) years through a procedure published on the department's Web site. The submission due date shall be the last day of the month of which the targeted case manager's initial certification was completed.

(5) Targeted case managers certified prior to the effective date of this administrative regulation shall[September 2014 shall be required to] submit~~[continuing education]~~ documentation of continuing education hours[for recertification] prior to May 2018[September 2017].

Section 4. Department responsibilities: The department shall:

(1) Approve or deny training curricula submitted by providers wishing to provide training to a targeted case manager or a prospective targeted case manager based on the curriculum requirements established by Section 3(1)(a) of this administrative regulation, through a procedure published on the department's Web site;

(2) Maintain a record of approved targeted case management training curricula, including contact information for providers of the

trainings on the department's Web site:

(3) Maintain a record of targeted case managers who have received a certificate of successful completion of a[the] department approved targeted case management training on the department's Web site;

(4) Create and make available a process for recording continuing education[recertification] of targeted case managers on the department's Web site; and

(5) Maintain a record of targeted case managers who have been certified or completed continuing education[recertified] to provide targeted case management services on the department's Web site.

Section 5. Supervision of a targeted case manager. (1) A targeted case manager shall provide services under the supervision of a behavioral health professional in accordance with 907 KAR 15:040, 907 KAR 15:050, and 907 KAR 15:060;[.]

(2) The supervising behavioral health professional shall complete the training requirements as described in Section 3(1) and (2) of this administrative regulation; and

(3) The supervisor of a targeted case manager shall provide and maintain documentation of the supervision, as specified in Section 2(4), (5), and (6) of this administrative regulation.

MARY REINLE BEGLEY, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 14, 2015

FILED WITH LRC: April 15, 2015 at 10 a.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: Natalie Kelly or Tanya Dickinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirement for a behavior health case manager position, specifying qualifications, pre-service training, continuing education and supervision requirements to behavioral health system providers who may employ targeted case managers who work with targeted populations of individuals with severe mental illnesses (SMI), severe emotional disabilities (SED), moderate to severe substance use disorders (SUD), or co-occurring SMI, SED, SUD and chronic or complex physical health disorders.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to assure that targeted case managers working within the behavioral health system are appropriately trained and supervised. This administrative regulation is necessitated by the references in 907 KAR 15:040, 907 KAR 15:050, and 907 KAR 15:060, that DBHDID approve pre-service and continuing education training requirements for case managers of targeted case management services. This administrative regulation is also necessary to comply with a federal mandate and to enhance recipient access to services. Providers must be trained in order for the services to be accessible.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 210.450 in that it establishes qualifications and standards for personnel who participate in meeting behavioral health needs of the citizens of the Commonwealth.

(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 statute by establishing criteria whereby case managers of targeted case management services can be trained and supervised to meet the behavioral health needs of citizens of the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: 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: An estimated 1,000 individuals that are currently working as targeted case managers and an additional 1,000 individuals that will seek employment as case managers; Fourteen (14) Community Mental Health Centers (serving all 120 counties of the Commonwealth), enrolled providers of Medicaid targeted case management services (approximately 150), and businesses or organizations planning to apply become behavioral health providers of targeted case management services within the Commonwealth (approximately 100); and Individuals who may receive services from case managers of targeted case management services (estimated at 40,000 per 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:

The Regional CMHC Boards and additional behavioral health providers will be required to establish systems for recruiting, hiring, and supervising targeted case managers.

Individuals seeking to become targeted case managers will be required to meet the DBHDID pre-service and continuing education training requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Regional CMHC Boards and other behavioral health providers will incur the expense necessary to pay salaries and associated costs if they choose to hire and train case managers.

For individuals who currently are or are seeking to become targeted case managers, there will likely be some minimal expenses associated with obtaining continuing education requirement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Individuals with behavioral disorders and their families will benefit by increased availability of qualified persons who can provide services and supports.

More individuals with mental health and substance use disorders will experience recovery, thus increasing their employment and decreasing their reliance on public assistance and their rates of hospitalization and incarceration. More youth will experience increased attendance and success in the school system and less involvement with the juvenile justice and child welfare systems.

Regional CMHCs and other behavioral health providers will benefit by having additional staff to fulfill their mission to serve individuals with behavioral health disorders in their regions.

Individuals who become targeted case managers will benefit from new employment opportunities.

Individuals receiving targeted case management services will benefit by having increased access to professionals who will assist them in achieving their treatment goals.

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

(a) Initially: No additional costs will be incurred to implement this administrative regulation on an initial basis.

(b) On a continuing basis: No additional costs will be incurred to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase in fees 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 and does not directly or indirectly increase fees.

(9) TIERING: Is tiering applied? Tiering will not be applied since every qualified applicant has an equal chance of applying to become a Department approved Case Manager of Targeted Case Management services.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact individuals seeking training as targeted case managers, the Regional Community Mental Health Centers (CMHCs), and other Behavioral Health Providers.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The following statutes authorize the actions taken by this administrative regulation: KRS 200.503(2), 210.005(2) (3) 210.370-485.

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 new revenues for state or local government in the first year.

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

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

KENTUCKY STATE BOARD OF ELECTIONS
(Amendment)

31 KAR 4:120. Additional and emergency precinct officers.

RELATES TO: KRS 117.015, 117.045

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.045(5),
(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 117. KRS 117.045(5) requires the county board of elections to submit a list of emergency election officer appointments to the State Board of Elections after all reasonable efforts have been made to find two (2) qualified officers, for each precinct, who are affiliated with the two (2) qualified parties having representation on the State Board of Elections. KRS 117.045(6) requires the State Board of Elections to promulgate an administrative regulation establishing conditions under which additional precinct officers may be approved. This administrative regulation establishes the conditions under which additional precinct officers may be approved, as required by KRS 117.045(6), and establishes the form of the list of emergency election officer appointments required by KRS 117.045(5).

Section 1. Request to Appoint Additional Precinct Officers. A county board of elections seeking permission to appoint additional precinct officers pursuant to KRS 117.045(6) shall file with the State Board of Elections SBE 23, Additional Precinct Officer Request, that contains the following information:

(1) The precinct number of each precinct for which additional officers will be appointed;

(2) For each designated precinct, the reasons additional precinct officers are necessary; ~~and~~

(3) For each designated precinct, whether one (1) or two (2) additional precinct officers are requested; and

(4) The election for which approval is sought, designating whether the election is a primary, general, or special election.

Section 2. Approval of Request. ~~(1) [Non-discretionary Grounds for Approving Request. The State Board of Elections shall approve a request to appoint additional precinct officers at a precinct in which any of the following apply:~~

~~(1) Two (2) or more voting machines will be used in the precinct;~~

~~(2) Two (2) or more precincts use the same voting location; or~~

~~(3) More than 600 voters are registered in the precinct.~~

Section 3. ~~Discretionary Grounds for Approving Request.]~~ The State Board of Elections may approve a request to appoint additional precinct officers if the request sets forth a reasonable explanation why voting may not be conducted safely and expediently unless additional precinct officers are appointed.

~~[Section 4. Approval of Request. (1) Approval of a request made under Section 2 of this administrative regulation may, be granted for one (1) election only or for a primary, the run-off primary, if required, and the following regular election.]~~

~~(2) Approval of a request to appoint additional precinct officers [made under Section 3 of this administrative regulation] shall be granted for one (1) election only.~~

~~(3) Approval of a request to appoint additional precinct officers may authorize [authorizes] a county board of elections to appoint[,] one (1) or two (2) additional precinct officers.~~

(4) If a county board of elections requests and is approved to appoint two (2) additional precinct officers:

(a) The two (2) additional precinct officers shall not be of the same political party; and

(b) If it appears from the list of precinct officers submitted to the State Board of Elections pursuant to KRS 117.045(8) that the two (2) additional precinct officers are of the same political party, then

the State Board of Elections may revoke its approval of the request to appoint additional precinct officers and the appointments made pursuant thereto shall be deemed invalid.

Section 3. ~~[5.]~~ Duties of Additional Precinct Officers. The duties of additional precinct officers shall be prescribed by the county board of elections.

Section 4. ~~[6.]~~ Request to Appoint Emergency Precinct Officers. A county board of elections seeking permission to appoint emergency precinct officers pursuant to KRS 117.045(5) shall file with the State Board of Elections SBE 24, Emergency Precinct Officer Request, which contains the following information:

(1) The precinct number of each precinct for which additional officers will be appointed;

(2) The name of the officer requested, the registered party of the officer, and the party the officer will be serving as for the specified election;

(3) The election for which approval is sought, designating whether the election is a primary, general, or special election; and

(4) A description of the efforts made to acquire precinct officers in the party (democrat or republican) which did not have enough workers as required by KRS 117.045(5).

Section 5. ~~[7.]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Additional Precinct Officer Request", SBE 23, January 2015 ~~[November 2007]~~ edition; and

(b) "Emergency Precinct Officer Request", SBE 24, August 2007 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALISON LUNDERGAN GRIMES, Chair

APPROVED BY AGENCY: February 13, 2015

FILED WITH LRC: March 16, 2015 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2015, at 9:00 a.m., Eastern Time, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made available unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business, June 1, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Lindsay Hughes Thurston, Assistant Secretary of State, 700 Capital Ave., Ste. 152, Frankfort, Kentucky 40601, phone (502) 564-3490, fax (502) 564-5687.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lindsay Hughes Thurston

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 117. KRS 117.045(5) requires the county board of elections to submit a list of emergency election officer appointments to the State Board of Elections after all reasonable efforts have been made to find two (2) qualified officers, for each precinct, who are affiliated with the two (2)

qualified parties having representation on the State Board of Elections. KRS 117.045(6) requires the State Board of Elections to promulgate an administrative regulation establishing conditions under which additional precinct officers may be approved. This administrative regulation establishes the conditions under which additional precinct officers may be approved, as required by KRS 117.045(6), and establishes the form of the list of emergency election office appointments required by KRS 117.045(5).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the conditions under which additional precinct officers may be approved, as required by KRS 117.045(6), and establish the form of the list of emergency election office appointments required by KRS 117.045(5).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 117. KRS 117.045(5) requires the county board of elections to submit a list of emergency election officer appointments to the State Board of Elections after all reasonable efforts have been made to find two (2) qualified officers, for each precinct, who are affiliated with the two (2) qualified parties having representation on the State Board of Elections. KRS 117.045(6) requires the State Board of Elections to promulgate an administrative regulation establishing conditions under which additional precinct officers may be approved. This administrative regulation conforms to the content of the authorizing statutes by establishing the conditions under which additional precinct officers may be approved, as required by KRS 117.045(6), and establishing the form of the list of emergency election office appointments required by KRS 117.045(5).

(d) How this administrative regulation will assist in the effective administration of the statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 117. KRS 117.045(5) requires the county board of elections to submit a list of emergency election officer appointments to the State Board of Elections after all reasonable efforts have been made to find two (2) qualified officers, for each precinct, who are affiliated with the two (2) qualified parties having representation on the State Board of Elections. KRS 117.045(6) requires the State Board of Elections to promulgate an administrative regulation establishing conditions under which additional precinct officers may be approved. This administrative regulation will assist in the effective administration of the statutes by establishing the conditions under which additional precinct officers may be approved, as required by KRS 117.045(6), and establishing the form of the list of emergency election office appointments required by KRS 117.045(5).

(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 changes the existing administrative regulation by requiring that when a county board of elections appoints two (2) additional precinct officers pursuant to approval of a request made under Section 1 of this administrative regulation, the two (2) additional precinct officers shall not be of the same political party.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that both political parties have as nearly equal as possible representation among precinct officers.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing the conditions under which additional precinct officers may be approved, as required by KRS 117.045(6).

(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 establishing the conditions under which additional precinct officers may be approved, as required by KRS 117.045(6), and ensuring that both political parties have as nearly equal as possible representation among precinct officers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect county boards of elections and the State Board of Elections.

(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: County boards of elections and the State Board of Elections will need to familiarize themselves with and comply with the conditions set forth in this amended administrative regulation for appointing additional precinct officers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Both county boards of elections and the State Board of Elections have an interest in the fair administration of elections. As a result of compliance with this administrative regulation, that interest will be served because both political parties will have as nearly equal as possible representation among precinct officers.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State Board of Elections' budget.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all individuals affected.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact county boards of elections and State Board of Elections.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: This administrative regulation is authorized by KRS 117.015(1)(a) and 117.045(5), (6).

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to state or local governments to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to state or local governments to administer this program for the 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 (+/-):

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)**

103 KAR 3:010. General Administrative Forms Manual.

RELATES TO: KRS 42.470, 61.870-61.884, 64.012, 131.010(9), 131.020, 131.030, 131.041, 131.051, 131.061, 131.081, 131.110, 131.130, 131.150, 131.155, 131.170, 131.181, 131.183, 131.190, 131.240, 131.340, 131.500, 131.510(1), (2)(a), (2)(b), 131.530, 131.540, 132.020, 132.130-132.160, 132.180, 132.190, 132.200, 132.220, 132.227, 132.230, 132.260, 132.270, 132.290, 132.310, 132.320, 132.425, 132.487, 132.510, 132.820, 132.990, 133.045, 133.110, 133.120, 133.130, 133.240, 134.420, 134.580(4), 134.590, 134.800, 134.805, 134.810, 134.815, 134.820, 134.825, 134.830, 135.010, 135.020, 135.050, 136.020, 136.050, 136.070, 136.071, 136.0704, 136.090, 136.100, 136.115-136.180, 136.1873, 136.310, 136.320, 136.330, 136.335, 136.377, 136.392, 136.545, 136.575, 136.600-136.660, 137.130, 137.160, 138.448, 138.885, 139.185, 139.200, 139.240, 139.330, 139.390, 139.550, 141.0401(5),(6), 141.050(4), 141.210, 141.235, 141.340(2), 142.010, 142.050, 142.321, 142.327, 142.357, 143.030(1), 143.037, 143.040, 143.050, 143.060(1), 143.085, 143.990, 143A.010, 143A.030, 143A.035, 143A.037, 143A.080, 143A.090, 143A.100(1), 143A.991, 154.22-050, 154.22-060, 154.22-070, 154.23-010, 154.24-110, 154.24-130, 154.26-090, 154.28-090, 154.34-010, 155.170, 160.613-160.617, 160.6154(3), 205.745, 209.160, 224.1-310(1), 234.321, 234.370, 243.710, 243.720, 243.730, 243.850, 243.884, 248.756(2), 299.530, 304.4-030, 304.11-050, 304.49-220, 351.175, 395.470(3), 413.120

STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.

Section 1. Administrative - Required Forms. (1) Revenue Form 10A001, "Request to Inspect Public Records", shall be completed by the public to request access to public records specified on the form.

(2) Revenue Form 10A020, "Waiver of Appeal Rights", shall be completed by a taxpayer to reopen an audit that has become final if the taxpayer has failed to timely file a protest with the Department of Revenue.

(3) Revenue Form 10A070, "Authorization Agreement for Electronic Funds Transfer", shall be completed by taxpayers to authorize the Department of Revenue to move funds by electronic means from taxpayer accounts to the Department of Revenue as payment for taxes.

(4) Revenue Form 10A071, "EFT Bank Change", shall be completed by taxpayers who are registered as EFT ACH Debit filers to notify the department of a bank account change.

(5) Revenue Form 10A100(P), "Kentucky Tax Registration Application and Instructions", shall:

(a) Be used by taxpayers to voluntarily apply for tax registration on the following accounts:

1. Employer's Kentucky withholding tax;
2. Corporation income tax;

3. Sales and use tax;
4. Consumer's use tax;
5. Motor vehicle tire fee;
6. Transient room tax;
7. Limited liability entity tax;
8. Utility Gross Receipts License tax;
9. Telecommunications tax;
10. Coal severance and processing tax; or
11. Coal Seller/Purchaser Certificate ID Number; and

(b) Provide the department the necessary information to properly register the taxpayer for all applicable tax accounts, including the legal business name, federal employer identification number (FEIN), address and other demographic information for the business, and each responsible party's information including full name, social security number, and residential address.

(6) Revenue Form 10A100-CS(P), "Kentucky Tax Registration Application and Instructions", shall:

(a) Be sent by the department's Division of Registration and Data Integrity to non-compliant taxpayers for the taxpayers to apply for tax registration of the following accounts:

1. Employer's Kentucky withholding tax;
2. Corporation income tax;
3. Sales and use tax;
4. Consumer's use tax;
5. Motor vehicle tire fee;
6. Transient room tax;
7. Limited liability entity tax;
8. Utility Gross Receipts License tax;
9. Telecommunications tax;
10. Coal severance and processing tax; or
11. Coal Seller/Purchaser Certificate ID Number; and

(b) Provide the department the necessary information to properly register the taxpayer for all applicable tax accounts, including the legal business name, federal employer identification number (FEIN), address and other demographic information for the business, and each responsible party's information including full name, social security number, and residential address.

(7) Revenue Form 10A104, "Update or Cancellation of Kentucky Tax Account(s)", shall:

(a) Be used by the taxpayer to update business information or to cancel accounts for the following taxes:

1. Employer's Kentucky withholding tax;
2. Corporation income tax;
3. Sales and use tax;
4. Consumer's use tax;
5. Motor vehicle tire fee;
6. Transient room tax;
7. Limited liability entity tax;
8. Utility Gross Receipts License tax;
9. Telecommunications tax; or
10. Coal severance and processing tax; and

(b) Provide the department the necessary information to properly update and maintain demographic information of the business for all applicable tax accounts, including the legal business name, federal employer identification number (FEIN), address and other demographic information for the business, and each responsible party's information including full name, social security number, and residential address.

(8) Revenue Form 10A104-I, "Instructions Update or Cancellation of Kentucky Tax Account(s)", shall provide instructions for the proper completion of Revenue Form 10A104.

(9) Revenue Form 10A106, "Appointment of Taxpayer Administrator and Authorized Users for Kentucky Online Tax", shall be used to establish a taxpayer administrator and authorized users for use of the Kentucky Online Tax System.

(10) Revenue Form 10A2000, "Request for Return/Information", shall be used to request information from the disclosure office as an inter-agency request or as a request from an outside agency.

(11) Revenue Form 10F060, "Electronic Funds Transfer Program: ACH Credit Guide", shall provide information on the specific requirements of the Department of Revenue's Credit Method of tax remittance for the Electronic Funds Transfer

Program.

(12) Revenue Form 10F061, "Electronic Funds Transfer Program: Debit Guide", shall provide instructions to the taxpayer on how to authorize the Department of Revenue to electronically debit a taxpayer controlled account in an Automated Clearing House participating financial institution for the amount which the taxpayer reports to the state's data collection service.

(13) Revenue Form 10F100, "Your Rights As a Kentucky Taxpayer", shall provide the public with information describing taxpayer rights provided by KRS Chapters 131, 133, and 134.

(14) Revenue Form 12A012, "Receipt of Seized Property", shall be presented for execution to the taxpayer receiving returned property from the Kentucky Department of Revenue that was previously seized for failure to pay taxes in order to establish documentation that the property was returned to the taxpayer.

(15) Revenue Form 12A018, "Kentucky Department of Revenue Offer in Settlement Application", shall be presented for execution to persons requesting to settle their tax liabilities for less than the delinquent tax liability based upon doubt as to collectability or doubt as to liability.

(16) Revenue Form 12A104, "Notice of Seizure", shall be presented to the owner or officer of the entity from which the Kentucky Department of Revenue is seizing property for failure to pay taxes owed to the Commonwealth.

(17) Revenue Form 12A107, "Notice of Sale", shall be presented to the owner of seized property, published in the newspaper with the highest circulation for that area, and posted at the courthouse, at three (3) other public places within the county, and where the seizure was made, for the purpose of notifying the property owner, and advertising to the public the sale of the seized property.

(18) Revenue Form 12A109-1, "Release of Bank Levy", shall be presented to the bank on which the levy was served for the purpose of releasing the seized property.

(19) Revenue Form 12A109-2, "Release of Levy", shall be presented to the party on which the levy was served for the purpose of releasing the seized property.

(20) Revenue Form 12A109-3, "Release of Levy", shall be presented to the party on which the levy was served for the purpose of releasing the seized property related to child support.

(21) Revenue Form 12A110, "Release of Levy on Wages, Salary, and Other Income", shall be presented to an employer for the purpose of releasing a wage levy.

(22) Revenue Form 12A110-1, "Release of Levy on Wages, Salary, and Other Income", shall be presented to an employer for the purpose of releasing a wage levy related to child support.

(23) Revenue Form 12A500, "Certificate of Partial Discharge of Tax Lien", shall be presented to anyone who makes a proper application for a lien release on a specific piece of property if the Department of Revenue's lien attaches no equity or if the equity that the lien encumbers is paid to the Department of Revenue.

(24) Revenue Form 12A501, "Certificate of Subordination of Kentucky Finance and Administration Tax Lien", shall be presented to anyone who makes proper application requesting that the Department of Revenue subordinate its lien position to a new mortgage and demonstrates that the subordination is in the Commonwealth's best interest.

(25) Revenue Form 12A502, "Application for Certificate of Subordination of Kentucky Tax Lien", shall be presented to anyone who requests to have the Department of Revenue subordinate its lien position to a new mortgage.

(26) Revenue Form 12A503, "Application for Specific Lien Release", shall be presented to anyone who requests that the Department of Revenue release its tax lien so that a specific piece of property may be sold.

(27) Revenue Form 12A504, "Personal Assessment of Corporate Officer or LLC Manager", shall be presented to a corporate officer for the purpose of establishing responsibility of payment of trust taxes owed to the Commonwealth.

(28) Revenue Form 12A505, "Waiver Extending Statutory Period of Assessment of Corporate Officer or LLC Manager", shall be presented to the corporate officers or LLC managers for the purpose of entering into a payment agreement to pay the trust

taxes owed to the Commonwealth, and the terms of the payment agreement shall extend past the statutory period for assessing responsible corporate officers or LLC managers.

(29) Revenue Form 12A506, "Waiver Extending Statutory Period for Collection", shall be presented to the taxpayer for the purpose of extending the period in which the liability may be collected.

(30) Revenue Form 12A507, "Table for Figuring the Amount Exempt From Levy on Wages, Salary, and Other Income", shall be presented to employers with a wage levy on an employee for the purpose of calculating the dollar amount of wages due to the employee.

(31) Revenue Form 12A508-1, "Notice of Tax Due", shall be presented for the purpose of assessing an officer of a corporation who is personally liable for trust taxes owed to the Commonwealth.

(32) Revenue Form 12A508-2, "Notice of Tax Due", shall be presented for the purpose of assessing an officer of a corporation who is personally liable for Gasoline and Special Fuels taxes owed to the Commonwealth.

(33) Revenue Form 12A508-3, "Notice of Tax Due", shall be presented for the purpose of assessing a manager or partner of a limited liability company who is personally liable for trust taxes owed to the Commonwealth.

(34) Revenue Form 12A508-4, "Notice of Tax Due", shall be presented for the purpose of assessing a manager or partner of a limited liability company who is personally liable for Gasoline and Special Fuels taxes owed to the Commonwealth.

(35) Revenue Form 12A514, "Questionnaire for Persons Relative to a Notice of Assessment", shall be presented to an officer of a corporation for the purpose of resolving responsibility of the trust taxes owed to the Commonwealth.

(36) Revenue Form 12A517, "Notice of Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(37) Revenue Form 12A517-1, "Notice of Child Support Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(38) Revenue Form 12A517-2, "Notice of Tax Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(39) Revenue Form 12A517-3, "Notice of Enterprise Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(40) Revenue Form 12A517-4, "Notice of Property Tax Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(41) Revenue Form 12A518, "Certificate of Release of Lien", shall be presented to the county clerk and to the taxpayer against whom the tax lien is filed for the purpose of releasing the lien and notifying the taxpayer of the release.

(42) ~~(39)~~ Revenue Form 12A518-1, "Certificate of Release of Child Support Lien", shall be presented to the county clerk and to the taxpayer against whom the child support lien is filed for the purpose of releasing the lien and notifying the obligor of the release.

(43) Revenue Form 12A518-2, "Certificate of Tax Lien Release", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(44) Revenue Form 12A518-3, "Certificate of Enterprise Lien Release", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the

purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(45) Revenue Form 12A518-4, "Certificate of Property Tax Lien Release", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(46) [(40)] Revenue Form 12A638, "Statement of Financial Condition for Individuals", shall be presented to individuals requesting to make payments or settle their tax liability to the Commonwealth for the purpose of establishing the financial ability to make payments or settle.

(47) [(41)] Revenue Form 12A638(I), "Instructions for Completing Statement of Financial Condition for Individuals", shall provide instructions for completing Revenue Form 12A638.

(48) [(42)] Revenue Form 12A639, "Statement of Financial Condition for Businesses", shall be presented to business owners requesting to make payments or settle a tax liability to the Commonwealth for the purpose of establishing the financial ability to make payments or settle.

(49) [(43)] Revenue Form 12A639(I), "Instructions for Completing Statement of Financial Condition for Businesses", shall provide instructions for completing Revenue Form 12A639.

(50) [(44)] Revenue Form 12B019, "Notice of Levy on Wages, Salary, and Other Income", shall be presented to employers for the purpose of levying wages from an employee who owes taxes to the Kentucky Department of Revenue.

(51) [(45)] Revenue Form 12B019-1, "Notice of Levy on Wages, Salary, and Other Income", shall be presented to employers for the purpose of levying wages from an employee who owes child support.

(52) [(46)] Revenue Form 12B020, "Notice of Levy", shall be presented to banks for the purpose of levying bank accounts of taxpayers who owe taxes to the Kentucky Department of Revenue.

(53) [(47)] Revenue Form 12B020-2, "Notice of Levy", shall be presented to banks for the purpose of levying bank accounts of obligors who owe child support.

(54) [(48)] Revenue Form 21A020, "Request for Copy of Tax Refund Check", shall be completed and submitted to the Department of Revenue in order to obtain a copy of a cashed refund check.

(55) [(49)] Revenue Form 30A005, "Temporary Vendor's Sales Tax Permit", shall be presented to temporary and transient vendors who do not have a permanent place of business for the purpose of remitting tax on a non-permit basis, as required by 103 KAR 25:060.

(56) [(50)] Revenue Form 30A006, "Temporary Vendor Sales and Use Tax Return/Processing Document", shall be used to register temporary vendors who do business in the Commonwealth of Kentucky.

(57) [(51)] Revenue Form 30A872, "Record of Money Receipt Issued", shall be used by Department of Revenue Field personnel to provide written documentation of acceptance of cash payments.

(58) [(52)] Revenue Form 31A001, "Vendor Contact Authorization", shall be used by a Department of Revenue representative to obtain permission from a taxpayer to contact his or her vendors concerning the issuance of exemption certificates.

(59) [(53)] Revenue Form 31A004, "Auditor Record of Money Receipt Issued", shall be used by the auditor to acknowledge payment from taxpayers of taxes found to be tentatively due when there is an audit.

(60) [(54)] Revenue Form 31A011-ASH, "Taxpayer Data Questionnaire", shall be used by auditors at the Ashland Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(61) [(55)] Revenue Form 31A011-BG, "Taxpayer Data Questionnaire", shall be used by auditors at the Bowling Green Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(62) [(56)] Revenue Form 31A011-CKY, "Taxpayer Data Questionnaire", shall be used by auditors at the Central Kentucky

Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(63) [(57)] Revenue Form 31A011-COR, "Taxpayer Data Questionnaire", shall be used by auditors at the Corbin Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(64) [(58)] Revenue Form 31A011-HOP, "Taxpayer Data Questionnaire", shall be used by auditors at the Hopkinsville Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(65) [(59)] Revenue Form 31A011-LOU, "Taxpayer Data Questionnaire", shall be used by auditors at the Louisville Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(66) [(60)] Revenue Form 31A011-NKY, "Taxpayer Data Questionnaire", shall be used by auditors at the Northern Kentucky Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(67) [(61)] Revenue Form 31A011-OWEN, "Taxpayer Data Questionnaire", shall be used by auditors at the Owensboro Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(68) [(62)] Revenue Form 31A011-PAD, "Taxpayer Data Questionnaire", shall be used by auditors at the Paducah Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(69) [(63)] Revenue Form 31A011-PIKE, "Taxpayer Data Questionnaire", shall be used by auditors at the Pikeville Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(70) [(64)] Revenue Form 31A012, "Interstate Sales/Income Tax Questionnaire", shall be used to establish possible taxing jurisdiction for sales and use tax and income tax for the states of Ohio and Indiana.

(71) [(65)] Revenue Form 31A014, "SEATA - Southeastern Association of Tax Administrators Nexus Questionnaire", shall be used to establish possible taxing jurisdiction for sales and use tax and income tax for the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, Virginia and West Virginia.

(72) [(66)] Revenue Form 31A020, "Office of Field Operations Request for Copy of Tax Return(s)", shall be used by Department of Revenue representatives to obtain permission from a taxpayer to release tax returns.

(73) [(67)] Revenue Form 31A050, "Electronic Transmittal Authorization", shall be used by auditors to seek permission from a taxpayer to transmit audit results electronically.

(74) [(68)] Revenue Form 31A110, "Office of Field Operations Estimated/[Jeopardy] Assessment Request", shall be used for Taxpayer Service Centers to request approval to submit estimated/[Jeopardy] assessments.

(75) [(69)] Revenue Form 31A114, "Property Audit Request", shall be used by PVAs to submit audit requests for property tax.

(76) [(70)] Revenue Form 31A115, "Agreement Fixing Test Periods", shall be used by auditors to establish certain test periods when conducting an audit.

(77) [(71)] Revenue Form 31A149, "Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", shall be completed by a taxpayer and a representative of the Kentucky Department of Revenue whereby both parties consent and agree that certain sales, use or severance tax deficiencies or overpayments for specific periods may be assessed or refunded beyond the normal four (4) year statute of limitations.

(78) [(72)] Revenue Form 31A150, "Agreement Fixing Period of Limitation Upon Assessment of Utility Gross Receipts License

Tax", shall be used by auditors to establish taxable periods to be held open for audit and date of assessment.

~~(79) [(73)]~~ Revenue Form 31A151, "Agreement Fixing Period of Limitation Upon Assessment of Sales or Use for Authorized EDP Holders", shall be used to document an agreement fixing a period of audit for sales or use tax field audits for EDP holders.

~~(80) [(74)]~~ Revenue Form 31A200, "Reporting Agreement", shall be used to document an agreement between the Department of Revenue and taxpayer regarding sales tax.

~~(81) [(75)]~~ Revenue Form 31A685, "Authorization to Examine Bank Records", shall be used by the Department of Revenue to obtain permission from a taxpayer to examine records in connection with transactions at the taxpayer's bank.

~~(82) [(76)]~~ Revenue Form 31A800, "IIT Review History Document", shall be used to record interaction with the taxpayer during an individual income tax review conducted by compliance officers.

~~(77)]~~ Revenue Form 31A725, "Statute of Limitations Agreement", shall be completed by a taxpayer and a representative of the Kentucky Department of Revenue whereby both parties consent and agree that certain income tax deficiencies or overpayments for specific periods may be assessed or refunded beyond the normal four (4) year statute of limitations.

~~(83)~~ Revenue Form 31A800, "IIT Review History Document", shall be used to record interaction with the taxpayer during an individual income tax review conducted by compliance officers.

~~(84) [(78)]~~ Revenue Form 31F006, "Southeastern States Information Exchange Program", shall be used to provide information to taxpayers concerning the information exchange program between the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, Virginia, and West Virginia.

~~(85) [(79)]~~ Revenue Form 31F010, "Kentucky's Computer Assisted Audit Program", shall be the brochure used as instructions for taxpayers who submit tax records in an electronic format.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Revenue Form 10A001, "Request to Inspect Public Records", February 1997;

(b) Revenue Form 10A020, "Waiver of Appeal Rights", January 2001;

(c) Revenue Form 10A070, "Authorization Agreement for Electronic Funds Transfer", January 2008;

(d) Revenue Form 10A071, "EFT Bank Change", June 2009;

(e) Revenue Form 10A100(P), "Kentucky Tax Registration Application and Instructions", ~~April 2015~~ [July 2013];

(f) Revenue Form 10A100-CS(P), "Kentucky Tax Registration Application and Instructions", ~~April 2015~~ [July 2013];

(g) Revenue Form 10A104, "Update or Cancellation of Kentucky Tax Account(s)", ~~April, 2015~~ [June 2011];

(h) Revenue Form 10A104-I, "Instructions Update or Cancellation of Kentucky Tax Account(s)", ~~April, 2015~~ [June 2011];

(i) Revenue Form 10A106, "Appointment of Taxpayer Administrator and Authorized Users for Kentucky Online Tax", May 2010;

(j) Revenue Form 10A2000, "Request for Return/Information", October 2011;

(k) Revenue Form 10F060, "Electronic Funds Transfer Program: ACH Credit Guide", April 2006;

(l) Revenue Form 10F061, "Electronic Funds Transfer Program: Debit Guide", December 2008;

(m) Revenue Form 10F100, "Your Rights as a Kentucky Taxpayer", July ~~2014~~ [2013];

(n) Revenue Form 12A012, "Receipt of Seized Property", November 2006;

(o) Revenue Form 12A018, "Kentucky Department of Revenue Offer in Settlement Application", August 2012;

(p) Revenue Form 12A104, "Notice of Seizure", October 1982;

(q) Revenue Form 12A107, "Notice of Sale", January 2000;

(r) Revenue Form 12A109-1, "Release of Bank Levy", September 2004;

(s) Revenue Form 12A109-2, "Release of Levy", January 2000;

(t) Revenue Form 12A109-3, "Release of Levy", January 2008;

(u) Revenue Form 12A110, "Release of Levy on Wages, Salary, and Other Income", September 2004;

(v) Revenue Form 12A110-1, "Release of Levy on Wages, Salary, and Other Income", January 2008;

(w) Revenue Form 12A500, "Certificate of Partial Discharge of Tax Lien", June 2006;

(x) Revenue Form 12A501, "Certificate of Subordination of Kentucky Finance and Administration Tax Lien", June 2006;

(y) Revenue Form 12A502, "Application for Certificate of Subordination of Kentucky Tax Lien", October 2006;

(z) Revenue Form 12A503, "Application for Specific Lien Release", October 2006;

(aa) Revenue Form 12A504, "Personal Assessment of Corporate Officer or LLC Manager", June 2003;

(bb) Revenue Form 12A505, "Waiver Extending Statutory Period of Assessment of Corporate Officer or LLC Manager", June 2003;

(cc) Revenue Form 12A506, "Waiver Extending Statutory Period for Collection", June 2003;

(dd) Revenue Form 12A507, "Table for Figuring the Amount Exempt from Levy on Wages, Salary, and Other Income", November 2006;

(ee) Revenue Form 12A508-1, "Notice of Tax Due", January 2008;

(ff) Revenue Form 12A508-2, "Notice of Tax Due", January 2008;

(gg) Revenue Form 12A508-3, "Notice of Tax Due", November 2008;

(hh) Revenue Form 12A508-4, "Notice of Tax Due", November 2008;

(ii) Revenue Form 12A514, "Questionnaire for Persons Relative to a Notice of Assessment", August, 1996;

(jj) Revenue Form 12A517, "Notice of Lien", November 2011;

(kk) Revenue Form 12A517-1, "Notice of Child Support Lien", ~~August 2014~~ [November 2008];

(ll) Revenue Form 12A517-2, "Notice of Tax Lien", August 2014;

(mm) Revenue Form 12A517-3, "Notice of Enterprise Lien", December 2014;

(nn) Revenue Form 12A517-4, "Notice of Property Tax Lien", December 2014;

(oo) Revenue Form 12A518, "Certificate of Release of Lien", November 2008;

(pp) [(mm)] Revenue Form 12A518-1, "Certificate of Release of Child Support Lien", August 2014 [January 2008];

(qq) Revenue Form 12A518-2, "Certificate of Tax Lien Release", August 2014;

(rr) Revenue Form 12A518-3, "Certificate of Enterprise Lien Release", December 2014;

(ss) Revenue Form 12A518-4, "Certificate of Property Tax Lien Release", December 2014;

(tt) [(nn)] Revenue Form 12A638, "Statement of Financial Condition for Individuals", July 2004;

(uu) [(oo)] Revenue Form 12A638(l), Instructions for Completing Statement of Financial Condition for Individuals", August 2004;

(vv) [(pp)] Revenue Form 12A639, "Statement of Financial Condition for Businesses", August 2004;

(ww) [(qq)] Revenue Form 12A639(l), "Instructions for Completing Statement of Financial Condition for Businesses", August 2004;

(xx) [(rr)] Revenue Form 12B019, "Notice of Levy on Wages, Salary, and Other Income", September 2004;

(yy) [(ss)] Revenue Form 12B019-1, "Notice of Levy on Wages, Salary, and Other Income", September 2011;

(zz) [(tt)] Revenue Form 12B020, "Notice of Levy", September 2004;

(aaa) [(uu)] Revenue Form 12B020-2, "Notice of Levy", January 2008;

(bbb) [(vv)] Revenue Form 21A020, "Request for Copy of Tax

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Refund Check", November 2011;
(ccc)(www) Revenue Form 30A005, "Temporary Vendor's Sales Tax Permit", September 1998;
(ddd)(xx) Revenue Form 30A006, "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2006;
(eee)(yy) Revenue Form 30A872, "Record of Money Receipt Issued", October 2000;
(fff)(zz) Revenue Form 31A001, "Vendor Contact Authorization", July 2006;
(ggg)(aaa) Revenue Form 31A004, "Auditor Record of Money Receipt Issued", July 2006;
(hhh)(bbb) Revenue Form 31A011-ASH, "Taxpayer Data Questionnaire", December 2011;
(iii)(eee) Revenue Form 31A011-BG, "Taxpayer Data Questionnaire", December 2011;
(iii)(ddd) Revenue Form 31A011-CKY, "Taxpayer Data Questionnaire", December 2011;
(kkk)(eee) Revenue Form 31A011-COR, "Taxpayer Data Questionnaire", December 2011;
(lll)(fff) Revenue Form 31A011-HOP, "Taxpayer Data Questionnaire", December 2011;
(mmm)(ggg) Revenue Form 31A011-LOU, "Taxpayer Data Questionnaire", December 2011;
(nnn)(hhh) Revenue Form 31A011-NKY, "Taxpayer Data Questionnaire", December 2011;
(ooo)(iii) Revenue Form 31A011-OWEN, "Taxpayer Data Questionnaire", December 2011;
(ppp)(jjj) Revenue Form 31A011-PAD, "Taxpayer Data Questionnaire", December 2011;
(qqq)(kkk) Revenue Form 31A011-PIKE, "Taxpayer Data Questionnaire", December 2011;
(rrr)(lll) Revenue Form 31A012, "Interstate Sales/Income Tax Questionnaire", July 2006;
(sss)(mmm) Revenue Form 31A014, "SEATA - Southeastern Association of Tax Administrators Nexus Questionnaire", July 2006;
(ttt)(nnn) Revenue Form 31A020, "Office of Field Operations Request for Copy of Tax Return(s)", July 2006;
(uuu)(ooo) Revenue Form 31A050, "Electronic Transmittal Authorization", March 2011;
(vvv)(ppp) Revenue Form 31A110, "Office of Field Operations Estimated/Jeopardy Assessment Request", June 2014[2012];
(www)(qqq) Revenue Form 31A114, "Property Audit Request", November 2011;
(xxx)(rrr) Revenue Form 31A115, "Agreement Fixing Test Periods", April 2008;
(yyy)(sss) Revenue Form 31A149, "Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", July 2006;
(zzz)(ttt) Revenue Form 31A150, "Agreement Fixing Period of Limitation Upon Assessment of Utility Gross Receipts License Tax", May 2008;
(aaaa)(uuu) Revenue Form 31A151, "Agreement Fixing Period of Limitation Upon Assessment of Sales or Use for Authorized EDP Holders", June 2013;
(bbbb)(vvv) Revenue Form 31A200, "Reporting Agreement", November 2011;
(ccc)(www) Revenue Form 31A685, "Authorization to Examine Bank Records", May 1985;
(ddd) Revenue Form 31A725, "Statute of Limitations Agreement", July 2006;
(eee)(xxx) Revenue Form 31A800, "IIT Review History Document", November 2011;
(fff)(yyy) Revenue Form 31A725, "Statute of Limitations Agreement", July 2006;
(zzz) Revenue Form 31F006, "Southeastern States Information Exchange Program", March 2012; and
(gggg)(aaaa) Revenue Form 31F010, "Kentucky's Computer Assisted Audit Program", May 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue Taxpayer Service Center,

Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: April 14, 2015

FILED WITH LRC: April 15, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2015 from 1:00 p.m. to 3:00 p.m., in Room 381, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business June 1, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed amended administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Staff Assistant, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Frankfort, Kentucky 40601, phone (502) 564-9826, fax (502) 564-2541.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for the Department of Revenue to meet the requirements of KRS Chapter 13A.110 which requires that forms required to be submitted by a regulated entity shall be included in an administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the required revenue forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.

(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 corrects the existing regulation to add new or update existing Department of Revenue forms.

(b) The necessity of the amendment to this administrative regulation: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. Any addition of new forms or a change to existing forms must result in an amendment of the associated regulation to keep it current.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe tax forms necessary for the administration of the tax laws.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide taxpayers with the current version of the forms listed herein.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky taxpayers and their representatives will be affected by the listing of all forms administered by the Department of Revenue in an administrative regulation. Local government will be affected to the extent they utilize forms administered by the Department of Revenue. The Department of Revenue will be affected to the extent that it administers the referenced forms.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions will have to be taken by the taxpayers or local governments to comply with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There would be no cost incurred by the taxpayer or local government.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Access to current forms and instructions will enable taxpayers to comply with tax laws.

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

(a) Initially: The Department of Revenue will not incur additional costs as the result of this regulation.

(b) On a continuing basis: The Department of Revenue will not incur additional costs as the result of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Revenue agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because the requirements of this regulation apply to every taxpayer.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Revenue within the Finance and Administration Cabinet.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(3).

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

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

(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 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:

GENERAL GOVERNMENT CABINET Kentucky Board of Hairdressers and Cosmetologists (Amendment)

201 KAR 12:083. Educational requirements.

RELATES TO: KRS 317A.050, 317A.140, 317B.025(1)(c), (4)(c)

STATUTORY AUTHORITY: KRS 317A.060, 317B.020(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.050, 317A.060, and 317B.020 require the board to promulgate administrative regulations governing the operation of schools of cosmetology and esthetics, including the proper education and training of students. This administrative regulation establishes proof of education and other enrollment requirements.

Section 1. (1) Any person enrolling in a school for a cosmetology, nail technician, or esthetics course shall complete a Student Enrollment Application provided by the board.

(2) The applicant shall furnish proof that the applicant has:

(a) A high school diploma, unless the applicant is enrolled in a board approved cosmetology program in an approved Kentucky high school;

(b) A General Educational Development (GED) diploma; or

(c) Results from the Test for Adult Basic Education indicating a score equivalent to the twelfth grade of high school.

(3) The applicant shall provide with the application a passport style photograph taken within thirty (30) days before submitting the application.

(4) A student enrolling in a school of cosmetology who desires to transfer hours from another state shall provide to the board prior to enrollment certification from the state agency that governs the school where the credit hours have been acquired. Hours shall not be accepted without certification from an appropriate state agency.

Section 2. (1) The Student Enrollment Application, accompanied by the applicant's proof of education, shall be received by the board no later than ten (10) working days after the student's date of enrollment.

(2) A student shall not receive credit hours if the application is not received within the ten (10) day period.

(3) The school shall forward to the board the enrollment application and proof of education so that the board receives the information no later than ten (10) working days after the student date of enrollment.

(4) Failure of the school to timely forward the information to the board may result in suspension or revocation of the school's license or a fine of twenty-five (25) dollars a day for every day the application is late.

Section 3. (1) A person shall not be permitted to enroll in a school of cosmetology for a brush-up course unless the applicant:

(a) ~~[The applicant]~~ Holds a current license issued by this board; or

(b) ~~[The applicant]~~ Has obtained special permission from the board.

(2) The applicant shall complete the Student Enrollment Application.

Section 4. Incorporation by Reference. (1) "Student Enrollment Application", January 30, 2013, is incorporated by reference.

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

subject to applicable copyright law, at Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BEA COLLINS, President

APPROVED BY AGENCY: April 13, 2015

FILED WITH LRC: April 15, 2015 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2015, at 10: am, at the boards office located at 111 St. James Court, Suite A, and Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on June 1, 2015. 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: Charles Lykins, Administrator, Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort Kentucky 40601, phone (502)-564-4262, fax (502)564-0481.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Charles Lykins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets out the requirements for any student enrolling in a school of cosmetology who wishes to transfer acquired clock hours from another state.

(b) The necessity of this administrative regulation: This regulation is required to comply with KRS 317A.060 and 317B.020(3).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statutes that require the board to promulgate administration governing the operation of schools of cosmetology and esthetics, including training of students.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets out the requirements for students wishing to transfer certified hours of training from another state.

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

(a) How the amendment will change this existing administrative regulation: This amendment gives direction to any student wishing to enroll in a school of cosmetology that wishes to transfer certified hours of training prior to enrollment.

(b) The necessity of the amendment to this administrative regulation: This requirement would ensure that students transferring hours from another state get credit for hours previously obtained, prior to enrolling in a school of cosmetology.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires the board to promulgate administrative regulations that govern cosmetology schools. This amendment is in conformity with statutory dictates.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that students enrolling in cosmetology school received full credit for training hours gained in another state.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board enrolls approximately fifty (50) students annually that wish to transfer hours obtained in another 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 take to comply with this administrative regulation or amendment: All students transferring hours obtained from another state will have to submit all certifications of hours to the board prior to enrolling in a school of cosmetology.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Validation and credit of training hours previously obtained in another state.

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

(a) Initially: None

(b) On a continuing basis: None

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all applicants.

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 State Board of Hairdressers and Cosmetologist.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A and 317B.020.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No new revenue will be generated.

(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 new revenue will be generated.

(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.

(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 Hairdressers and Cosmetologists
(Amendment)**

201 KAR 12:110. School license.

RELATES TO: KRS 317A.060, 317A.090

STATUTORY AUTHORITY: KRS 317A.050, 317A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.090 requires that each school owner shall submit an application to operate a school of cosmetology, furnish proof of financial responsibility, and meet all city, county, and state zoning, building, and plumbing codes. This administrative regulation defines the process of applying for a cosmetology school.

Section 1. Each person, firm, or corporation applying for a license to operate a school of cosmetology shall submit an application provided by the board.

Section 2. Each individual owner, or one (1) partner, in the instance of a partnership, or one (1) corporate officer in the instance of a corporation, shall submit a financial statement indicating financial assets in the amount of \$10,000 for twenty (20) students enrolled and \$1,000 for each additional student enrolled.

Section 3. A person having any interest in operating a school shall submit a minimum of two (2) character references, proposed copy of student contract indicating all financial charges to enrolling students, and term of lease for location, if applicable.

Section 4. Application for license to operate a school of cosmetology shall be accompanied by an architect's or draftsman's plan of proposed premises drawn to scale, showing the arrangements of the classroom, clinic area, mannequin area, dispensary, reception area, shampoo area, office and any other area of the school, entrance and exits, and placement of equipment.

Section 5. (1) A license to operate a cosmetology school carries the approval of this board and shall be valid only for the location and person, firm, or corporation named on application and license issued by the board. A school of cosmetology license shall not be transferable from one (1) location to another or from one person, firm or corporation to another.

(2) The license shall contain:

(a) The name of the proposed school; and

(b) A statement that the proposed school is authorized to operate educational programs beyond secondary education.

Section 6. The owners, firm, or corporation operating a school of cosmetology shall notify the board in writing twenty (20) days prior to selling, transferring, or changing of ownership and management of a school. Prospective ownership shall meet all qualifications of owning a school and have the approval of the board.

Section 7. Following approval of the application to operate a school of cosmetology by the board, the site shall be inspected by a quorum of the board or by at least one (1) member of the board and the board administrator. A final inspection of the premises shall be conducted by the members of the board prior to issuing of license. All schools shall comply with city, county, and state zoning laws, plumbing and building codes. The construction or renovation of the proposed school shall be completed and a final inspection conducted by the board within twelve (12) months from the date of approval of the site. Any extension of this period of time shall be granted for good cause shown provided the request is presented, in writing, to the board. The applicant shall provide:

(1) Reason for extension and term of request; and

(2) Supportive documentation of extension request.

Section 8. Any cosmetology school owner, manager, or instructor who misrepresents facts to the board, to the students, or

to the general public concerning any information regarding the school or any student enrolled in the school, or in any way violates administrative regulations adopted by this board, may be served notice to show cause before this board, why the school's license and the instructor's license should not be revoked.

Section 9. Any person, establishment, firm or corporation that[which] accepts, directly or indirectly, compensation for teaching persons any branch or subjects of cosmetology as defined in KRS 317A.010 shall be classified as a school and shall be required to comply with all the provisions of law and the rules and administrative regulations of this board by authority established in KRS 317A.090 and KRS 317A.050.

Section 10. The board shall not license a correspondence school, nor shall the board license any school of cosmetology in an establishment that teaches any other trade, profession or business, excluding vocational training schools.

Section 11. A person who is an owner, partner, stockholder, corporate officer or who has any financial or other interest in the management and control of the school, shall not be enrolled in the school as a student.

Section 12. A school of cosmetology shall not permit or require students to be in attendance at school more than forty (40) hours in any one (1) week.

Section 13. Any school of cosmetology desiring night classes may, by proper application, be granted permission from the board to operate the classes. Under no condition shall the school operate past 10 p.m. local time.

Section 14. (1) A member of the board or an employee, unless resigning, shall not~~[It shall be considered a conflict of interest and therefore impermissible for a member of the board or for an employee of the board to]~~ apply for a new school license or to apply for any existing school license under KRS 317A.090 and this administrative regulation.~~[If any member of the board or any employee of the board desires to apply for a new school license or for any existing school license, the board member or employee of the board shall submit a letter of resignation to the board no later than thirty (30) days prior to submitting an application for a school license.]~~

(2) The board may choose not to consider any application for a school license submitted by a relative of a member of the board, by a relative of a board employee or by any person with whom a member of the board or a board employee shares a significant financial interest. Failure to make full disclosure to the board as to the exact nature of the relationship between the board member or employee of the board and the applicant may result in denial of approval of licensure. Any person applying for a new school license shall complete an application with the board.

(3) The provisions of this section shall apply only to applications for licenses approved or filed, licenses issued, or actions of a person serving as a member of the board or as a board employee after June 10, 1986.

Section 15. Incorporation by reference. (1) "Application for Kentucky School of Cosmetology", 10/09, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Hairdressers and Cosmetologists, 111 St. James Court, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BEA COLLINS, President

APPROVED BY AGENCY: April 14, 2015

FILED WITH LRC: April 15, 2015 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2015, at 10: am, at the boards office located at 111 St. James Court, Suite A, and Frankfort Kentucky 40601. Individuals

interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business, June 1, 2015. 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: Charles Lykins, Administrator, Kentucky State Board of Hairdressers and Cosmetologist, 111 St. James Court, Suite A, Frankfort Kentucky, 40601, phone (502)-564-4262, fax (502)564-0481.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Charles Lykins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes requirements for the process of issuing a school license.

(b) The necessity of this administrative regulation: To meet requirements set forth by The Federal Department of Education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: To meet the requirements of issuing a school license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will set the requirements for the process issuing a school license.

(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: By defining the license content that the board issues.

(b) The necessity of the amendment to this administrative regulation: To meet the US. Department of Education requirements for post-secondary education.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires the board to promulgate administrative regulations that govern cosmetology school license.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will help define the school license process and license content.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Seventy (70)

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The license issued will meet requirements set forth by the US Department of Education and will help identify post-secondary schools in the state of Kentucky.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

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

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

made by this amendment.

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

(9) TIERING: Is tiering applied? Tiering was not applied as this regulation is applicable to all applications.

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 State Board of Hair Dressers and Cosmetologist.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 317A.060 and 317A.090.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Medical Imaging and Radiation Therapy (Amendment)

201 KAR 46:010. Definitions for 201 KAR Chapter 46.

RELATES TO: KRS 311B.020[244.890, 244.993]

STATUTORY AUTHORITY: KRS 311B.010, 311B.050[194A.050, 244.090, 244.870]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.010 and 311B.050 authorize the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to regulate medical imaging, radiation therapy, and related occupations~~[The Board of Medical Imaging and Radiation Therapy is authorized by KRS 311B.010 to 311B.190 to regulate an operator of a source of radiation other than a licensed practitioner of the healing arts, including but not limited to: the classification and licensure of operators; examinations; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of licenses; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, licenses and renewal licenses; and to set other standards as may be appropriate for the protection of health and safety]. This administrative regulation establishes definitions for~~[defines] terms used in 201 KAR Chapter 46.

Section 1. Definitions. (1) "Accredited educational program" means an educational program accredited by the Joint Review Committee on Education in Radiologic Technology (JRCERT) or the Joint Review Committee on Educational Program in Nuclear Medicine Technology (JRCNMT).

(2) "Advanced imaging professional" means an individual who holds credentialing as a radiologist assistant (R.R.A.) or nuclear medicine advanced associate (NMAA).

(3) "Alternate course of study" means an independent course of study that qualifies an individual to take an examination approved by the board.

(4)[(2)] "Authorized user" is defined by KRS 311B.020(4)[means a physician, dentist, or podiatrist identified on a radioactive materials license issued by the board, by the U.S. Nuclear Regulatory Commission, or by another U.S. Nuclear Regulatory Commission agreement state, that authorizes the medical use of radioactive materials].

(5)[(3)] "Board" is defined by KRS 311B.020(5).

(6)[(4)] "Clinical education" means the component of the educational program that provides for supervised, competency-based, clinical education and experience.

(7) "Computerized tomography technologist" or "CT technologist" means an individual who has obtained a post-primary certification in computerized tomography from the American Registry of Radiologic Technologists (ARRT).

(8)[(5)] "Continuing education" means a learning activity that is planned, organized, and administered to enhance the professional knowledge and skills that a licensee uses to provide services for patients, the public, or the medical profession. In order to qualify as continuing education an approval request form or proof of approval by a Recognized Continuing Education Evaluation Mechanism (RCEEM) shall be submitted to the board along with form Kentucky CEU-001, Continuing Education Approval Request Radiation Operator Certification Program.

(9) "Continuing education unit" or "CEU" means fifty (50) contact minutes of participation in a continuing education experience completed by:

(a) Attendance at a professional meeting;

(b) Documenting completed, approved independent study; or

(c) Documenting completed academic courses applicable to health care, medical imaging, radiation therapy, or related courses.

(10)[(6)] "Contrast procedure" means a diagnostic or therapeutic [radiation]procedure performed while administering contrast[radiopaque] media into the human body to visualize anatomy not otherwise demonstrated on an image receptor.

(11)[(7)] "Course of study" means a [basic]curriculum in radiologic technology, nuclear medicine technology, advanced imaging profession, limited x-ray machine operation, or radiation therapy approved by the board.

(12)[(8)] "Didactic education" means the component of the educational program that provides formal instruction with specific objectives and methods for assessing the student's [cognitive]progress for entry-level competency.

(13) "Direct supervision" means supervised by, and in the physical presence of, a licensed practitioner of the healing arts or a licensee.

(14) "Educational program" means a board-approved, accredited educational program or limited x-ray machine operator program.

(15) "Facility" means a hospital, outpatient department, clinic, radiology practice, mobile unit, or office of a physician or portion thereof, in which medical imaging or radiation therapy are performed.

(16) "Independent study course" means a form of education offered by the board in partnership with an employer to provide limited scope radiography, podiatry, or bone densitometry education to fulfill the requirements established in 201 KAR 46:081, Section 7.

(17) "Indirect supervision" means supervised by a licensed practitioner of the healing arts or licensee who is immediately available in the individual's place of employment or sponsoring institution.

(18) "License" means the document issued to a licensee to work as a medical imaging technologist, radiation therapist, advanced imaging professional, or limited x-ray machine operator in Kentucky.

(19)[(9)] "General license" means a license issued by the board authorizing an individual to perform diagnostic radiographic,

nuclear medicine, or radiation therapy procedures.

(10) "General radiation licensee" means a radiographer, a nuclear medicine technologist, a radiation therapist, or a radiologist assistant who has completed an accredited educational program and administers ionizing radiation.

(a) Only an individual license as a general radiation licensee shall be employed as an operator of a source of radiation at a facility where contrast studies, fluoroscopic, nuclear medicine, or radiation therapy procedures are performed.

(b) Categories for a general radiation licensee practice shall include:

1. Radiographer who shall be authorized to:

a. Perform a comprehensive scope of diagnostic-radiologic procedures using external ionizing radiation equipment;

b. Exercise responsibility for the operation of radiation-generating equipment, shielding the patient and staff from unnecessary radiation and the appropriate exposure of radiographs or other procedures which contribute to the site or dosage of ionizing radiation to which a patient is exposed; and

c. Provide patient care resulting in radiographic or digital images.

2. Nuclear medicine technologist who compounds, calibrates, dispenses, and administers radiopharmaceuticals, pharmaceuticals, and radionuclides under the direction of an authorized user for benefit of performing a comprehensive scope of nuclear medicine procedures for diagnostic and therapeutic purposes.

3. Radiation therapist who shall be authorized to utilize ionizing radiation-generating equipment and sources of radiation for the planning and delivery of therapeutic procedures on human beings.

4. Radiologist assistant is an individual certified by the American Registry of Radiologic Technologists (ARRT) as a Registered Radiologist Assistant (R.R.A.) who works under the supervision of a radiologist, in accordance with supervision guidelines jointly established by the American College of Radiology (ACR), the American Society of Radiologic Technologists (ASRT), and the ARRT to enhance patient care by assisting the radiologist in the medical imaging environment.

(14)] "Licensee" means an individual [who shall be]licensed [pursuant to the provisions of this administrative regulation]to perform the duties of a radiographer, nuclear medicine technologist, advanced imaging professional, limited x-ray machine operator, or radiation therapist.

(20)[(12)] "Licensed practitioner" or "licensed practitioner of the healing arts" is defined by KRS 311B.020(8)[means a physician licensed in Kentucky to practice medicine, osteopathy, dentistry, chiropractic, podiatry, or veterinary medicine].

(21)[(13)] "Licensure" means the process by which a license is issued by the board pursuant to 201 KAR Chapter 46 and in accordance with KRS Chapter 311B[335B.020].

(22)[(14)] "Limited license" means a license issued by the board authorizing an individual to perform limited radiographic procedures in his specific field of practice or operation.

(15)] "Limited x-ray machine operator" is defined by KRS 311B.020(9)[means an individual who:

(a) Has completed an educational program approved by the board;

(b) Is certified by the board as a:

1. Limited x-ray machine operator;

2. Limited podiatry x-ray machine operator; or

3. Limited bone densitometry x-ray machine operator; and

(c) Performs limited radiographic procedures].

(23)[(16)] "Limited radiographic procedures" means the following procedures:

(a) Routine chest and thorax;

(b) Cranium;

(c) Extremity;

(d) Podiatric;

(e) Vertebral column radiography; and

(f) Bone densitometry procedures.

(24) "Medical imaging technologist" is defined by KRS 311B.020(10). Limited x-ray machine operators are defined separately and are not permitted to work as medical imaging

technologists.

(25)[(17)] "National organization" is defined by KRS 311B.020(11)[means:

- (a) The American Society of Radiologic Technologists;
- (b) The American Registry of Radiologic Technologists;
- (c) the Joint Review Committee on Education in Radiologic Technology; or
- (d) The American College of Radiology].

(26) "Nuclear medicine advanced associate" means an individual certified by the Nuclear Medicine Technologist Certification Board (NMTCB) as a nuclear medicine advanced associate (NMAA) who works under the supervision of a radiologist or nuclear medicine physician, in accordance with professional standards.

(27) "Nuclear medicine technologist" is defined by KRS 311B.020(12).

(28)[(18)] "Nuclear medicine technology" means technology applied by a nuclear medicine technologist utilizing radioactive material and with the nuclear medicine technologist being under the supervision of an authorized user.

(29) "PET" means the positron emission tomography.

(30) "Positron emission tomography" means the utilization of positron-emitting radioactive material for medical imaging under the supervision of an authorized user.

(31) "Practice standards" means the standards established by board-approved professional organizations that define the practice expectations of individuals within the professions.

(32) "Primary discipline" means radiography, nuclear medicine, and radiation therapy.

(33)[in compliance with 201 KAR Chapter 46 which pertains to the:

- (a) Utilization of radiopharmaceuticals or radioactive materials in the diagnosis and treatment of disease in humans;
- (b) Preparation of radiopharmaceutical agents;
- (c) Administration of diagnostic or therapeutic radiopharmaceuticals to patients or human research subjects; and
- (d) Calibration and use of radiation detecting equipment to obtain clinical information.

(19) "Operator" or "operator of sources of radiation" means an individual, other than a licensed practitioner of the healing arts, who is licensed by the board to:

- (a) Technically manipulate or administer a source of radiation; and
- (b) Accurately position the patient to receive the radiation or manipulate the patient within the imaging or active radiation field.

(20) "Professional educational guidelines" means curriculum and educational standards established by national organizations and approved by the board.

(34)[(21)] "Program director" means an individual designated by a sponsoring institution to assure that the educational programs[training program] for medical imaging, limited x-ray machine operator, radiation therapy, and advanced imaging professionals are[operators of sources of radiation shall be] properly conducted.

(35)[(22)] "Provisional nuclear medicine technology license" means a license issued by the board to an individual participating in the alternate nuclear medicine course of study approved by the board.

(36) "Provisional training license" means a license issued to a nuclear medicine technologist or a radiation therapist pursuing post-primary certification in computed tomography or a license issued to a radiographer or radiation therapist pursuing post-primary certification in PET.

(37)[(23)] "Radiation safety officer" means an individual [in the field of radiation protection or a licensed practitioner of the healing arts]who has the training, knowledge, and responsibility to apply appropriate radiation safety practices.

(38) "Radiation therapist" is defined by KRS 311B.020(15).

(39)[(24)] "Radiation therapy" means the therapeutic administration of ionizing radiation by a radiation therapist[to destroy lesions while sparing normal surrounding tissue].

(40)[(25)] "Radioactive materials" means a solid, liquid, or gas that emits ionizing radiation spontaneously.

(41)[(26)] "Radionuclide" means a radioactive element or a radioactive isotope.

(42)[(27)] "Radiopharmaceuticals" means radioactive drugs used for the diagnosis and treatment of disease.

(43) "Radiographer" is defined by KRS 311B.020(16).

(44)[(28)] "Radiography" means the utilization and administration of [external]ionizing radiation to produce medically relevant images for the diagnosis of injury or disease and shall include a comprehensive scope of diagnostic-radiologic procedures.

(45)[(29)] "Radiologist assistant" means an individual certified by the American Registry of Radiologic Technologists (ARRT) as a registered radiologist assistant (R.R.A.) who works under the supervision of a radiologist, in accordance with supervision guidelines jointly established by the American College of Radiology (ACR), the American Society of Radiologic Technologists (ASRT), and the ARRT.

(46)[(30)] "Scope of practice" means the parameter of the specific practice[standards established by the American Society of Radiologic Technologists that delineate what the profession does and confines the breadth of functions persons within a profession may perform].

(47)[(31)] "Source of radiation" means a radioactive material, device, or equipment emitting or capable of producing ionizing radiation.

(48)[(32)] "Sponsoring institution" means an institution recognized[approved] by the board to provide a post-secondary educational program in medical imaging, limited x-ray machine operation, radiation therapy, or advanced imaging professions[the radiological sciences].

(49)[(33)] "Student" means an individual enrolled in a board-recognized educational program[an approved course of study for operators of sources of radiation].

(50)[(34)] "Supervision of students" means supervised by a licensed practitioner of the healing arts or a licensee in the appropriate field of practice who directs the activity of students.

(51)[(a)] "Direct supervision" means supervised by, and in the physical presence of, a licensed practitioner of the healing arts or a licensee.

(b) "Indirect supervision" means supervised by a licensed practitioner of the healing arts or licensee who is immediately available in the individual's place of employment or sponsoring institution.

(35) "Temporary license" means a nonrenewable license[written authorization] issued by the board as established in 201 KAR Chapter 46[cabinet] permitting an individual to practice for a specified period of time[who has completed an appropriate course of study to perform diagnostic or therapeutic radiation procedures while awaiting the results of his examination].

Section 2. Incorporation by Reference (1) Form "KY CEU-001, Continuing Education Approval Request Radiation Operator Certification Program", edition 3/07, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place[Cabinet for Health and Family Services, 275 East Main Street], Frankfort, Kentucky 40601[40624], Monday through Friday, 8 a.m. to 4:30 p.m.

SHERYL L. ABERCROMBIE, Chair

APPROVED BY AGENCY: April 13, 2015

FILED WITH LRC: April 15, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2015, at 9:00 a.m., in the office of the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, (859) 782-5687. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public.

Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on June 1, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Vanessa Breeding, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (859) 782-5687, fax (859) 782-6495.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Vanessa Breeding

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines essential terms applicable to the Medical Imaging profession and regulatory process.

(b) The necessity of this administrative regulation: The Board of Medical Imaging and Radiation Therapy is authorized by KRS 311B.010 to 311B.190 to regulate licensees other than licensed practitioners of the healing arts, including but not limited to: the classification and licensure of medical imaging technologists, radiation therapists, radiologist assistants and limited x-ray machine operators; examinations; standards of education and experience; curricula standards for institutions teaching persons to perform medical imaging and radiation therapy procedures; issuance, renewal, and revocation of licenses; the establishment of a reasonable schedule of fees and charges to be paid by individuals for examinations, licenses and renewal licenses; and to set other standards as may be appropriate for the protection of health and safety. This administrative regulation defines terms used in 201 KAR Chapter 46.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes definitions used in the requirements for practice of medical imaging, radiation therapy and related occupations.

(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 revises 201 KAR 46:010, amends definitions and establishes new definitions applicable for the practice of medical imaging, radiation therapy and related occupations.

(b) The necessity of the amendment to this administrative regulation: This amendment ensures continuity with national standards of practice.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c)

(d) How the amendment will assist in the effective administration of the statutes: No Change.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 state health care organizations and approximately 8,100 licensees.

(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. The amendment merely defines the terms for 201 KAR Chapter 46.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and licensees benefit by having the definitions of terms used within the regulations to clarify the regulations and put the licensee on clear notice.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional Cost will be incurred as a result of amending this administrative regulation.

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: NONE

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: NONE

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all licensees and applicants.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. None.

(2) State compliance standards. This administrative regulation defines the practice of medical imaging, radiation therapy and related occupations.

(3) Minimum or uniform standards contained in the federal mandate. None.

(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 imposition of the stricter standard, or additional or different responsibilities or requirements 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? Kentucky Board of Medical Imaging and Radiation Therapy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 311B.010 to 311B.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) 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? This regulation merely defines terms used throughout the 201 KAR Chapter 46. There is no cost associated with administering this regulation.

(d) How much will it cost to administer this program for subsequent years? This regulation merely defines terms used throughout the 201 KAR Chapter 46. There is no cost associated with administering this regulation.

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

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

**GENERAL GOVERNMENT CABINET
Board of Medical Imaging and Radiation Therapy
(Amendment)**

201 KAR 46:020. Fees[General requirements].

RELATES TO: KRS 311B.050, 311B.100(2), 311B.120, 311B.180, 311B.190[211.870, 211.890, 211.993]

STATUTORY AUTHORITY: KRS 311B.010, 311B.050, 311B.100(2), 311B.120, 311B.180, 311B.190[13B.170, 194A.050(3), 211.090, 211.870, 211.890]

NECESSITY, FUNCTION, AND CONFORMITY: The Board of Medical Imaging and Radiation Therapy is authorized by KRS Chapter 311B[211.870, 311B.010 to 311B.190-] to regulate an individual[operator of a source of radiation] other than a licensed practitioner of the healing arts. This administrative regulation establishes fees for the licensure of medical imaging technologists, radiation therapists, advanced imaging professionals, and limited x-ray machine operators[uniform general requirements for the licensure of operators of sources of radiation].

Section 1. Initial Application and License Fee. A non-refundable initial application and license fee shall be \$100.

Section 2. Renewal License Fee. A non-refundable renewal fee shall be fifty (50) dollars per year.

Section 3. Temporary Application and License Fee. A non-refundable fee for a temporary license shall be \$100.

Section 4. Provisional Training License Fee. A non-refundable fee for a provisional training license shall be fifty (50) dollars per twenty-four (24) month training period.

Section 5. Temporary Limited X-ray Machine Operator Application and License Fee. A non-refundable, non-transferrable fee for a license shall be \$100.

Section 6. Duplicate License Fee. A non-refundable fee for a duplicate license shall be twenty (20) dollars.

Section 7. Reinstatement Fee. A reinstatement fee shall be \$100.

Section 8. Name Change Fee. A non-refundable fee for a new printed license with a name change shall be twenty (20) dollars.

Section 9. Limited X-ray Machine Operator Examination Fee. A non-refundable fee for the limited x-ray machine operator examination shall be \$150.

Section 10. Independent Study Program Course Fee. A non-refundable administrative fee for the independent study course for limited radiography shall be \$500.

Section 11. Insufficient Funds Fee. A fee for returned check or denied online banking (ACH) payment shall be fifty (50) dollars.

Section 12. Written Verification Documents Fee. The fee for completion of written verification documents shall be twenty-five (25) dollars per document.

Section 13. Continuing Education Approval Fee. (1) Individual continuing education program fee shall be ten (10) dollars.
(2) Annual sponsoring institution fee shall be \$100.

Section 14. This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of

Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.[Regulated Entities. (1) 201 KAR Chapter 46 establishes requirements for the licensure of an operator of a source of radiation, other than a licensed practitioner of the healing arts.

(2) The regulation of a source of ionizing or electronic product radiation and the handling and disposal of radioactive waste shall not be covered by 201 KAR Chapter 46.

(3) This administrative regulation shall not require the certification of:

(a) A student enrolled in an approved course of instruction in the healing arts or allied health sciences; or

(b) An employee of the federal government, while engaged in the performance of official duties within this state.

Section 2. Application for Licensure. (1) An application for a general or limited license shall be filed with the Board of Medical Imaging and Radiation Therapy on "Form KR-300", incorporated by reference.

(2) A license, either general or limited, shall expire on the last day of the month, two (2) years after the date of issuance.

(3) A temporary license shall:

(a) Expire on the last day of the month, one (1) year after the date of issuance; and

(b) Not be renewable.

Section 3. Examinations. (1) A general or limited license shall be issued to a person who passes an appropriate examination, approved by the cabinet, in the field of practice or operation for which licensure is sought.

(a) An examination shall be divided into appropriate sections and a minimum grade of seventy-five (75) percent shall be required for passage.

(b) A person shall not be allowed to retake the limited examination more than three (3) times within a calendar quarter.

(2) An examination shall not be required by the board if an applicant submits a valid certificate from:

(a) A national organization acceptable to the board, if the holder:

1. Is otherwise qualified for a license; and

2. Has earned the license by passing an appropriate examination; and

(b) Another state or political subdivision acceptable to the board, if the holder:

1. Is otherwise qualified for a license; and

2. Has earned the license by passing an appropriate examination.

(3) Acceptance of an examination from a national organization, state or political subdivision shall be contingent on:

(a) An annual review of the examination together with an outline by subject; and

(b) An item analysis of each examination section.

(4) The board shall hold the examination information confidential and shall make its contents available only to an authorized representative of the board.

Section 4. Fee Schedule. A fee, as established in this section, shall be paid in connection with the licensure of an operator of a source of radiation, other than a licensed practitioner of the healing arts:

(1) Application for a license (nonrefundable) – twenty-five (25) dollars.

(2) Issuance of a general or limited license – thirty-five (35) dollars.

(3) Issuance of a temporary or provisional license – twenty-five (25) dollars.

(4) Renewal of a general or limited license – thirty-five (35) dollars.

(5) Duplicate license – fifteen (15) dollars.

(6) Limited examination – seventy (70) dollars.

Section 5. Continuing Education Requirements for Renewal.

(1) A general or limited license shall not be renewed if the holder

has not completed the continuing education requirement required for his or her class of license.

(2) A general license holder shall, during each twenty-four (24) month period that an operator holds a license, obtain a minimum of twenty-four (24) clock hours of continuing education approved by the board.

(3) A limited licensee shall, during each twenty-four (24) month period that an operator holds a license, obtain a minimum of twelve (12) clock hours of continuing education approved by the board.

(4) A licensee attending or participating in continuing education related to the licensee's field of practice or operation shall send documented evidence of attendance or participation to the board within forty-five (45) days. The evidence shall include:

(a) The licensee's name and license number;

(b) Subject title;

(c) Date attended;

(d) Clock hours of instruction; and

(e) The instructor's name and title.

(5) If a licensee presents a program of instruction approved for continuing education credit, the licensee shall receive up to six (6) clock hours credit, on an hour-for-hour basis, toward license renewal.

(6) Continuing education clock hours may be accrued by attending a seminar, lecture, or course relating to the licensee's field of practice or operation.

~~Section 6. General Requirements. (1) It shall be the responsibility of each employer to insure that an employee operating a source of radiation is licensed, as provided in 201 KAR Chapter 46.~~

~~(2) Only a person holding a general license shall be employed as an operator of a source of radiation at a facility where a contrast study is performed.~~

~~(3) A licensee shall notify the board within sixty (60) days regarding a change of name or address.~~

~~(4) A licensee shall display or have available his or her license, or a photocopy, at the location where the source of radiation is operated.~~

~~Section 7. Incorporated by Reference. (1) Form KR-300, Board of Medical Imaging and Radiation Therapy, September 1997 edition, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Medical Imaging and Radiation Therapy, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

SHERYL L. ABERCROMBIE, Chair

APPROVED BY AGENCY: April 13, 2015

FILED WITH LRC: April 15, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2015, at 9:00 a.m., in the office of the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, (502) 782-5687. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on June 1, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Vanessa Breeding, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502) 782-6495.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Vanessa Breeding

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees to be assessed to licensees and applicants.

(b) The necessity of this administrative regulation: The necessity of this regulation is to advise the public, licensee and applicant of fees to be assessed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations establishing fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the fees to be assessed from applications, renewals, late filings, reinstatement, name change, and various other programs and services provided by the board.

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

(a) How the amendment will change this existing administrative regulation: The amendment revises 201 KAR 46:020 from the uniform general requirements for the licensure of operators of sources of radiation to establishing fees.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to establish fees for licensure and other services provided by the board.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the establishment of fees.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will notify the public of the fees and provide funding for the board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 state health care organizations and approximately 8,100 licensees.

(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 state health care organization, licensees and applicants will have to demonstrate compliance with the requirements set forth in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment to the administrative regulation establishes new fees and increases other fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulations place applicants and licensees on clear notice of the fees associated with licensure and procedures.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional Cost will be incurred as a result of amending this administrative regulation.

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees established by this regulation and 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, if new, or by the change if it is an amendment: No increase in fees or funding is required to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This amendment to the administrative regulation establishes new fees and increases other 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 departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Medical Imaging and Radiation Therapy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 311B.010 to 311B.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. There will be \$81,260 additional revenue dollars for the Board of Medical Imaging and Radiation Therapy. Some of these revenues will be used to cover personnel needs within the board office. Some of these revenues will be passed to other government agencies who will provide support to the board. There will be approximately \$80,000 dollars in additional expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? Approximately \$236,000 will be required for year one (1).

(d) How much will it cost to administer this program for subsequent years? Approximate cost will be \$400,000. This will allow the board to hire a second permanent position in the office to ensure continuity of operations, contract with other state agencies to provide licensee inspections, allow follow-up inspections by board representatives for sites that have failed to meet standards

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Medical Imaging and Radiation Therapy (Amendment)

201 KAR 46:030. Education for medical imaging technologists, advanced imaging professionals and radiation therapists[and training].

RELATES TO: KRS 311B.100[211.890, 211.993]

STATUTORY AUTHORITY: KRS 311B.050, 331B.080, 311B.100, 311B.110[194A.050, 211.090, 211.870]

NECESSITY, FUNCTION, AND CONFORMITY: The Board of Medical Imaging and Radiation Therapy is authorized by KRS Chapter 311B[211.870 and 211.890] to regulate licensees[operators of sources of radiation] other than licensed practitioners of the healing arts, including but not limited to: the classification and licensure of individuals[operators]; examinations; standards of training and experience; curricula standards for institutions teaching persons to utilize[operate] sources of radiation; issuance, renewal, and revocation of licenses; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, licenses, and renewal licenses; and to set other standards as may be appropriate for the protection of health and safety. This administrative regulation establishes

uniform curricula standards for postsecondary educational institutions[teaching persons to operate sources of radiation].

Section 1. Curricular Standards for Medical Imaging, Radiation Therapy and Advanced Imaging Professionals. Educational programs shall ensure:

(1) Radiography and radiation therapy meet the curricular standards established by the American Society of Radiologic Technologists (ASRT);

(2) Nuclear medicine programs meet the curricular standards established by the Society of Nuclear Medicine and Molecular Imaging Technologists Section (SNMMITS);

(3) Programs maintain continuous accreditation by the Joint Review Committee on Education in Radiologic Technology, the Joint Review Committee on Educational Programs in Nuclear Medicine Technology, or another agency that specifically evaluates the imaging or radiation therapy program based upon equivalent standards; and

(4) The programs permit site inspections by a representative of the board[Applicability. (1) This administrative regulation shall apply to institutions offering a postsecondary course of study for operators of sources of radiation.

(2) An institution that offers a program of study for operators of sources of radiation shall ensure:

(a) Its program meets the standards established by the American Society of Radiologic Technologists (ASRT); and

(b) Its program is accredited by the Joint Review Committee on Education in Radiologic Technology.

(3) Educational programs may be established in:

(a) Community and junior colleges;

(b) Senior colleges and universities;

(c) Hospitals;

(d) Medical schools;

(e) Postsecondary vocational/technical schools and institutions;

(f) Military/governmental facilities;

(g) Proprietary schools; and

(h) Consortia.

(4) Consortia shall be structured to recognize and perform the responsibilities and functions of a sponsoring institution.

Section 2. Curricula Standards. Sponsoring institutions offering a course of study for operators of sources of radiation shall:

(1) Apply to the Joint Review Committee on Education in Radiologic Technology;

(2) Supply data requested for a complete evaluation of its administration, organization, faculty, physical facilities, student policies, and curriculum;

(3) Provide a structured curriculum with clearly written course descriptions, lesson plans, and objectives;

(4) Provide an adequate faculty, which shall be qualified through academic preparation or experience to teach the subjects assigned;

(5) Have a program director appropriate for the certification offered as follows:

(a) General licensure- a general licensee who shall meet the requirement of the professional educational guidelines and standards in the appropriate field of practice; or

(b) Limited licensure- a general licensee who shall have a minimum of three (3) years of clinical or teaching experience or a combination of clinical and teaching experience in the appropriate field of practice;

(6) Provide a licensee to student ratio consistent with professional educational guidelines in the appropriate field of practice;

(7) Provide appropriate facilities, sufficient volume, and a variety of diagnostic or therapeutic procedures to properly conduct the course of study;

(8) Prohibit students from applying radiation to human beings for diagnostic or therapeutic purposes until they have obtained practical experience and have had their performance evaluated as satisfactory by the program faculty;

(9) Provide supervision by a licensed practitioner of the healing

arts or a licensee in the appropriate field of practice;

(10) Prohibit students from being placed in a situation where they would be required to apply radiation or radiopharmaceuticals to a human being while not under supervision consistent with professional educational guidelines in the appropriate field of practice;

(11) Maintain records of each student's attendance, grades, clinical competency, and subjects completed;

(12) Designate a radiation safety officer;

(13) Maintain accreditation by the Joint Review Committee on Education in Radiologic Technology (JRCERT) an approved programmatic accrediting body for educational programs leading to general licensure and permit site inspections by the board's representative; and

(14) Permit site inspections by the cabinet's representative for educational programs leading to limited licensure].

Section 2.[3:] Student Employment Outside the Academic Clinical Setting. A student shall not engage or attempt to engage in the operation of radiation-producing equipment or the administration of ionizing radiation for the purpose of medical imaging or radiation therapy in Kentucky unless licensed by the board.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Radiography revised June 16, 2013;

(b) Nuclear Medicine Technologist Scope of Practice and Performance Standards revised June 7, 2013;

(c) Positron Emission Tomography (PET) Technologist Scope of Practice and Performance Standards revised January 26, 2013;

(d) Scope of Practice for the Nuclear Medicine Advanced Associate created 2009; and

(e) Radiation Therapy revised June 19, 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) American Society of Radiologic Technologists, 15000 Central Ave. SE Albuquerque, NM 87123-3909, <http://www.asrt.org/main/standards-regulations/practice-standards>; or

(b) Society for Nuclear Medicine and Molecular Imaging, 1850 Samuel Morse Drive Reston, Virginia 20190, or <http://www.snmmi.org> (1) Educational programs shall develop a policy governing employment of students to perform diagnostic radiologic procedures outside the academic setting.

(2) Educational programs that elect to permit student employment shall develop criteria and guidelines for students employed to perform diagnostic radiologic procedures outside the academic setting.

(3) At a minimum, students must have completed fifty (50) percent of their course of study and have had their didactic and clinical performance evaluated and recorded as satisfactory by the program director.

(4) Students shall be under the indirect supervision of a licensed practitioner of the healing arts or a licensee.

(5) The program director shall submit documentation to the employer and to the board verifying the student has permission to work as a student radiographer.

Section 4. An Institution's Curriculum and Requirements. (1) Radiography course of study. The radiography curriculum offered by an approved institution shall consist of a minimum of two (2) academic years of full-time study or its equivalent that includes the following subjects:

(a) Human structure and function;

(b) Principles of radiation protection;

(c) Radiation biology;

(d) Pathology;

(e) Medical terminology;

(f) Medical ethics and law;

(g) Equipment operation and maintenance;

(h) Image production and evaluation;

(i) Radiographic procedures;

(j) Computers in radiologic sciences;

(k) Radiologic physics;

(l) Pharmacology and drug administration;

(m) Patient positioning;

(n) Patient assessment, management, and education; and

(o) Clinical education.

(2) Nuclear medicine course of study. The nuclear medicine technology curriculum offered by an approved institution shall consist of a minimum of twelve (12) months of full-time study for graduates of an accredited radiography program or a minimum of two (2) academic years of full-time study or its equivalent for other individuals, which includes the following subjects:

(a) Human structure and function;

(b) Radionuclide chemistry;

(c) Radiopharmacology;

(d) Nuclear instrumentation;

(e) Diagnostic and therapeutic procedures;

(f) Radiation biology;

(g) Nuclear medicine in vivo and in vitro procedures;

(h) Nuclear medicine physics;

(i) Applied math and statistics;

(j) Radiation safety and protection;

(k) Patient positioning;

(l) Patient assessment, management, and education;

(m) Computer applications for nuclear medicine;

(n) Records and administrative procedures;

(o) Medical ethics and law; and

(p) Clinical correlation of nuclear medicine procedures.

(3) Alternate course of study in nuclear medicine. The approved alternate course of study in nuclear medicine shall consist of:

(a) Completion of a minimum of fifteen (15) hours of course work approved by the board in each of the following areas:

1. Radiopharmacy;

2. Nuclear medicine instrumentation; and

3. Radiation safety.

(b) A minimum of four (4) years or 8,000 hours of clinical education in nuclear medicine technology under the supervision of an authorized user as named on a radioactive materials license issued by the cabinet, by another U.S. Nuclear Regulatory Commission agreement state, or by the U.S. Nuclear Regulatory Commission.

1. The employer shall be responsible for providing or arranging for the required clinical education and providing appropriate supervision of the student by an authorized user.

2. Clinical education shall be documented annually by the authorized user with the renewal of the provisional nuclear medicine technology license.

(c) A maximum of six (6) years shall be permitted to complete the alternate course of study.

(4) Radiation therapy course of study. The radiation therapy curriculum offered by an approved institution shall consist of a minimum of twelve (12) months of full-time study for graduates of an accredited radiography program or a minimum of two (2) academic years of full-time study or its equivalent for other individuals that includes the following subjects:

(a) Human structure and function;

(b) Oncologic pathology;

(c) Radiation protection and quality assurance;

(d) Equipment operation;

(e) Clinical and technical oncology;

(f) Medical terminology;

(g) Radiation biology;

(h) Mathematics;

(i) Radiation therapy physics;

(j) Radiation protection;

(k) Patient assessment, management, and education;

(l) Medical imaging and processing;

(m) Clinical dosimetry;

(n) Medical ethics and law; and

(o) Clinical education.

(5) Radiologist assistant course of study.

(a) The educational program for the radiologist assistant shall

culminate in the award of a baccalaureate degree, master's degree, or postbaccalaureate certificate from an institution that:

1. Is recognized by the American Registry of Radiologic Technologists;
2. Incorporates a radiologist-directed clinical preceptorship; and

3. Meets the eligibility requirements for certification by the American Registry of Radiologic Technologists.

(b) The radiologist assistant curriculum offered by an approved institution shall include the following subjects:

1. Patient assessment, education, and management;
2. Medical terminology;
3. Anesthetics;
4. General medications;
5. Contrast media;
6. Anatomy, physiology, and pathophysiology;
7. Radiologic procedures;
8. Radiation safety;
9. Radiation biology;
10. Fluoroscopic operation;
11. Medical-legal, professional, and governmental standards;

and

12. A radiologist-directed clinical preceptorship.

(6) Limited x-ray machine operator course of study. The limited x-ray machine operator curriculum offered by an approved institution shall consist of:

(a) A minimum of 240 hours of classroom work in the following subjects:

1. Human structure and function;
2. Medical terminology;
3. Radiation protection;
4. Radiation biology;
5. Medical ethics and law;
6. Equipment operation and maintenance;
7. Image production and evaluation;
8. Radiographic processing technique;
9. Radiographic procedures;
10. Patient positioning; and
11. Patient care; and

(b) A minimum of 360 hours of clinical education consisting of:

1. Demonstrations; and
2. Supervised practice.

(7) Limited x-ray machine operator independent course of study. The limited x-ray machine operator independent course of study shall:

(a) Be completed within twelve (12) months;

(b) Include the following subjects:

1. Human structure and function;
2. Medical terminology;
3. Radiation protection;
4. Radiation biology;
5. Medical ethics and law;
6. Equipment operation and maintenance;
7. Image production and evaluation;
8. Radiographic processing technique;
9. Radiographic procedures;
10. Patient positioning; and
11. Patient care; and

(c) Include clinical education consisting of a minimum of fifty (50) radiographic procedures in each of the following areas:

1. Chest;
2. Extremities; and
3. Musculoskeletal.

(8) The limited podiatry x-ray machine operator independent course of study shall:

(a) Be completed within twelve (12) months;

(b) Include the following subjects:

1. Human structure and function;
2. Medical terminology;
3. Radiation safety and protection;
4. Radiation biology;
5. Medical ethics and law;

6. Equipment operation and maintenance;
7. Image production and evaluation;
8. Radiographic processing technique;
9. Radiographic procedures;
10. Patient positioning; and
11. Patient care; and

(c) Include clinical education consisting of a minimum of fifty (50) radiographic procedures of the feet and ankles.

(9) The limited bone densitometry x-ray machine operator independent course of study shall:

(a) Be completed within twelve (12) months;

(b) Include the following subjects;

1. Human structure and function;
2. Medical terminology;
3. Radiation safety and protection;
4. Radiation biology;
5. Medical ethics and law;
6. Equipment operation and maintenance;
7. Image production and evaluation;
8. Radiographic processing technique;
9. Radiographic procedures;
10. Patient positioning;
11. Patient care; and

12. Manufacturer's training in accordance with 201 KAR 46:081; and

(c) Include clinical education consisting of a minimum of fifty (50) bone densitometry procedures.

SHERYL L. ABERCROMBIE, Chair

APPROVED BY AGENCY: April 13, 2015

FILED WITH LRC: April 15, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2015, at 9:00 a.m., in the office of the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, (859) 782-5687. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on June 1, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Vanessa Breeding, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (859) 782-5687, fax (859) 782-6495.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Vanessa Breeding

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes essential requirements for Teaching institution's curricula and practice of persons other than practitioners who operate sources of radiation in the Healing Arts.

(b) The necessity of this administrative regulation: The Board of Medical Imaging and Radiation Therapy is authorized by KRS 311B.010 to 311B.190 to regulate licensees other than licensed practitioners of the healing arts, including but not limited to: the classification and licensure of medical imaging technologists, radiation therapists, radiologist assistants and limited x-ray machine operators; examinations; standards of education and experience; curricula standards for institutions teaching persons to perform medical imaging and radiation therapy procedures; issuance, renewal, and revocation of licenses; the establishment of a reasonable schedule of fees and charges to be paid by

individuals for examinations, licenses and renewal licenses; and to set other standards as may be appropriate for the protection of health and safety. This administrative regulation defines terms used in 201 KAR Chapter 46.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes guidelines used in the requirements for teaching institutions for the education and training of medical imaging, radiation therapy and related occupations professionals.

(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 revises 201 KAR 46:030, regulations and establishes new regulations used in the requirements for teaching institutions for the education and training of medical imaging, radiation therapy and related occupations professionals.

(b) The necessity of the amendment to this administrative regulation: This amendment ensures continuity with national standards of education and training.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c)

(d) How the amendment will assist in the effective administration of the statutes: No Change.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 state health care organizations and approximately 8,100 licensees.

(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 state health care organization, licensees and applicants will have to demonstrate compliance with the requirements set forth in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Prospective license applicants and licensees will benefit by having the educational requirements set out in the regulation and put the licensee on clear notice.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional Cost will be incurred as a result of amending this administrative regulation.

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are 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, if new, or by the change if it is an amendment: NONE

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: NONE

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all licensees and applicants.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. None.

(2) State compliance standards. This regulation establishes guidelines used in the requirements for teaching institutions for the education and training of medical imaging, radiation therapy and

related occupations professionals.

(3) Minimum or uniform standards contained in the federal mandate. None.

(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 imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements 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? Kentucky Board of Medical Imaging and Radiation Therapy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 311B.010 to 311B.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) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

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

(c) How much will it cost to administer this program for the first year? The amendment revises 201 KAR 46:030, regulations and establishes new regulations used in the requirements for teaching institutions for the education and training of medical imaging, radiation therapy and related occupations professionals. There is no cost associated with administering this regulation.

(d) How much will it cost to administer this program for subsequent years? This regulation merely amends and establishes new regulations used in the requirements for teaching institutions for the education and training of medical imaging, radiation therapy and related occupations professionals. There is no cost associated with administering this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Medical Imaging and Radiation Therapy (Amendment)

201 KAR 46:040. Medical imaging technologist, advanced imaging professional and radiation therapist licenses[General radiation operator requirements].

RELATES TO: KRS 311B.050, 311B.100(2), 311B.120, 311B.180, 311B.190[244.890, 244.993]

STATUTORY AUTHORITY: KRS 311B.010, 311B.050, 311B.100(2), 311B.120, 311B.180, 311B.190[194.050, 244.090, 244.870]

NECESSITY, FUNCTION, AND CONFORMITY: The Board of Medical Imaging and Radiation Therapy is authorized by KRS 311B[244.870 and 244.890] to regulate individuals[an operator of a source of radiation] other than a licensed practitioner of the healing arts, including but not limited to: the[classification and] licensure of medical imaging technologists, advanced imaging professionals and radiation therapists; approval of accredited educational

programs of medical imaging or radiation therapy and the monitoring of compliance with the educational standards established by the individual disciplines, as recognized by the board[operators;—examinations;—standards—of—training—and experience; curricula standards for institutions teaching persons to operate sources of radiation]; issuance, renewal, suspension, and revocation of licenses; the fixing of a reasonable schedule of fees and charges to be paid by applicants for [examinations,] licenses[,] and renewal licenses; and to set other standards as may be appropriate for the protection of health and safety. This administrative regulation establishes uniform standards for the licensure of individuals who perform medical imaging and radiation therapy[operate sources of radiation] for[human] diagnostic and therapeutic purposes while under the supervision of a[medical, osteopathic, or chiropractic] licensed practitioner of the healing arts.

Section 1. Applicability. This administrative regulation shall apply to individuals who perform medical imaging or radiation therapy[operate sources of radiation] for[human] diagnostic medical imaging[radiologic] or therapeutic purposes while under the supervision of a[medical, osteopathic, or chiropractic] licensed practitioner of the healing arts.

Section 2.~~[General License Required to Perform Contrast Procedures. Only individuals holding a general license shall operate sources of radiation at facilities where contrast studies, fluoroscopic, nuclear medicine or radiation therapy procedures are performed.~~

~~Section 3.] Eligibility for a Medical Imaging Technologist, Radiation Therapist or Advanced Imaging Professional[General] License. No person shall be eligible for a[general] license pursuant to this administrative regulation[as an operator of a source of radiation] for [human] diagnostic imaging[radiologic] or therapeutic purposes unless the person has:~~

~~(1) Satisfactorily passed the national examination administered by the American Registry of Radiologic Technologists and/or the Nuclear Medicine Technologist Certification Board examination[completed a course of study in radiography, nuclear medicine technology, radiation therapy, or radiologist assistant approved by the board as described in 201 KAR 46:030]; and~~

~~(2) Satisfactorily completed a program in radiography, nuclear medicine technology, radiation therapy, or advanced imaging practice that has achieved and maintained programmatic accreditation recognized by the board as described in 201 KAR 46:030[Satisfactorily passed an examination approved by the cabinet as prescribed in 201 KAR 46:020, Section 3].~~

Section 3. Application for Initial License. An applicant shall submit:

(1) Completed and signed application KBMIRT Form 1;

(2) Non-refundable initial application and license fee as established by 201 KAR 46:020;

(3) Results of criminal background check completed within the past six (6) months in state of residence and employment and any other state of residence and employment within the past five (5) years;

(4) Copy of a government issued photo ID;

(5) Documentation of active registration or certification with the ARRT or NMTCB; and

(6) Verification of graduation from a program accredited by the Joint Review Committee on Education in Radiologic Technology or the Joint Review Committee on Educational Programs in Nuclear Medicine Technology.

Section 4. The issued license shall identify the licensee as a medical imaging technologist, radiation therapist, or advanced imaging professional. The medical imaging technologist license shall also identify any ARRT or NMTCB disciplines awarded to the licensee.

Section 5. The license shall expire annually on the last day of

the licensee's birth month.

Section 6. Renewal of License. To renew a license, the licensee shall submit:

(1) KBMIRT Form 2;

(2) Verification of current active status of ARRT or NMTCB; and

(3) Renewal license fee.

Section 7. Reinstatement of Lapsed License. (1) A licensee who has allowed the license to lapse greater than one (1) month but less than twelve (12) months is eligible to be reinstated upon submission of the renewal application, documentation of twenty-four (24) hours of approved continuing education biennially, and reinstatement and renewal fees.

(2) A licensee whose license has lapsed for more than twelve (12) months shall submit:

(a) Verification of current active status of ARRT or NMTCB;

(b) KBMIRT Form 1;

(c) Continuing education KBMIRT Form 8 that documents twenty-four (24) hours of approved continuing education;

(d) Non-refundable initial application and license fee as established by 201 KAR 46:020, Section 1;

(e) Results of criminal background check completed within the past six (6) months in state of residence and employment and any other state of residence and employment within the past five (5) years; and

(f) Copy of a government issued photo ID.

Section 8.~~[4.]~~ Temporary License. The board may, upon proper application and payment of the appropriate fee, issue a temporary license to an applicant who has successfully completed an approved course of study in radiography, nuclear medicine technology,~~[or]~~ radiation therapy, or an advanced imaging profession and meets the other requirements of these administrative regulations other than having taken the required examination. Temporary licenses shall be effective for one (1) year only and are not renewable.

Section 9. Continuing Education Audit Process. (1) The board shall select a sample of licenses to audit for CE compliance.

(2) The board shall send each licensee selected for audit a notification of audit.

(3) Each licensee shall maintain their personal files such as certificates or records of credit from approved continuing education programs from the current biennium and immediate prior biennium.

(4) A licensee selected for audit shall provide the board with a copy of their certificate or records of completion.

(5) Failure to comply with an audit may result in non-renewal, suspension, or revocation of license.

Section 10. Contrast Procedures. Only individuals holding a license pursuant to this administrative regulation shall perform diagnostic imaging or radiation therapy procedures regulated by KRS 311B at facilities where contrast studies are performed.

Section 11.~~[5.]~~ Practice Standards~~[for—General—Licensee]. Individuals licensed pursuant to this administrative regulation[General licensees] shall perform according to practice standards of the discipline for which they hold credentials, as established by the American Society of Radiologic Technologists (ASRT), and the Society of Nuclear Medicine and Molecular Imaging (SNMMI) and incorporated by reference.~~

Section 12. CT Training for Nuclear Medicine Technologists and Radiation Therapists. Individuals who are licensed in the primary discipline of nuclear medicine or radiation therapy, are certified by the ARRT or NMTCB, and are seeking post-primary certification in computed tomography (CT) may work under the direct supervision of a licensed and certified CT technologist to gain clinical competency. An individual who wishes to complete clinical training in CT shall submit an application for a provisional license which shall expire twenty-four (24) months from the date of

issuance.

Section 13. PET Training for Radiographers and Radiation Therapists. Individuals who are licensed in the primary discipline of radiography or radiation therapy, are certified by the ARRT, and are seeking post-primary certification in positron emission tomography (PET) may work under the direct supervision of a licensed and certified PET technologist with the permission of an authorized user to gain clinical competency. An individual who wishes to complete clinical training in PET shall submit an application for a provisional license which shall expire twenty-four (24) months from the date of issuance.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Radiography", revised June 16, 2013;

(b) "Nuclear Medicine Technologist Scope of Practice and Performance Standards", revised June 7, 2013;

(c) "Positron Emission Tomography (PET) Technologist Scope of Practice and Performance Standards", revised January 26, 2013;

(d) "Scope of Practice for the Nuclear Medicine Advanced Associate", created 2009; and

(e) "Radiation Therapy", revised June 19, 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) American Society of Radiologic Technologists, 15000 Central Ave. SE Albuquerque, NM 87123-3909, <http://www.asrt.org/main/standards-regulations/practice-standards>; or

(b) Society for Nuclear Medicine and Molecular Imaging, 1850 Samuel Morse Drive Reston, Virginia 20190, <http://www.snmmi.org> [including the following:

(1) Radiography standards. The radiographer shall:

(a) Apply knowledge of the principles of radiation protection for the patient, self, and others;

(b) Apply knowledge of anatomy, positioning, and radiographic techniques to accurately demonstrate anatomical structures in medical imaging;

(c) Determine exposure factors to achieve optimum radiographic technique with a minimum of radiation exposures to the patient;

(d) Examine radiographs for the purpose of evaluating technique, positioning, and other pertinent technical qualities;

(e) Exercises discretion and judgment in the performance of medical imaging procedures;

(f) Provide patient care essential to radiologic procedures; and

(g) Recognize emergency patient conditions and initiate lifesaving first aid.

(2) Nuclear medicine technology standards. The nuclear medicine technologist shall:

(a) Apply knowledge of the principles of radiation protection for the patient, self, and others;

(b) Apply knowledge of radio pharmacy, instrumentation, patient examination protocols to produce accurate metabolic and image data;

(c) Provide patient care essential to nuclear medicine procedures;

(d) Maintain patient records;

(e) Participate in the quality assurance program;

(f) Prepare, calculate, identify, administer, and dispose of radiopharmaceuticals;

(g) Exercise discretion and judgment in the performance of medical imaging and therapeutic procedures; and

(h) Recognize emergency patient conditions and initiate lifesaving first aid.

(3) Radiation therapist standards. The radiation therapist shall:

(a) Apply knowledge of the principles of radiation protection for the patient, self, and others;

(b) Demonstrate knowledge of human structure, function, and pathology;

(c) Maintain the records of treatment administration;

(d) Deliver a planned course of radiation therapy;

(e) Produce and utilize immobilization and beam directional devices;

(f) Prepare commonly used brach therapy sources;

(g) Demonstrate knowledge of methods of calibration of equipment, and quality assurance;

(h) Prepare isodose summations;

(i) Detect malfunctioning equipment;

(j) Apply wedge and compensating filters;

(k) Exercise discretion and judgment in the performance of therapy procedures; and

(l) Recognize emergency patient conditions and initiate lifesaving first aid.

(4) Radiologist assistant standards. The radiologist assistant, if ordered to do so by the supervising radiologist, shall:

(a) Perform selected procedures including static and dynamic fluoroscopic procedures;

(b) Assess and evaluate the physiologic and psychological responsiveness of patients undergoing radiologic procedures;

(c) Participate in patient management including acquisition of additional imaging for completion of the examination and record documentation in medical records;

(d) Evaluate image quality, make initial image observations, and communicate observations to the supervising radiologist;

(e) Administer intravenous contrast media or other prescribed medications; and

(f) Follow the established standards listed in subsections (1)(a) through (g) of this section.

Section 6. Requirements for the Nuclear Medicine Technologist. (1) An individual holding a license as a nuclear medicine technologist may:

(a) Conduct in-vivo and in-vitro measurements of radioactivity and administer radiopharmaceuticals to human beings for diagnostic and therapeutic purposes; and

(b) Administer x-radiation from a combination nuclear medicine-computed tomography device if:

1. The radiation is administered as an integral part of a nuclear medicine procedure that uses an automated computed tomography protocol for the purposes of attenuation correction and anatomical localization; and

2. The technologist has received device-specific training on the combination device.

Section 7. Requirements for the Radiologist Assistant. In addition to the requirements of Section 5(1)(a) through (g) and through (e) of this administrative regulation, an individual holding a license as a radiologist assistant shall comply with the following requirements:

(1) The individual is a general licensed radiographer in this state;

(2) The individual has satisfactorily completed an advanced academic program encompassing a nationally recognized radiologist assistant curriculum culminating in a baccalaureate degree, post baccalaureate certificate, or master's degree that incorporates a radiologist-directed clinical preceptorship and meets the eligibility requirements for certification by the American Registry of Radiologic Technologists;

(3) The individual is certified in advanced cardiac life support (ACLS);

(4) The radiologist assistant shall not interpret images, make diagnoses, or prescribe medications or therapies; and

(5) The radiologist assistant shall comply with the Standards of Ethics of the American Registry of Radiologic Technologists as well as the standards, policies, and procedures regarding the standard of care of patients, established by the American Society of Radiologic Technologists (ASRT), and the institution employing the radiologist assistant.

Section 8. Licensure in Nuclear Medicine Technology or Radiation Therapy. The board may issue a license pursuant to the following conditions:

(1) The applicant shall be currently employed full time as a nuclear medicine technologist or radiation therapist and have held

the position for twenty-four (24) months prior to May 31, 2006; and

(2) The applicant shall satisfactorily demonstrate through employer documentation that he or she has clinical experience in nuclear medicine technology or radiation therapy. The employer and the licensed practitioner shall be responsible for documentation of the required clinical experience and supervision].

Section 15.9. Applications for licensure in nuclear medicine technology and radiation therapy shall be filed with the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601 [275 East Main Street, Mailstop HS 1C-A, Frankfort, Kentucky 40624].

SHERYL L. ABERCROMBIE, Chair

APPROVED BY AGENCY: April 13, 2015

FILED WITH LRC: April 15, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held May 27, 2015, at 9:00 a.m., in the office of the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, (502) 782-5687. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on June 1, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Vanessa Breeding, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502) 782-6495.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Vanessa Breeding

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the initial and renewal application process.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the standards and process for application and renewal of license issued by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311B.050(3) authorizes the board to issue and renew the licenses of duly qualified applicants, following procedures established by the board through the promulgation of administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures for the board to issue and renew the licenses of duly qualified applicants.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A.

(d) How the amendment will assist in the effective administration of the statutes: N/A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 state health care organizations and approximately 8,100 licensees.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals who seek to be licensed or have an issued license to be renewed must submit an application setting forth the individual's qualifications.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs for complying with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Qualified individuals will be able to be licensed and maintain previously issued licenses.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional cost will be incurred as a result of amending this administrative regulation.

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are 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, if new, or by the change if it is an amendment: No.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(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? Kentucky Board of Medical Imaging and Radiation Therapy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 311B.100 to 311B.110.

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

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

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

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this regulation.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Medical Imaging and Radiation Therapy
(Amendment)

201 KAR 46:070. Violations and enforcement.

RELATES TO: KRS 311B.100, 311B.120, 311B.180, 311B.190[13B.170, 194A.030]

STATUTORY AUTHORITY: KRS 311B.050, 311B.120, 311B.180, 311B.190[194A.050(1), 211.090(3), 211.870]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.120[211.870] authorizes the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations relating to medical imaging technologists, radiation therapists, nuclear medicine technologists, advanced imaging professionals, and limited x-ray machine operators[of sources of radiation] other than practitioners of the healing arts. KRS 311B.120 authorizes imposition of fees and[monetary] penalties for violations of KRS 311B.180, 311B.190, and related administrative regulations. This administrative regulation establishes uniform enforcement procedures regarding the licensure of medical imaging technologists, radiation therapists, nuclear medicine technologists, advanced imaging professionals, and limited x-ray machine operators[of sources of radiation] and penalties for violation of licensure requirements.

Section 1. Denial, Revocation, and Suspension of Licenses. The board may deny, revoke, or suspend the license of a licensee[an operator of a source of radiation] who:

(1) Has engaged in conduct relating to his profession that is likely to deceive, defraud, or harm the public;

(2) Has engaged in alcohol and other drug abuse as defined in KRS 222.005(12);

(3) Develops a physical or mental disability or other condition that makes continued practice or performance of his duties potentially dangerous to patients or the public; or

(4) Performs procedures under, or represents as valid to any person:

(a) A license not issued by the board;

(b) A license containing unauthorized alterations; or

(c) A license containing changes that are inconsistent with board records regarding its issuance;

(5) Has been convicted of a crime that is a felony under the laws of this state or convicted of a felony in a federal court, unless such individual has had all civil rights restored;

(6) Exhibits significant or repeated failure in the performance of professional duties;[or]

(7) Fails to comply with any administrative regulation of the board relating to[the] licensure; or

(8) Fails to obey an order of the board[of an operator of a source of radiation].

Section 2. Hearings. (1) The board shall furnish the licensee with written notice of sufficient detail to reasonably apprise a person of the nature, time and place of the offense charged.

(2) A licensee to whom a notice or order is directed shall comply immediately.

(3) The board shall issue the licensee a notice of proposed action in accordance with 201 KAR 46:090.

(4) A licensee may request a conference and appeal the board's action in accordance with 201 KAR 46:090.

Section 3. Penalties. (1) The board shall assess civil penalties in accordance with KRS 311B.180 and 311B.190 against an individual or licensee who performs diagnostic or therapeutic procedures without valid licensure.

(2) Prior to assessing civil penalties, the board shall confirm the violation of the requirements by any of the following:

(a) Observation of the violation;

(b) Obtaining records, documents, or other physical evidence;

(c) Obtaining statements from either the employer or the employee which confirm the existence of the violation; or

(d) Obtaining statements from third parties, such as[,] patients

or co-workers, that corroborate the allegation that a violation has occurred.

(3) Civil penalties shall be assessed against individuals who perform diagnostic or therapeutic procedures without valid licensure as follows:

(a) Failure to apply for initial licensure by an individual who is fully qualified for licensure at the time the violation is discovered shall be assessed a civil penalty of twenty-five (25)[no less than ten (10)] dollars per day until the application has been approved [by the board].

(b) A licensee who has not renewed the license by the expiration date shall be assessed a civil penalty according to the following schedule:

1. One (1) to five (5) days late – no penalty;

2. Six (6) to fifteen (15) days late – Ten (10) dollars per calendar day; or

3. Sixteen (16) to thirty (30) days late – Twenty (20) dollars per calendar day.

(c) A licensee who has not renewed after thirty (30) days shall pay a civil penalty of \$750 and submit an initial application for license and pay the new application fee[Failure to apply for renewal by an individual who would be eligible for renewal of a license but would not currently qualify due to insufficient continuing education at the time the violation is discovered shall be assessed a civil penalty of no less than twenty (20) dollars per day until the application has been approved by the board].

(d)[(e)] Performance of a diagnostic or therapeutic procedure requiring a license by an individual who is not qualified for licensure at the time the violation is discovered shall be assessed a civil penalty of no less than \$100 per day until the application has been approved[by the board].

(4) Civil penalties shall also be assessed against the employer of the individual without valid license double the amount assessed against the licensee or individual[licensure] pursuant to KRS 311B.180 and subsection (3) of this section.

(5) Any person assessed a civil penalty may request a hearing as specified in Section 2 of this administrative regulation and 201 KAR 46:090.

SHERYL L. ABERCROMBIE, Chair

APPROVED BY AGENCY: April 13, 2015

FILED WITH LRC: April 15, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on May 27, 2015, at 9:00 a.m., in the office of the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, (502) 782-5687. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on June 1, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Vanessa Breeding, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502) 782-6495.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Vanessa Breeding

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for the board handling denials, revocations, and suspension.

(b) The necessity of this administrative regulation: This

administrative regulation is necessary to establish the process for the board handling complaints and due process to licensees who are subject to disciplinary action.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to authority delegated in KRS 311B.050(2) and KRS 311B.050(7).

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation establishes the process for the board handling complaints and due process to licensees who are subject to disciplinary action.

(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 regulation will impact the approximate 8,100 individuals currently licensed by the board.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: This regulation will establish the complaint and disciplinary hearing processes that have not been promulgated by the board.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) are provided an opportunity to respond to any complaint filed and due process if evidence is found to support a violation of state law.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities: No new costs are associated with the changes to the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with the regulation, the individuals identified in question (3) will be provided with due process in the complaint process.

(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 Medical Imaging and Radiation Therapy is funded from 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 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? Board of Medical Imaging and Radiation Therapy.

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation: 311B.050(2) and (7), KRS 311B.160, and KRS 311B.170.

3. Estimate the effect of this administrative regulation on the

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A.

(c) How much will it cost to administer this program for the first year? 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 (+/-)

Expenditures (+/-)

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Medical Imaging and Radiation Therapy (Amendment)

201 KAR 46:081. Limited X-Ray machine operator.

RELATES TO: KRS 311B.100(2), 311B.120, 311B.180, 311B.190[211.890, 211.993]

STATUTORY AUTHORITY: KRS 311B.100[211.090(3), 211.870]

NECESSITY, FUNCTION, AND CONFORMITY: The Board of Medical Imaging and Radiation Therapy is authorized by KRS 311B.100(f) to regulate an operator of a source of radiation other than a licensed practitioner of the healing arts, including but not limited to: the classification and licensure of limited x-ray machine operators; examinations; standards of training and experience; curricula standards for institutions teaching persons to perform limited diagnostic imaging[operate sources of radiation]; issuance, renewal, and revocation of licenses; and to set other standards as may be appropriate for the protection of health and safety. The purpose of this administrative regulation is to establish uniform requirements for the licensure of limited licensees.

Section 1. Applicability. (1) This administrative regulation shall apply to individuals who perform limited[~~human~~] diagnostic radiography while under the supervision of a licensed practitioner of the healing arts, a licensed limited x-ray machine operator, or a licensed radiographer[medical, osteopathic, or chiropractic licensed practitioner, or a licensed radiation operator].

(2) Limited [human] diagnostic radiography shall include routine chest and thorax, cranium, extremity, podiatric, vertebral column radiography, and bone densitometry procedures.

Section 2. Limited Licensee Employment Prohibition[Prohibition]. An individual who holds a limited license shall not be employed as an operator of a source of radiation at a facility where contrast studies, fluoroscopy, mammography, computed tomography, magnetic resonance imaging, bedside radiography, nuclear medicine, positron emission tomography, or radiation therapy procedures are performed.

Section 3. Pathways to the Limited X-ray Machine Operator License. An applicant shall complete an approved postsecondary educational program that meets the ASRT Limited X-Ray Machine Operator Curriculum requirements. Individuals shall complete this requirement by either:

(1) Formal education program for limited x-ray machine operators approved by the board; or

(2) Independent study program for limited x-ray machine operators approved by the board.

An applicant shall meet the requirements for a temporary limited machine operator license[Eligibility for a Limited X-ray Machine Operator License. (1) No person shall be eligible for a limited x-ray machine operator license for human diagnostic radiographic purposes unless the individual has:

- (a) Completed a four (4) year course of study in a secondary school or passed a standard equivalency test;
- (b) Completed a course of study in limited x-ray machine operations approved by the board from a postsecondary institution or an approved independent study course; and
- (c) Passed an examination conducted or approved by the board.

(2) The approved postsecondary course of study shall meet the requirements for the limited x-ray machine operator course of study in 201 KAR 46:030, Section 4(6).

(3) An approved independent study course shall be completed within twelve (12) months and shall meet the requirements for the limited x-ray machine operator independent course of study in 201 KAR 46:030, Section 4(7).

(4) The clinical education required by 201 KAR 46:030, Section 4(7) shall be obtained at the student's place of employment, an alternate facility, or a combination. The employer shall be responsible for providing or arranging for the required clinical education and for providing the appropriate supervision of the student by a licensed practitioner of the healing arts or a licensed radiation operator. Clinical education shall begin only after the student has successfully completed the first six (6) chapters in the provided textbook and has received an authorization letter issued by the board. Course requirements shall be completed within one (1) year from date of enrollment].

Section 4. Application for Temporary Limited X-ray Machine Operator License. Issuance of a temporary limited license shall be dependent upon the educational pathway selected by the applicant.

(1) An applicant who has completed a formal educational program shall submit:

(a) Completed and signed application Form KBMIRT Form 5;

(b) Non-refundable, non-transferrable temporary limited x-ray machine operator application and license fee as mandated in 201 KAR 46:020;

(c) Satisfactory results of criminal background check completed within the past six (6) months in state of residence and employment and any other state of residence and employment within the past five (5) years; and

(d) Copy of a government issued photo ID.

(2) An applicant selecting the independent study program pathway shall receive a temporary license upon completion of the required coursework. As part of the application process for the independent study pathway, an applicant shall submit:

(a) Completed and signed application KBMIRT Form 5;

(b) Completed and signed application KBMIRT Form 5A;

(c) Non-refundable, non-transferrable temporary limited x-ray machine operator application and license fee as mandated in 201 KAR 46:020;

(d) Satisfactory results of criminal background check completed within the past six (6) months in state of residence and employment and any other state of residence and employment within the past five (5) years;

(e) Copy of a government issued photo ID; and

(f) Individuals enrolling in the independent study program shall also submit:

1. A copy of the Cabinet for Health and Family Services radiation producing-machine registration card of their employer; and

2. A copy of his or her high school diploma or equivalent.

(3) The temporary limited x-ray machine operator license shall expire:

(a) Two (2) years from the date of enrollment in the independent study program;

(b) One (1) year from date of issuance for graduates of formal educational programs.

(4) Upon completion of the limited x-ray machine operator

training program, individuals shall:

(a) Apply for the limited scope radiography exam; and

(b) Submit the non-refundable, non-transferrable limited x-ray machine operator examination fee as mandated in 201 KAR 46:020.

(5) If a temporary licensee has not successfully passed the ARRT administered limited scope radiography exam prior to the expiration date of the temporary license, the licensee shall cease to perform radiographic procedures. The licensee remains eligible to sit for the exam, however, the individual shall not perform radiographic procedures. Upon successful completion of the exam, the individual shall submit:

(a) A limited x-ray machine operator license application using KBMIRT Form 4; and

(b) An initial application and license fee as mandated in 201 KAR 46:020.

(6) If a temporary licensee has successfully passed the ARRT administered limited scope radiography exam prior to the expiration date of the temporary license for the selected educational pathway, the licensee shall be issued a limited x-ray machine operator license which shall expire on the last day of the licensee's birth month[Eligibility for a Limited Podiatry X-ray Machine Operator License. (1) No person shall be eligible for a limited podiatry x-ray machine operator license for human diagnostic radiographic purposes unless the individual has:

(a) Completed a four (4) year course of study in a secondary school or passed a standard equivalency test;

(b) Completed an independent course of study in limited podiatric radiography approved by the board; and

(c) Passed an examination conducted or approved by the board.

(2) The approved independent study course shall be completed within twelve (12) months and shall meet the requirements for the limited podiatry x-ray machine operator independent course of study in 201 KAR 46:030, Section 4(8).

(b) The clinical education required by 201 KAR 46:030, Section 4(8) shall be obtained at the student's place of employment. The employer shall be responsible for providing or arranging for the required clinical education and for providing the appropriate supervision of the student by a licensed practitioner of the healing arts or a licensed operator. Clinical education shall begin only after the student has successfully completed the first six (6) chapters in the textbook and has received an authorization letter issued by the board. Course requirements shall be completed within one (1) year from date of enrollment].

Section 5. The issued license shall identify the licensee as a limited x-ray machine operator. The license shall also identify the category as general, bone densitometry, or podiatry[Eligibility for a Limited Bone Densitometry X-ray Machine Operator License. (1) No person shall be eligible for a limited bone densitometry x-ray machine operator license for human diagnostic radiographic purposes unless the individual has:

(a) Completed a four (4) year course of study in a secondary school or passed a standard equivalency test;

(b) Completed an independent course of study in limited bone densitometry approved by the board; and

(c) Passed an examination conducted or approved by the board.

(2) The approved independent study course shall be completed within twelve (12) months and shall meet the requirements for the limited bone densitometry x-ray machine operator independent course of study in 201 KAR 46:030, Section 4(9).

(b) The clinical education required by 201 KAR 46:030, Section 4(9) shall be obtained at the student's place of employment. The employer shall be responsible for providing or arranging for the required clinical education and for providing the appropriate supervision of the student by a licensed practitioner of the healing arts or a certified radiation operator. Clinical education shall begin only after the student has successfully completed the first six (6) chapters in the textbook and has received an authorization letter issued by the board. Course requirements shall be completed

within one (1) year from date of enrollment.

(c) The approved independent study course shall include manufacturer's training:

1. Manufacturer's training will be conducted by a representative of the company who produces the x-ray machine used for bone densitometry.
2. Training shall include the proper techniques for operation and safety].

Section 6. Employer Responsibility for Students Enrolled in the Independent Study Program for Limited X-Ray Machine Operators. Pursuant to Section 8 of this administrative regulation, clinical education shall be obtained at the student's place of employment, an alternate facility, or a combination. The employer shall be responsible for providing or arranging for the required clinical education and for providing the appropriate supervision of the student by a licensed practitioner of the healing arts, a licensed limited x-ray machine operator, or a licensed radiographer. Clinical education shall begin only after the student has successfully completed the required coursework of the textbook and has received a temporary license issued by the board [Temporary License. (1) The board may, upon application and payment of the appropriate fees, issue a temporary license to an applicant who has completed an approved course of instruction in limited medical radiography, limited podiatric radiography, or limited bone densitometry, and who meets the requirements of this administrative regulation, but has not taken the required examination.

(2) Applications for licensure shall be filed with the Cabinet for Health and Family Services on Form KR-300, Radiation Operator Certification-Diagnostic X-Ray Application Form.

(3) Temporary licenses for all certifications shall expire on the last day of the month, one (1) year after the date of issuance and shall not be renewable].

Section 7. Curricular Standards for Formal Educational Program. This administrative regulation applies to institutions offering a postsecondary program for limited x-ray machine operators. Programs shall:

- (1) Meet the curricular standards established by the American Society of Radiologic Technologists (ASRT);
- (2) Include a minimum of 240 classroom hours of didactic instruction and 360 clinical hours of education which shall include supervised practice and demonstration of clinical competency;
- (3) Supply data requested for a complete evaluation of its administration, organization, faculty, physical facilities, student policies, and curriculum;
- (4) Provide a structured curriculum with clearly written course descriptions, lesson plans, and objectives;
- (5) Provide an adequate faculty, which shall be qualified through academic preparation or experience to teach the subjects assigned;
- (6) Have a program director who is a licensed radiographer with a minimum of three (3) years of clinical or teaching experience or a combination of clinical and teaching experience;
- (7) Provide a licensee-to-student ratio consistent with professional educational guidelines in the appropriate field of practice;
- (8) Provide appropriate facilities, sufficient volume, and a variety of diagnostic exams to properly conduct the educational program;
- (9) Prohibit students from applying radiation to human beings for diagnostic purposes until they have obtained practical experience and have had their performance evaluated as satisfactory by the program faculty;
- (10) Provide supervision by a licensed practitioner of the healing arts or a licensee;
- (11) Prohibit students from administering radiation to a human being unless appropriately supervised;
- (12) Maintain records of each student's attendance, grades, clinical competency, and subjects completed;
- (13) Designate a radiation safety officer; and
- (14) Permit site inspections by the board's representative.

Section 8. Curricular Standards for Independent Study Program. (1) The general limited x-ray machine operator independent study program shall:

- (a) Be completed within twenty-four (24) months;
- (b) Include the following subjects:
 1. Human structure and function;
 2. Medical terminology;
 3. Radiation protection;
 4. Radiation biology;
 5. Medical ethics and law;
 6. Equipment operation and maintenance;
 7. Image production and evaluation;
 8. Image processing;
 9. Radiographic procedures;
 10. Patient positioning; and
 11. Patient care; and
- (c) Include clinical education consisting of a minimum of fifty (50) radiographic procedures in each of the following areas:
 1. Chest;
 2. Extremities; and
 3. Musculoskeletal.

(2) The limited podiatry x-ray machine operator independent study program shall:

- (a) Be completed within twenty-four (24) months;
- (b) Include the following subjects:
 1. Human structure and function;
 2. Medical terminology;
 3. Radiation protection;
 4. Radiation biology;
 5. Medical ethics and law;
 6. Equipment operation and maintenance;
 7. Image production and evaluation;
 8. Image processing;
 9. Radiographic procedures;
 10. Patient positioning; and
 11. Patient care; and
- (c) Include clinical education consisting of a minimum of fifty (50) radiographic procedures of the feet and ankles.
- (3) The limited bone densitometry x-ray machine operator independent course of study shall:

- (a) Be completed within twenty-four (24) months;
- (b) Include the following subjects:
 1. Human structure and function;
 2. Medical terminology;
 3. Radiation protection;
 4. Radiation biology;
 5. Medical ethics and law;
 6. Equipment operation and maintenance;
 7. Image production and evaluation;
 8. Image processing;
 9. Radiographic procedures;
 10. Patient positioning;
 11. Patient care; and
 12. Equipment Specific training; and
- (c) Include clinical education consisting of a minimum of fifty (50) bone densitometry procedures.

Section 9. Approved Radiographic Procedures for the Limited X-ray Machine Operator. An individual who holds a limited license is limited to performing the procedures authorized for his or her license as described in this section:

- (1) An individual holding a general limited x-ray machine operator license shall perform only the following[procedures]:
 - (a) Radiography of the thorax, lungs and ribs;
 - (b) Radiography of the skull and facial structures;
 - (c) Radiography of the upper and lower extremities, including the pectoral girdle and the hips and pelvis; and
 - (d) Radiography of the cervical, thoracic, and lumbar spines.
- (2) An individual holding a limited podiatry x-ray machine operator license shall perform radiographic procedures on the foot and ankle only.
- (3) An individual holding a limited bone densitometry x-ray

machine operator license shall perform bone densitometry radiographic procedures only.

Section 10. Continuing Education Requirements. Licensees shall complete and document twelve (12) hours of continuing education biennially. A minimum of six (6) hours shall be related to radiation safety and/or medical imaging.

Section 11. Continuing Education Audit Process. (1) The board shall select a sample of licenses to audit for CE compliance.

(2) The board shall send each licensee selected for audit a notification of audit.

(3) Each licensee shall maintain their personal files such as certificates or records of credit from approved continuing education programs from the current biennium and immediate prior biennium.

(4) Licensees selected for audit shall provide the board with a copy of his or her certificates or records of completion.

(5) Failure to comply with an audit may result in non-renewal, suspension or revocation of license.

Section 12. Renewal of License. A licensee shall renew annually prior to the expiration of their current license, which is the last day of their birth month, by:

(1) Completing KBMIRT Form 6; and

(2) Submitting the Renewal License Fee in accordance with 201 KAR 46:020.

Section 13. Reinstatement of Lapsed License. A licensee who has allowed the license to lapse for more than one (1) month but less than twelve (12) months is eligible to be reinstated upon submission of the renewal application, documentation of twelve (12) hours of continuing education, and reinstatement and renewal fees. A licensee whose license has lapsed for more than twelve (12) months shall:

(1) Successfully pass the ARRT limited scope radiography examination;

(2) Submit a completed and signed application KBMIRT Form 4;

(3) Submit non-refundable initial application and license fee as mandated in 201 KAR 46:020;

(4) Submit satisfactory results of criminal background check completed within the past six (6) months in state of residence and employment and any other state of residence and employment within the past five (5) years; and

(5) Submit a copy of a government issued photo ID.

Section 14.[8.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) KBMIRT Form 4, "Limited X-ray Machine Operator License Application", April 2015;

(b) Form 5, "Limited X-ray Machine Operator Temporary License Application", April 2015;

(c) Form 5A, "Limited X-ray Machine Operator Independent Study Course Application", April 2015; and

(d) Form 6, "Limited X-ray Machine Operator Renewal License Application", March 2015[(1) Form "KR-300, Radiation Operator Certification Diagnostic X-Ray Application Form", edition 7/97, is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place[275 East Main Street], Frankfort, Kentucky 40601[40624], Monday through Friday, 8 a.m. to 4:30 p.m.

SHERYL L. ABERCROMBIE, Chair

APPROVED BY AGENCY: April 13, 2015

FILED WITH LRC: April 15, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2015, at 9:00 a.m., in the office of the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, (502) 782-5687. Individuals interested in attending this hearing shall notify the agency in writing by five

workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on June 1, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Vanessa Breeding, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502) 782-6495.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Vanessa Breeding

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process and requirements for licensure of a limited x-ray machine operator or radiographer.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to allow establish the standards and qualifications for licensure of a limited x-ray machine operator.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 311B authorizes the board to determine and establish the standards and qualifications for licensure of a limited x-ray machine operator or radiographer.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation standards and qualifications for licensure of a limited x-ray machine operator or radiographer.

(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 revises 201 KAR 46:081, and will establish updated procedures and guidelines for the licensure of a limited x-ray machine operator.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to provide updated procedures and guidelines for the licensure of a limited x-ray machine operator.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 311B authorizes the board to determine and establish the standards and qualifications for licensure of a limited x-ray machine operator or radiographer.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is a substantive change to the regulation which was originally promulgated by the Cabinet for Health and Family Services before enactment of KRS Chapter 311B. The amendment updates the regulation to address current regulatory issues found to be lacking.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 state health care organizations and approximately 8,100 licensees.

(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 state health care organization, licensees and applicants will have to demonstrate compliance with the requirements set forth in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be a \$100 fee to apply for the license.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): Applicants for a limited x-ray license will know the requirements for licensure.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional cost will be incurred as a result of amending this administrative regulation.

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are 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, if new, or by the change if it is an amendment: No.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(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? Board of Medical Imaging and Radiation Therapy.

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation: 311B.050(2) and (7), KRS 311B.160, and KRS 311B.170.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A.

(c) How much will it cost to administer this program for the first year? 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 (+/-)

Expenditures (+/-)

Other Explanation

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Kentucky Board of Emergency Medical Services (Amendment)

202 KAR 7:701. Scope of practice matters.

RELATES TO: KRS 311A.135, 311A.140, 311A.160, 311A.165, 311A.170, 311A.175

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, 311A.170

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, and 311A.170 require the board to promulgate administrative regulations relating to the scope of practice for individuals certified or licensed by the board. This administrative regulation establishes those scopes of practice.

Section 1. Emergency Medical[First] Responder. (1) In addition to the skills and procedures outlined in the current National Highway Traffic Safety Administration National EMS Scope of Practice Model[1995 edition of the United States Department of Transportation National Standard Curriculum for Emergency Medical Technician – First Responders], emergency medical[first] responders certified by the board shall be eligible to perform the following supplemental procedures:

(a) Cervical spine and spinal immobilization; and

(b) Administration of Naloxone via Nasal Atomization Devices[Utilization of oxygen;

(b) Obtaining blood pressures;

(c) Utilization of an automatic external defibrillator; and

(d) Cervical spine and spinal immobilization].

(2) To be eligible to perform the supplemental procedures, an emergency medical[a-first] responder shall have been trained and educated utilizing:

(a) The Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Responder – Spinal Immobilization (KBEMS-E-34); and

(b) The Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Responder – Naloxone Administration via Nasal Atomization Devices (KBEMS-E-33)[the "Kentucky Required Mandatory Supplemental Curricula for the First Responder"].

(3) An out-of-state emergency medical[first] responder may perform any skill or procedure that the emergency medical[first] responder may use in the state in which the emergency medical[first] responder is certified subject to the emergency medical[first] responder being called upon to assist in providing medical and related care during a disaster or emergency pursuant to KRS 39A.050, the Emergency Management Assistance Compact, or an agreement made pursuant to KRS Chapter 39A.

(4) An emergency medical responder shall adhere to the protocols approved by KBEMS and the medical director of the agency that employs the emergency medical responder. Deviation from these protocols shall only occur if:

(a) The emergency medical responder's medical director or designated on-line medical direction orders otherwise;

(b) Compliance with approved protocols is not in the patient's medical best interest; or

(c) The emergency medical responder does not have the equipment or medication to adhere to the protocol.

(5) Any deviation from an approved protocol shall be documented in the Patient Care Report (PCR).

Section 2. Emergency Medical Technician (EMT). (1) In addition to the skills and procedures outlined in the current National Highway Traffic Safety Administration National EMS Scope of Practice Model[1994 edition of the United States Department of Transportation National Standard Curriculum for Emergency Medical Technician – Basic], EMTs certified by the board shall be eligible to perform the following supplemental procedures:

(a) Identification of correct placement of an endotracheal tube (ETT) placed by a licensed paramedic, including the use of end tidal CO₂ monitoring (EtCO₂);

(b) Secure an endotracheal tube that has been inserted by appropriately licensed personnel;

(c) The use of Blind Insertion Airway Devices (BIADs);

(d) Set up and troubleshoot potential problems with a cardiac monitor;

(e)[(d)] Select and apply cardiac electrodes;

(f) Non-interpretive acquisition and transmission of a 12-Lead Electrocardiogram (ECG);

(g) Appropriate utilization of equipment and sampling of blood glucose using a glucometer;

(h) Care for a saline lock site where a catheter has been dislodged;

(i) Administration of Epinephrine for anaphylaxis;

(j) Administration of Naloxone using a Nasal Atomization Device; and

(k) ~~Administration of Albuterol using a Nebulizer~~[(e) Apply a pulse oximeter and obtain pulse oximetry readings;

(f) ~~Troubleshoot potential problems with a pulse oximeter;~~

(g) ~~Obtain an appropriate sample for and obtain a blood glucose reading;~~

(h) ~~Troubleshoot potential problems with a glucose monitoring device;~~

(i) ~~Shut off the flow of a preestablished intravenous infusion; and~~

(j) ~~Care for an intravenous infusion site where a catheter has been dislodged or removed].~~

(2) To be eligible to perform each of the supplemental procedures, an EMT shall have been trained and educated utilizing:

(a) ~~["Kentucky Required Mandatory Supplemental Curriculum for Emergency Medical Technician (EMT) Advanced Airway Management Assist Skills: Monitoring and Securing an Endotracheal Tube (KBEMS-E-38);~~

(b) ~~Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT) using a noninvasive cardiac monitoring device - Application of Electrocardiogram Electrodes, Use of a Cardiac Monitor, and Acquisition & Transmission of a 12-Lead ECG (KBEMS-E-35);~~

(c) ~~Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician - Care for a saline lock site where a catheter has become dislodged (KBEMS-E-40);~~

(d) ~~Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT) using a noninvasive EtCO₂ monitoring device - Use of EtCO₂ devices to identify correct placement of an endotracheal tube (KBEMS-E-39);~~

(e) ~~Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician - Administration of Naloxone using a Nasal Atomization Device (KBEMS-E-36);~~

(f) ~~Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician- Advanced Airway Management: Blindly Inserted Airway Devices (BIAD's) (KBEMS-E-37);~~

(g) ~~Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician: Sampling of Blood Glucose using a Glucometer (KBEMS-E-41);~~

(h) ~~Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician: Administration of Epinephrine (KBEMS-E-42); and~~

(i) ~~Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician: Administration of Albuterol using a Nebulizer (KBEMS-E-43). [Initial Training in Advanced Airway Management;"]~~

(b) ~~"Kentucky Ambulance Service Specific Continuing Education Curriculum for the Emergency Medical Technician (EMT) using a noninvasive monitoring device - Application of Electrocardiogram Electrodes and Monitor;"]~~

(c) ~~"Kentucky Ambulance Service Specific Continuing Education Curriculum for the Emergency Medical Technician (EMT) using a noninvasive monitoring device - Application of Pulse Oximetry;"]~~

(d) ~~"Kentucky Ambulance Service Specific Continuing Education Curriculum for the Emergency Medical Technician (EMT) in Blood Glucose Analysis;"]~~

(e) ~~"Kentucky Required Mandatory Supplemental Curriculum for Emergency Medical Technician (EMT) Initial Training in the Monitoring, Maintaining, and Discontinuing of Preestablished Patient Intravenous Infusions in Prehospital, Interfacility, and Facility-to-Home Encounters;"] and~~

(f) ~~"Kentucky Ambulance Service Specific Continuing Education Curriculum for the Emergency Medical Technician (EMT) using a noninvasive monitoring device - Application of End Tidal Carbon Dioxide Monitoring;"]~~

(3) An EMT shall adhere to the protocols approved by KBEMS and the medical director of the agency that employs the EMT. Deviation from these protocols shall only occur[issued by the employer except] if:

(a) The medical director or designated on-line medical direction[control physician] orders otherwise;

(b) Compliance is not in the medical best interest of the patient; or

(c) The EMT does not have the equipment or medication to adhere to the protocol.

(4) Any deviation from an approved protocol shall be documented in the Patient Care Report (PCR). [The documentation shall be maintained as a part of the ambulance run form and as required by 202 KAR 7:501, Section 5(1)(c).]

(5) An out-of-state EMT may perform any skill or procedure that the EMT may use in the state in which the EMT is certified subject to the EMT being called upon to assist in providing medical and related care during a disaster or emergency pursuant to KRS 39A.050, the Emergency Management Assistance Compact, or an agreement made pursuant to KRS Chapter 39A.

Section 3. EMT[Paramedic] Students[and Paramedic Graduates]. (1) During the didactic, laboratory, and clinical portions of an EMT[a-paramedic] course, an EMT[a-paramedic] student may perform any skill or procedure, or administer any medication within the scope of practice for an EMT[a-paramedic] as defined by this administrative regulation[KRS 314A.170], if the student:

(a) [The student] Has been trained and educated to perform the skill or procedure, or to administer the medication; and

(b) Is permitted to perform the skill or procedure in writing or by direct order of the medical director of the EMT[paramedic] course.

(2) During a [the] field internship, an EMT[a-paramedic] student may perform any skill or procedure, or administer any medication within the scope of practice for an EMT[a-paramedic] as defined by this administrative regulation[KRS 314A.170], if:

(a) The student has written authorization[permission] by the medical director of the EMT[paramedic] course to perform the skill or procedure;

(b) Authorization to perform the skill or procedure[The permission] is filed with the [paramedic-course] coordinator of the EMT[paramedic] course; and

(c) The medical director of the EMT course and the director of the agency for whom the skill or procedure is performed [ambulance service] each give written permission to the EMT[paramedic] student [or paramedic graduate] to participate in a field internship with the agency [their service].

(3) This administrative regulation shall not be construed to allow an emergency medical [a-first] responder student, EMT student, AEMT student, or paramedic student [or paramedic graduate] to perform any skill or procedure without direct supervision by a physician, registered nurse, or paramedic any of whom shall be licensed in the Commonwealth of Kentucky, except for out-of-state clinical or field rotations specifically approved by the board.

Section 4. Advanced Emergency Medical Technician (AEMT). (1) An AEMT shall provide emergency medical services consistent with the current National Highway Traffic Safety Administration National EMS Scope of Practice Model.

(2) In addition to the skills and procedures in the National EMS Scope of Practice Model, the scope of practice of a Kentucky AEMT shall include the following supplemental procedures:

(a) Quantitative and qualitative capnography and capnometry;

(b) Bi-level Positive Airway Pressure and Continuous Positive Airway Pressure (BiPAP/CPAP) devices; and

(c) Establish and maintain an adult intraosseous infusion.

(3) To be eligible to perform each of the supplemental procedures, an AEMT shall have been trained and educated utilizing:

(a) The Kentucky Required Mandatory Supplemental Curriculum for the Advanced Emergency Medical Technician using a noninvasive monitoring device - Application and interpretation of quantitative capnography and end tidal carbon dioxide monitoring (KBEMS-E30);

(b) The Kentucky Required Mandatory Supplemental Curriculum for the Advanced Emergency Medical Technician - Establish and maintain an adult intraosseous infusion (KBEMS-E-31); and

(c) The Kentucky Required Mandatory Supplemental

Curriculum for the Advanced Emergency Medical Technician using Bi-level Positive Airway Pressure and Continuous Positive Airway Pressure Devices (KBEMS-E-32).

(4) An AEMT shall adhere to the protocols approved by KBEMS and the medical director of the agency that employs the AEMT. Deviation from these protocols shall only occur if:

(a) The AEMT's medical director or designated on-line medical direction orders otherwise;

(b) Compliance with approved protocols is not in the patient's medical best interest; or

(c) The AEMT does not have the equipment or medication to adhere to the protocol.

(5) Any deviation from an approved protocol shall be documented in the Patient Care Report (PCR).

(6) If providing emergency medical services during a disaster or emergency that qualifies as part of the Emergency Management Assistance Compact pursuant to KRS 39A.050, or if acting pursuant to another agreement made pursuant to KRS Chapter 39, an AEMT certified in another state may perform the skills and procedures approved by the certifying state.

Section 5. AEMT Students. (1) During the didactic, laboratory, and clinical portions of an AEMT course, an AEMT student may perform any skill or procedure, or administer any medication within the scope of practice for an AEMT, as defined by this administrative regulation, if the student:

(a) Has been trained and educated to perform the skill or procedure, or to administer the medication; and

(b) Is permitted to perform the skill or procedure in writing or by direct order of the medical director of the AEMT course.

(2) During a field internship, an AEMT student may perform any skill or procedure, or administer any medication within the scope of practice for an AEMT, as defined by this administrative regulation, if:

(a) The student has written authorization by the medical director of the AEMT course to perform the skill or procedure;

(b) Authorization to perform the skill or procedure is filed with the coordinator of the AEMT course; and

(c) The medical director of the AEMT course and the director of the agency for whom the skill or procedure is performed each give written permission to the AEMT student to participate in a field internship with the agency.

(3) This administrative regulation shall not be construed to allow an emergency medical responder student, EMT student, AEMT student, or paramedic student to perform any skill or procedure without direct supervision by a physician, registered nurse, or paramedic, any of whom shall be licensed in the Commonwealth of Kentucky, except for out-of-state clinical or field rotations specifically approved by the board.

Section 6. Paramedic. (1) Paramedics may perform any of the skills and procedures consistent with the current National Highway Traffic Safety Administration National EMS Scope of Practice Model[outlined in the 1998 edition of the United States Department of Transportation National Standard Curriculum for Emergency Medical Technician—Paramedic].

(2) A paramedic shall adhere to the protocols approved by KBEMS and the medical director of the agency that employs the EMT. Deviation from these protocols shall only occur[issued by the employer and approved by the board except] if:

(a) The medical director or designated on-line medical direction[control-physician] orders otherwise;

(b) Compliance is not in the medical best interest of the patient; or

(c) The paramedic does not have the equipment or medication to adhere to the protocol.

(3) Any deviation from an approved protocol shall be documented in the Patient Care Report (PCR).[The documentation shall be maintained as a part of the ambulance run form and as required by 202 KAR 7:501, Section 5(1)(c).]

(4) A paramedic functioning in their position of employment may perform any procedure or administer medications authorized by KRS 311A.170, or this administrative regulation, at any location

within the Commonwealth subject to the written approval of, and limitations set forth by the paramedic's medical director and the paramedic's employer. A paramedic performing skills or procedures outside of the normal response area for the paramedic shall accompany and assist with or continue treatment for the patient until the patient is accepted by a receiving hospital, an ALS ground or licensed ALS air ambulance provider, or care is transferred to another licensed paramedic, receiving facility RN, advanced registered nurse practitioner, licensed physician's assistant, or physician.

(5) An off-duty paramedic may perform any procedure or administer medications authorized by KRS 311A.170, or this administrative regulation, at any location within the Commonwealth subject to the written approval of, and limitations set forth by the paramedic's medical director and, if appropriate, the paramedic's employer; or the paramedic may render care subject to the limitations of their scope of practice at any location, if ordered to do so by a duly licensed physician. A paramedic performing skills or procedures outside of the normal response area for the paramedic shall accompany and assist with or continue treatment for the patient until the patient is accepted by a receiving hospital, an ALS ground or licensed ALS air ambulance provider, or care is transferred to another licensed paramedic, hospital emergency department, RN, advanced registered nurse practitioner, licensed physician's assistant, or physician.

(6) An out-of-state paramedic may perform any skill, procedure, or administer any medications that the paramedic may use in the state in which the paramedic is certified or licensed, subject to:

(a) Control of the out-of-state paramedic's medical director or protocols; and

(b) The following conditions and limitations:

1. An out-of-state paramedic is transporting a patient from out-of-state to a Kentucky medical facility or other location in Kentucky;

2. An out-of-state paramedic is transporting a patient from out of state through Kentucky to another location out of state; or

3. An out-of-state paramedic is called upon to assist in providing medical and related care during a disaster or emergency pursuant to KRS 39A.050, the Emergency Management Assistance Compact, or an agreement made pursuant to KRS Chapter 39A.

(7) A paramedic with a critical care endorsement shall be authorized to perform the skills and procedures included in their education and training subject to authorization by the medical director through established protocols approved by the board.

Section 7.[5.] Paramedic Hospital Scope of Practice. (1) Paramedics functioning in the hospital environment shall perform within the scope of practice, as defined in this administrative regulation.

(2) Employment of paramedics in hospital emergency department settings, exclusive of their being employed by air or ground transport components, or both, owned or operated by the hospital, shall be subject to demonstrating knowledge based and clinical competencies at a level satisfactory to the employing hospital and subject to applicable laws and administrative regulations.

(3) The employers shall not dictate practice for a paramedic that exceeds the defined scope of practice. The paramedic shall inform the employing institution or supervising staff of any inability or limitation to perform an ordered skill or procedure based upon:

(a) A lack of knowledge of or training or education in the procedure or skill; or

(b) The order or directive exceeding the paramedic's scope of practice.

(4) Employers may provide education or educational opportunities to expand the documented clinical practice of the paramedic but shall not do so with the intent of requiring the paramedic to perform skills or procedures that exceed their statutorily defined scope of practice while in the hospital's employ.

(5) Paramedics shall have a duty to:

(a) Maintain strict patient confidentiality;

(b) Provide and assure continuity of care to their patients;

- (c) Be patient advocates;
- (d) Follow the hospital's chain of command;
- (e) Be knowledgeable and function within the scope of practice of a paramedic;
- (f) Be clearly identified as a licensed paramedic while functioning in the hospital's employ;
- (g) Appropriately document on patient care records all interventions, treatments and assessments performed by the paramedic;
- (h) Perform patient assessment, which may include triage; and
- (i) Institute appropriate therapy in the care of patients subject to the limitation of existing protocols.

Section 8. Paramedic Students. (1) During the didactic, laboratory, and clinical portions of a paramedic course, a paramedic student may perform any skill or procedure, or administer any medication within the scope of practice for a paramedic as defined by this administrative regulation, if the student:

- (a) Has been trained and educated to perform the skill or procedure or administer the medication; and
- (b) Is permitted to perform the skill or procedure in writing or by direct order of the medical director of the paramedic course.

(2) During the field internship, a paramedic student may perform any skill or procedure, or administer any medication within the scope of practice for a paramedic as defined by this administrative regulation, if:

- (a) The student has written authorization by the medical director of the paramedic course to perform the skill or procedure;
- (b) The permission is filed with the paramedic course coordinator of the paramedic course; and
- (c) The medical director and director of the ambulance service each give written permission to the paramedic student to participate in a field internship with their service.

(3) This administrative regulation shall not be construed to allow an emergency medical responder student, EMT student, AEMT student, or paramedic student to perform any skill or procedure without direct supervision by a physician, registered nurse, or paramedic any of whom shall be licensed in the Commonwealth of Kentucky, except for out-of-state clinical or field rotations specifically approved by the board.

Section 9.[6-] Restriction of Practice. This administrative regulation shall not prohibit a[the] medical director from restricting the scope of practice of any emergency medical[first] responder, EMT, AEMT, or paramedic under their authority through established protocols.

Section 10.[7-] Exemptions. This administrative regulation shall not prohibit an emergency medical[a first] responder, emergency medical technician, advanced emergency medical technician[EMT], or paramedic certified or licensed in another state or registered with the NREMT from functioning under their statutory or regulatory scope of practice while assisting with mass casualties, weapons of mass destruction, or disaster incidents.

Section 11. Incorporation[8- Incorporated] by Reference. (1) The following documents are incorporated by reference.

- (a) "Kentucky Required Mandatory Supplemental Curriculum for the AEMT using a noninvasive monitoring device – Application and interpretation of quantitative capnography and end tidal carbon dioxide monitoring", KBEMS-E30;
- (b) "Kentucky Required Mandatory Supplemental Curriculum for the AEMT: Establish and maintain an intraosseous infusion in the adult", KBEMS-E-31;
- (c) "Kentucky Required Mandatory Supplemental Curriculum for the AEMT using Bi-level Positive Airway Pressure and Continuous Positive Airway Pressure Devices", E-32;
- (d) "Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Responder- Administration of Naloxone using a Nasal Atomization Device", KBEMS-E-33;
- (e) "Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Responder (EMR) - Spinal

Immobilization", KBEMS-E-34;

(f) "Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT) using a noninvasive monitoring device - Application of Electrocardiogram Electrodes, use of a Cardiac Monitor, & Acquisition and Transmission of a 12-Lead ECG", KBEMS-E-35;

(g) "Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician- Administration of Naloxone using a Nasal Atomization Device", KBEMS-E-36;

(h) "Kentucky Required Mandatory Supplemental Curriculum for Emergency Medical Technician (EMT) Advanced Airway Management: Blindly Inserted Airway Devices (BIAD's)", KBEMS-E-37;

(i) "Kentucky Required Mandatory Supplemental Curriculum for Emergency Medical Technician (EMT) Advanced Airway Management Assist Skills: Monitoring and Securing an Endotracheal Tube (ETT)", KBEMS-E-38;

(j) "Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT) using a noninvasive monitoring device - Application of End-Tidal Carbon Dioxide Monitoring, use of EtCO2 Devices to Identify Correct Placement of an Endotracheal Tube or BIAD", KBEMS-E-39;

(k) "Kentucky Required Mandatory Supplemental Curriculum for Emergency Medical Technician (EMT) Care for a Saline Lock site where a catheter has become dislodged", KBEMS-E-40;

(l) "Kentucky Required Mandatory Supplemental Curriculum for the EMT: Sampling of Blood Glucose using a Glucometer", KBEMS-E-41;

(m) "Kentucky Required Mandatory Supplemental Curriculum for the EMT: Administration of Epinephrine", KBEMS-E-42; and

(n) "Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician: Administration of Albuterol using a Nebulizer", KBEMS-E-43[Curricula for the First Responder (April 2002);

(b) Kentucky Required Mandatory Supplemental Curriculum for Emergency Medical Technician (EMT) Initial Training in Advanced Airway Management (04-01);

(c) Kentucky Ambulance Service Specific Continuing Education Curriculum for the Emergency Medical Technician (EMT) Using a Noninvasive Monitoring Device - Application of Electrocardiogram Electrodes and Monitor (04-01);

(d) Kentucky Ambulance Service Specific Continuing Education Curriculum for the Emergency Medical Technician (EMT) Using a Noninvasive Monitoring Device - Application of Pulse Oximetry (04-01);

(e) Kentucky Ambulance Service Specific Continuing Education Curriculum for the Emergency Medical Technician (EMT) in Blood Glucose Analysis (04-01);

(f) Kentucky Required Mandatory Supplemental Curriculum for Emergency Medical Technician (EMT) Initial Training in the Monitoring, Maintaining, and Discontinuing of Preestablished Patient Intravenous Infusions in Prehospital, Interfacility, and Facility-to-home Encounters (04-01); and

(g) Kentucky Ambulance Service Specific Continuing Education Curriculum for the Emergency Medical Technician (EMT) using a noninvasive monitoring device - Application of End Tidal Carbon Dioxide Monitoring (04-01)].

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 118 James Court, Suite 50, Lexington, Kentucky 40565[2545 Lawrenceburg Road, Frankfort, Kentucky 40621], Monday through Friday, 8 a.m. to 4:30 p.m.

ANNE-TYLER MORGAN, Legal Counsel

APPROVED BY AGENCY: April 14, 2015

FILED WITH LRC: April 15, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2015 at 10:00 a.m. Eastern Standard Time at the Kentucky Board of Emergency Medical Services, 118 James Court, Lexington, Kentucky 40505. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no

notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business on June 1, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Anne-Tyler Morgan; Legal Counsel, Kentucky Board of Emergency Medical Services; McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street Suite 900, Lexington, Kentucky 40507, phone (859) 231-8780, fax (859) 281-6480.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Anne-Tyler Morgan

(1) Provide a brief summary of:

(a) What this administrative regulation does: 202 KAR 7:701E provides the scopes of practice for Emergency Medical Responder students, EMT students, AEMT students, and paramedic students.

(b) The necessity of this administrative regulation: This regulation is mandated by KRS 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, and 311A.170, which require the board to promulgate administrative regulations relating to the scope of practice for individuals certified or licensed by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, and 311A.170, which require the board to promulgate administrative regulations relating to the scope of practice for individuals certified or licensed by the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, and 311A.170 require the board to promulgate administrative regulations relating to the scope of practice for individuals certified or licensed by the board. This administrative regulation establishes those scopes of practice.

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

(a) How the amendment will change this existing administrative regulation: This amendment include the scope of practice for Advanced Emergency Medical Technicians ("AEMTs"), Emergency Medical Responder students, and EMT students and to update the scopes of practice for Emergency Medical Responders and paramedic students to comply with the current National Highway Traffic Safety Administration "National EMS Scope of Practice Model".

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide the scope of practice for Advanced Emergency Medical Technicians ("AEMTs"), Emergency Medical Responder students, and EMT students and to update the scopes of practice for Emergency Medical Responders and paramedic students to comply with the current National Highway Traffic Safety Administration "National EMS Scope of Practice Model".

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, and 311A.170, which require the board to promulgate administrative regulations relating to the scope of practice for individuals certified or licensed by the board.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures that Emergency Medical Responder students, EMT students, AEMT students, and paramedic students know their respective scopes of practice.

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

administrative regulation:

- (a) Emergency Medical Responder students;
- (b) EMT students;
- (c) AEMT students; and
- (d) Paramedic students.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All Emergency Medical Responder students, EMT students, AEMT students, and paramedic students shall meet applicable requirements as mandated in the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All entities will benefit from the consistency of their respective scopes of practice.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The board shall pay for all administrative costs of reviewing compliance with applicable requirements, which will not change with this amendment.

(a) Initially: The above paragraph is accurate for initial costs.

(b) On a continuing basis: The above paragraph is accurate for continuing costs.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Emergency Medical Services is a state agency that receives its annual budget from the state government.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because there are no separate levels of licensure for the provider types included in this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The administrative regulation will not relate to any division of state or local government.

Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, and 311A.170. No federal statutes necessitate this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first

year? This administrative regulation will not impose any costs on state or local government, other than the board itself.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government, other than the board itself.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

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

301 KAR 2:300. Black bear seasons and requirements.

RELATES TO: KRS 150.010, 150.092, 150.170, 150.175, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of bears in any manner contrary to any provisions of KRS Chapter 150 or Title 301 KAR[its administrative regulations]. This administrative regulation establishes bear hunting and chasing seasons; bear hunting areas; legal methods of take; and permitting, checking, and recording requirements.

Section 1. Definitions. (1) "Adult" means an individual who is at least eighteen (18) years of age.

(2) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(3) "Arrow" means the projectile fired from a bow or crossbow.

(4) "Baited area" means an area where feed, grains, or other substances capable of luring black bears have been placed.

(5) "Barbed broadhead" means a point or portion of a blade projecting backward from a broadhead designed to hold an arrow within an animal.

(6) "Bear" means the species *Ursus americanus*.

(7) "Bear chase area" means a designated area within the Bear Zone where hunters may use dogs to chase bears.

(8) "Bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to use dogs to chase a bear.

(9) "Bear permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to harvest[take] one (1) black bear of either sex.

(10) "Bear zone" means the following Kentucky counties: Bell, Clay, Floyd, Harlan, Knott, Knox, Laurel, Leslie, Letcher, Martin, McCreary, Perry, Pike, Pulaski, Wayne, and Whitley.

(11) "Chase-only season" means a designated season when a person may use dogs to chase a bear, without killing or intentionally injuring a bear.

(12) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(13) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(14) "Junior bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows a youth to use dogs to chase a bear.

(15) "License year" means the period from March 1 through the following last day of February.

(16) "Modern gun" means a rifle, handgun, or shotgun loaded from the rear of the barrel.

(17) "Muzzle-loading firearm" means a rifle, shotgun, or

handgun loaded from the discharging end of the barrel or discharging end of the receiver.

(18) "Youth" means a person under the age of sixteen (16) by the day of the hunt.

Section 2. Feeding Black Bears. A person shall not engage in any direct or indirect feeding of black bears.

Section 3. Bear Chase Requirements. (1) Unless exempted by KRS 150.170, a person, while using dogs to chase a bear, shall carry proof of purchase of a valid Kentucky hunting license and a valid:

(a)[first obtain the appropriate] Bear chase permit; or
(b) Junior bear chase permit[from the department before chasing bears].

(2) A bear chase permit or junior bear chase permit shall only be purchased by a resident of Kentucky.

(3)[~~Unless exempted by KRS 150.170, a person shall carry proof of purchase of a valid Kentucky hunting license and valid bear chase permit while using dogs to chase bears.~~

(4)] A bear chase permit shall be purchased on the department's Web site at fw.ky.gov from July 1 through December 31.

~~(4)](5)] A person shall not:~~

(a) Kill or intentionally injure a bear during a chase-only season;

(b) Chase a bear except during daylight hours while a chase season is open;

(c) Chase a bear from a baited area:

1. While bait is present; or

2. For thirty (30) days after the bait has been removed; or

(d) Disturb a bear in a den.

~~(5)](6)] Individual hunt groups shall include no more than five (5) people and eight (8) dogs, except:~~

~~(a)] a hunt party may total seven (7) people if two (2) additional youths accompany the party;~~

~~(b) The two (2) additional youths do not have to be drawn as part of a quota hunt party; and~~

~~(c) The two (2) additional youths shall not be allowed to harvest a bear.~~

~~(6)](7)] Any dog transported in a motorized vehicle by members of a hunt group shall not be considered a member of that hunt group.~~

~~(7)](8)] The department shall supply a Bear Chase Survey to each person purchasing a bear chase permit.~~

~~(8)](9)] A person who purchases a bear chase permit shall submit to the department a completed Bear Chase Survey by the last day of January following each bear season.~~

~~(9)](10)] A person who fails to submit a Bear Chase Survey shall be ineligible to purchase a bear chase permit for the following year's chase seasons.~~

~~(10)](11)] A person shall only use a dog to chase a bear in the following designated areas:~~

~~(a) Eastern bear chase area;~~

~~(b) Central bear chase area; and~~

~~(c) Western bear chase area.~~

Section 4. Chasing Bears with Dogs. A person shall not use a dog to chase a bear except during the[following] seasons established in this section:

(1) The chase-only season, which shall be from August 1 through August 31; and

(2) The bear quota hunt with dogs season pursuant to Section 8(1) of this administrative regulation.

Section 5. Bear Permit Requirements. (1) Only a resident of Kentucky shall be allowed to purchase a bear permit.

(2) Unless exempted by KRS 150.170, a person hunting a bear shall possess proof of purchase of a valid Kentucky hunting license and valid bear permit while hunting during the seasons established in Section 8(1) of this administrative regulation.

Section 6. Hunter Restrictions. (1) A person shall not:

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(a) Harvest a bear except during daylight hours;
(b) Use a dog[dogs] during the modern gun season for bears, except leashed tracking dogs may be used to recover a wounded or dead bear;

(c) Hunt bear on a baited area:

1. While bait is present; or

2. For thirty (30) days after the bait has been removed;

(d) Harvest:

1. A female bear that has a cub; or

2. A bear that weighs less than seventy-five (75) pounds;

(e) Harvest a bear that is swimming;

(f) Harvest a bear if the person is in a vehicle, boat, or on horseback, except that a hunter in possession of a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform;

(g) Harvest a bear in a den; or

(h) Disturb a bear in a den for the purpose of taking the bear if the bear exits the den.

(2) An adult shall accompany and maintain control of a youth who is hunting bear with a firearm.

Section 7. Weapon Restrictions. (1) A person shall only use the weapons and ammunition established in paragraphs (a) through (e) of this subsection to take a bear:

(a) A crossbow or archery equipment loaded with a non-barbed broadhead of seven-eighths (7/8) inch or wider upon expansion;

(b) A firearm:

1. With an action that fires a single round of ammunition upon each manipulation of the trigger;

2. Of .270 caliber or larger; and

3. Loaded with centerfire, single projectile ammunition designed to expand upon impact;

(c) A muzzle-loading firearm of .50 caliber or larger;

(d) A shotgun of twenty (20) gauge or larger loaded with a shell containing one (1) projectile; or

(e) A handgun loaded with:

1. Centerfire cartridges;

2. Bullets of .270 caliber or larger designed to expand upon impact; and

3. Cartridges with a case length of 1.285 inches or larger.

(2) A crossbow shall contain a working safety device.

(3) A bear hunter shall not use a magazine capable of holding more than ten (10) rounds.

Section 8. Bear Season Dates and Bag Limits. (1) A legal bear hunter shall only kill a bear in the bear zone during the seasons established in paragraphs (a) through (d)[(e)] of this subsection:

(a) The archery – crossbow season for bears, which shall be for seven (7)[nine (9)] consecutive days beginning on the fourth Saturday in October[before Thanksgiving];

(b) The modern gun season for bears, which shall be for three (3) consecutive days beginning on the second Saturday in December;~~and~~

(c) The bear quota hunt with dogs season, which shall be for:

1. Two (2)[five (5)] consecutive days beginning on the Saturday after Thanksgiving; and

2. Two (2) consecutive days beginning on the third Saturday in December; and

(d) The youth-only bear[Monday following the modern gun] season which shall last for two (2) consecutive days beginning on the Saturday after Christmas[bears].

(2) A person shall not ~~harvest[take]~~ more than one (1) bear in a license year.~~[(3) A hunt party drawn for the bear quota hunt with dogs season shall not take more than one (1) bear in a license year.]~~

Section 9. Bear Season Closure. (1) The archery - crossbow season for bears shall close after daylight hours on the day the following quota has been reached:

(a) Ten (10) bears; or

(b) Five (5) female bears.

(2) The modern gun season for bears shall close after daylight hours on the day the following quota has been reached:

(a) Fifteen (15)[Ten (10)] bears; or

(b) Five (5) female bears.

(3) The bear quota hunt with dogs season shall close after daylight hours on the day the quota of five (5) bears has been reached.

(4) The youth-only bear season shall close after daylight hours on the day the quota of five (5) bears has been reached.

(5) A bear hunter shall call 800-858-1549 after 9 p.m. each day of any open bear season to determine if the annual quota has been reached.

Section 10. Bear Quota Hunt with Dogs Requirements. (1)~~[A person shall complete the Bear Quota Hunt with Dogs Application on the department's Web site at fw.ky.gov from September 1 through September 30.~~

(2) ~~An applicant shall possess a bear chase permit before applying.~~

(3) ~~A person shall not:~~

(a) ~~Apply more than one (1) time per year;~~

(b) ~~Apply as a party of more than five (5) people; or~~

(c) ~~Be eligible to take a bear unless drawn by the department in the bear quota hunt lottery.~~

(4)~~[A person shall only harvest a bear with the use of unleashed dogs.~~

(2)~~[(5) A person or each member of a hunt party selected for the quota hunt shall possess a bear permit in order to kill a bear.~~

(6)~~[The bear quota hunt with dogs season shall also be open as a chase-only season for any person who possesses a valid bear chase permit.~~

Section 11. Hunter Orange Clothing Requirements. (1) During any modern gun or muzzle-loading season for bears, a person hunting any species, and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest, except these requirements shall not apply to a person hunting:

(a) Waterfowl; or

(b) Furbearers at night during a legal furbearer season.

(2) The hunter orange portions of a garment worn to fulfill the requirements of this section:

(a) May display a small section of another color; and

(b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

Section 12. Bear Reserves. (1) The areas within the Bear Zone established in paragraphs (a) through (d) of this subsection shall be closed to bear hunting:

(a) Cumberland Gap National Historical Park;

(b) Hensley-Pine Mountain Wildlife Management Area;

(c) Big South Fork National River and Recreation Area; and

(d) The area surrounding Hensley-Pine Mountain Wildlife Management Area: starting at the intersection of Sand Hill Bottom Road and North US Hwy 119 in Cumberland, the boundary proceeds northeast along North US Hwy 119 to the intersection of US Hwy 119 and Kentucky Hwy 2035. The boundary then proceeds west along Kentucky Hwy 2035 to the intersection of Kentucky Hwy 2035 and Kentucky Hwy 931. The boundary continues southwest along Kentucky Hwy 931 to the intersection of Kentucky Hwy 931 and Kentucky Hwy 160, then proceeds southwest along Kentucky Hwy 160 to the intersection of Kentucky Hwy 160 and Kentucky Hwy 463 in Gordon. The boundary then proceeds south and east along Kentucky Hwy 160 to the intersection of Kentucky Hwy 160 and Sand Hill Bottom Road in Cumberland, then south along Sand Hill Bottom Road to the intersection with North US Hwy 119, completing the boundary.

(2) Kentucky resident landowners, their spouses, and dependent children may hunt bears on their own property within the closed area established in subsection (1)(d) of this section.

Section 13. Harvest Recording and Check-in Requirements.

(1) Immediately after harvesting a bear, and before moving the carcass, a person shall record on a hunter's log the:

(a) Species taken;

(b) Date taken;

- (c) County where taken; and
- (d) Sex of the bear.
- (2) A person who has harvested a bear during the modern gun season for bears shall:
 - (a) Retain a completed hunter's log;
 - (b) Check a harvested bear at a department-operated check station immediately after leaving the field;
 - (c) Telecheck the bear before leaving the check station by:
 - 1. Calling 800-245-4263 and completing the telecheck process or checking the bear on the department's Web site at fw.ky.gov; and
 - 2. Recording the confirmation number on the hunter's log; and
 - (d) Attach to the carcass a department issued tag prior to leaving the check station.
- (3) A person who has harvested a bear during the archery – crossbow season, youth-only bear season, or the bear quota hunt with dogs season shall:
 - (a) Retain a completed hunter's log;
 - (b) Telecheck the bear by 8 p.m. Eastern Standard Time the day the bear was harvested by:
 - 1. Calling 800-245-4263 and completing the telecheck process or checking the bear on the department's Web site at fw.ky.gov; and
 - 2. Recording the confirmation number on the hunter's log;
 - (c) Arrange for department personnel to inspect the bear by:
 - 1. Calling the department at 800-858-1549 within twenty-four (24) hours of harvest; and
 - 2. Presenting to department personnel the bear carcass or an intact hide that contains the skull and proof of sex; and
 - (d) Attach to the carcass a department issued tag after having the bear inspected by department personnel.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Eastern Bear Chase Area" map, 2015[2013] edition;
- (b) "Central Bear Chase Area" map, 2015[2013] edition;
- (c) "Western Bear Chase Area" map, 2013 edition; and
- (d) "20__ Bear Chase Survey", 2014 edition[; and
- (e) "Bear Quota Hunt With Dogs Application", 2014 edition].

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

GREGORY K. JOHNSON, Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: April 9, 2015

FILED WITH LRC: April 14, 2015 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2015, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by close of business June 1, 2015. 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) 564-7109, ext 4507, fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes black bear chase and hunt seasons, chase and hunt requirements, bag limits, and legal methods of take.

(b) The necessity of this administrative regulation: To establish bear hunting season requirements and methods of take to provide reasonable hunting and chasing opportunity, while properly managing bear populations in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to establish open seasons for the taking of wildlife, regulate bag limits, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of bears in any manner contrary to any provisions of Chapter 150 or Title 301.

(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 of chase and take used to manage black bears 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 will shorten the archery-crossbow season from nine (9) to seven (7) days and move the season opening date from the Saturday after Thanksgiving to the fourth Saturday in October. This amendment also splits the existing five (5)-day bear quota hunt with dogs season in December into two (2)-day seasons in November and December. This amendment will also establish a two (2)-day youth-only bear season with a harvest quota of five (5) bears that opens the Saturday after Christmas. Additionally, the harvest quota for the modern gun season will be increased from ten (10) to fifteen (15) bears. This amendment will also abolish the online registration process for the bear quota hunt with dogs season, allow any legal hunter to harvest a bear during the bear quota hunt with dogs season, and clarify that dogs transported in a motorized vehicle shall not be included in the eight (8)-dog limit for individual hunt groups. Lastly, amendments will expand the geographic boundaries of the Eastern and Central Bear Chase Areas; these changes are reflected in new maps that are incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to increase hunting success for persons participating in the archery-crossbow season by moving it early in the fall when bears are more active. Likewise, splitting the bear quota hunt with dogs season will increase participation by moving this hunt from the week of Christmas to two earlier weekends. Establishing a youth-only bear season and increasing the harvest quota for the modern gun season will increase hunting opportunity and promote interest in bear hunting. Proposed amendments to adjust the structure of the bear quota hunt with dogs season will remove technical and logistical barriers for hunters, and increase opportunity by allowing any member of a dog hunt group to harvest a bear. Lastly, expansion of the Eastern and Central Bear Chase Areas will increase hunter opportunity and hopefully enable hunters to meet bear harvest quotas.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All hunters that pursue black bears will be affected by this regulatory amendment. In 2014, there were 729 Bear Permits, twenty-six (26) Bear Chase Permits, and two (2) Junior Bear Chase permits sold in Kentucky.

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

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Those who hunt bears must comply with the individual requirements and restrictions for respective hunt or chase-only seasons for bears, as listed in the fall hunting guide published by the department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not modify the costs of bear hunt and chase permits.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Archery and crossbow hunters should experience increased hunter success with this season change from November to October when bears are more active. Additionally, more opportunity will be generated for bear hunters with creation of a youth-only season, increased harvest quota for the modern gun season, and expansion of the Eastern and Central Bear Chase Areas. Newly proposed changes will allow any participant in the bear quota hunt with dogs season to harvest a bear, rather than a one (1)-bear limit per hunt group. Lastly, removal of the online registration process for the bear quota hunt with dogs season will eliminate technical and logistical barriers to hunters.

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

(a) Initially: There will be small administrative cost to the department to implement this regulation.

(b) On a continuing basis: There will be a small cost to the department on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees established or increased.

(9) TIERING: Is tiering applied? No. Tiering was not used because all persons who hunt bears are required to abide by the same seasons, methods of take, bag limits, harvest recording procedures, and checking requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) and 150.390(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenue generated by bear hunt and bear chase permits pursuant to 301 KAR 3:022 was approximately \$22,670 in 2014. It is unknown how the amendments to this administrative regulation will affect this number.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue generated by this administrative regulation for subsequent years is expected to be stable to slightly increasing.

(c) How much will it cost to administer this program for the first year? There will be a small administrative cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a small administrative cost incurred in subsequent years.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation:

TRANSPORTATION CABINET Department of Vehicle Regulation (Amendment)

601 KAR 9:135. Apportioned registration.

RELATES TO: KRS 131.110(1), 131.340, 186.020(1), (3), 186.040, 186.050(13)(a), 186.051(2), 186.180, 186.240(2), 49 U.S.C. 31704

STATUTORY AUTHORITY: KRS 186.050(13), 186.051(3), 49 U.S.C. 31704

NECESSITY, FUNCTION, AND CONFORMITY: 49 U.S.C. 31704 requires each state to participate in the International Registration Plan. KRS 186.051(3) requires the Transportation Cabinet to promulgate an administrative regulation establishing a system of staggered registration time periods for commercial motor vehicles. KRS 186.050(13)(a) requires the Transportation Cabinet to promulgate an administrative regulation concerning the registration of commercial motor vehicles pursuant to the Articles of the International Registration Plan. This administrative regulation establishes the procedures required to register a commercial motor vehicle under the provisions of the International Registration Plan; clarifies if a vehicle licensed pursuant to KRS 186.050(13) is required to be licensed as established in other sections of KRS 186.050; and establishes the recordkeeping standards required for apportionable vehicles, auditing of the records by the Transportation Cabinet, and the appeal procedure if a disagreement occurs.

Section 1. Definitions. (1) "Apportionable vehicle":

(a) Means a power conveyance that is used or intended for use in two (2) or more International Registration Plan Jurisdictions that is used for the transportation of persons for hire, or designed, used, or maintained primarily for the transportation of property and:

1. Has two (2) axles and gross vehicle weight or registered gross vehicle weight in excess of 26,000 pounds (11,793.401 kilograms);

2. Has three (3) or more axles, regardless of weight; or

3. Is used in combination for a vehicle with a gross weight in which the combination exceeds 26,000 pounds (11,793.401 kilograms); and

(b) Does not mean a recreational vehicle; a vehicle displaying restricted plates; ~~a bus used for the transportation of chartered parties;~~ a government-owned vehicle, except a truck or tractor or a power conveyance in a combination of vehicles having a gross vehicle weight of 26,000 pounds (11,793.401 kilograms) or less. The vehicle types excluded by this paragraph are usually registered pursuant to a plan at the option of the registrant.

(2) "Base jurisdiction" means the member jurisdiction selected in accordance with the International Registration Plan to which an applicant applies for apportioned registration, or the member jurisdiction that issues apportioned registration to a registrant under the plan.

(3) "Established place of business" means a physical structure located within the base jurisdiction:

(a) Owned, leased, or rented by the fleet registrant;

(b) Designated by a street number or road location;

(c) Open during normal business hours;

(d) In which is located:

1. A person conducting the fleet registrant's business; and
2. The operational records of the fleet necessary for audit.

(4) "Fleet" means one (1) or more apportionable vehicles designated by a registrant for distance reporting as established in the International Registration Plan.

(5) "International Registration Plan" or "IRP" means a registration reciprocity agreement among the states of the United States and provinces of Canada providing for payment of license fees on the basis of total distance operated in all jurisdictions.

(6) "Jurisdiction" means a country, state, province, territory, possession, or federal district of a country.

(7) "Operational records" means source documents that evidence distance travelled by a fleet in a member jurisdiction such as fuel reports, trip sheets, and driver logs, including those that are generated through on-board recording devices and maintained electronically as required by the IRP Audit Procedures Manual.

Section 2. Application for Apportioned Registration. (1) The operator of an apportionable vehicle operating in more than one (1) licensing jurisdiction shall apply for apportioned registration in the jurisdictions of operation that are members of the IRP unless a trip permit has been purchased for each trip into the jurisdiction.

(2) A vehicle, or combination of power unit and trailer having a gross vehicle weight of 26,000 pounds or less and two (2) axle vehicles may be apportioned registered at the option of the registrant.

(3) If Kentucky is the base jurisdiction for an operator of an apportionable vehicle, the operator's established place of business shall apply for the apportioned registration in Kentucky.

Section 3. Apportioned Mileage Reporting and Recordkeeping.

(1)(a) The fleet miles required to be reported on Kentucky IRP Apportioned Registration Application Schedule B, TC 95-303B shall be the fleet miles traveled from July 1 through June 30 of the year immediately preceding the registration year.

(b) If the registration year begins on a date in July, August, or September, the reporting period shall be the previous twelve (12) month period.

(c) The following table is provided for illustration purposes:

First Month of Registration Year	Reporting Period
January, 1975	July 1, 1973 - June 30, 1974
February, 1975	July 1, 1973 - June 30, 1974
March, 1975	July 1, 1973 - June 30, 1974
April, 1975	July 1, 1973 - June 30, 1974
May, 1975	July 1, 1973 - June 30, 1974
June, 1975	July 1, 1973 - June 30, 1974
July, 1975	July 1, 1973 - June 30, 1974
August, 1975	July 1, 1973 - June 30, 1974
September, 1975	July 1, 1973 - June 30, 1974
October, 1975	July 1, 1974 - June 30, 1975
November, 1975	July 1, 1974 - June 30, 1975
December, 1975	July 1, 1974 - June 30, 1975

(d) The mileage shall be distributed by jurisdiction. Miles travelled in a jurisdiction by an apportioned power unit, whether or not a member of the International Registration Plan, and whether the vehicle is empty or loaded, shall be reported.

(e) The mileage reported for a motor vehicle power unit that was added to, or deleted from the apportioned fleet during the mileage reporting period shall be the miles generated while it was part of the apportioned fleet.

(f) Mileage shall include the following:

1. Loaded and unloaded trips;
2. Intrastate and interstate trips; and
3. Miles operated under trip permits.

(2)(a) An apportioned registrant shall maintain operational records for the current registration year and the three (3) registration years immediately prior to the current year.

(b) The information shall be retained in an individual vehicle mileage record.

(c) The individual vehicle mileage record shall contain the following information:

1. Registrant's name and fleet number;
2. Beginning and ending date of trip;
3. Trip origin and destination;
4. Route of travel for trip;
5. Beginning and ending odometer or hubometer reading of each trip;
6. Total trip miles and mileage;
7. Mileage by jurisdiction for each trip;
8. Vehicle unit number and vehicle identification number; and
9. Driver's name or signature.

Section 4. Proof of Insurance and Certificate of Apportioned Registration. (1) The applicant shall apply to the appropriate county clerk for a certificate of apportioned registration for each vehicle in the fleet, and a vehicle to be apportioned registered.

(2) The county clerk's fee shall be collected as established in KRS 186.040 and 186.050.

(3) A vehicle owned by a non-Kentucky registrant that is properly titled in a foreign jurisdiction and leased to a Kentucky based-motor carrier shall be registered in the name of the Kentucky based-motor carrier with copies of the foreign title, lease agreement, and the owner's commercial driver's license.

(4) The applicant shall submit proof of insurance to the county clerk at the time of application for the certificate of apportioned registration.

Section 5. Registration Fees. (1)(a) The applicant shall submit an application for apportioned registration to the Department of Vehicle Regulation.

(b) Original or renewal application shall be made by using:

1. Kentucky IRP Apportioned Registration Supplemental Application Schedule C, TC 95-303C; and
2. Kentucky IRP Apportioned Registration Application Schedule B, TC 95-303B.

(c) After the Department of Vehicle Regulation has approved an application, the department shall compute the apportioned registration fee due each jurisdiction under the International Registration Plan.

(d) The applicant shall return to the department, either in person or by mail or electronic payment, the bill and a certified check, cashier's check, personal check, business check, or money order made payable to the Kentucky State Treasurer.

(e) If the applicant is required to post a bond as established in 601 KAR 1:200, Section 6, or has had a personal or business check returned for insufficient funds to the Transportation Cabinet by the applicant's bank, the cabinet shall require the applicant to make payment by cash, certified check, money order, or cashier's check.

(2) The required tax and fee shall be accompanied by proof of payment of the federal heavy vehicle use tax.

(3)(a) The Department of Vehicle Regulation shall issue an IRP apportioned license plate and IRP cab card to the registrant for each IRP registered vehicle.

(b) The originally issued IRP license plate shall have a decal, indicating the expiration month and year.

(c) After the yearly renewal the registrant shall be issued a new decal designating the year of expiration and a new IRP cab card.

(d) The IRP cab card shall list the jurisdictions in which the registrant has apportioned his registration fees.

(e) The original IRP cab card shall be carried in the cab of the vehicle continuously.

Section 6. Supplemental Applications. (1) An applicant needing to add or delete a vehicle from a fleet shall file Kentucky IRP Apportioned Registration Supplemental Application, Schedule C, TC 95-303C with the department. This form shall be used to provide notice of:

- (a) A vehicle addition;
- (b) A vehicle deletion;
- (c) A vehicle transfer; or
- (d) A gross weight increase.

(2)(a) A vehicle deletion notice shall be accompanied by the apportioned registration plate and the IRP cab card.

(b) At the end of the registration month, a registrant may apply for a refund of the fees that apply to the unexpired months of the registration year.

(3)(a) If a vehicle is added by a registrant at the same time another vehicle with the same weight within the fleet is deleted, the Kentucky registration tax shall be transferred from the deleted to the added vehicle.

(b) The Kentucky transfer fee of three (3) dollars shall be collected as established in KRS 186.180.

(c) The registrant shall be notified of the transfer fee owed to other jurisdictions.

(4) If the declared gross weight of the vehicle is increased, the increased fees shall be prorated from the date the increased weight is allowed.

~~Section 7.[Adding Jurisdictions to IRP Registrations. (1) If the operation of a registrant is expanded to include an additional jurisdiction that participates in the IRP, the registrant shall amend the mileage schedule by filing IRP Apportioned Registration Application, Schedule B, TC 95-303B with the department to reflect an estimate of miles to be operated in the new jurisdiction.~~

~~(2) The mileage percentages for an added jurisdiction shall be computed by adding to the actual mileages previously reported.~~

~~(3) Percentages approved on the original application shall not be changed during the registration year.~~

~~(4)(a) If an additional jurisdiction is added during the registration year, each vehicle in the fleet shall be changed to reflect operation in the additional jurisdiction.~~

~~(b) If an IRP cab card is damaged, lost, or destroyed, the Department of Vehicle Regulation shall send a replacement card to the registrant.~~

~~(c) Upon receipt of the new cab cards, the registrant shall return the outdated IRP cab cards to the department.~~

~~Section 8.] Conversion to Apportioned Registration. (1) If a vehicle is an interstate charter bus, or is registered in Kentucky as a commercial or limited activity vehicle, and the registrant intends to convert to an apportioned registration, the registrant shall purchase an apportioned registration from the county clerk of residence.~~

~~(2) The current commercial vehicle, charter bus, or limited activity license plate shall be submitted to the Department of Vehicle Regulation with the application for apportioned registration.~~

~~(3)(a) The applicant shall be given credit for the remainder of the value of current Kentucky registration.~~

~~(b) This credit shall be applied toward fees due to other IRP jurisdictions and collected by Kentucky on the apportioned registration.~~

~~(4) All fees due to other jurisdictions and a fee due to Kentucky shall be paid in accordance with Section 5 of this administrative regulation before the apportioned credentials are issued.~~

~~Section 8.[9.] Replacement of Credentials. (1) The owner of a vehicle registered pursuant to KRS 186.050(13) may obtain a duplicate of a lost IRP cab card from the Department of Vehicle Regulation by:~~

~~(a) Filing Affidavit for Replacement or Non-exchange, TC 96-167; and~~

~~(b) Paying a fee of three (3) dollars as established in KRS 186.180.~~

~~(2) A registration plate issued pursuant to KRS 186.050(13) that is lost shall be reported as lost or stolen to the area state police post or local law enforcement agency and the Department of Vehicle Regulation.~~

~~(3)(a) A new certificate of apportioned registration shall be issued by the department after review and acceptance of the completed forms. A new license plate reissued by the department shall bear a different number from that of the lost plate.~~

~~(b) The original copy of the surrendered certificate of apportioned registration shall be maintained by the department.~~

~~(4) The department shall cancel the registration corresponding~~

~~to the number of the lost plate.~~

~~(5) A person finding a lost registration plate shall return it to the Department of Vehicle Regulation or to a county clerk.~~

~~Section 9.[10.] Apportioned Registration of Leased Vehicles. Apportioned registration of a leased vehicle shall be accomplished in one (1) of the following ways:~~

~~(1) (a) If the owner or lessor is the registrant, the vehicle shall be registered in the name of the owner or lessor.~~

~~(b) The allocation of registration fees shall be based on the operational records of the owner or lessor.~~

~~(c) The apportioned license plate and IRP cab card shall be the property of the lessor.~~

~~(2) If the lessee is the registrant, the vehicle shall be registered by the lessee:~~

~~(a) In the lessee's name;~~

~~(b) In the lessor's name; or~~

~~(c) In both the owner or lessor's name and that of the lessee.~~

~~(3) The allocation of registration fees shall be based on the operational records of the lessee.~~

~~(4) The apportioned license plate and IRP cab card shall be the property of the lessee.~~

~~Section 10.[14.] Audit of Apportioned Registrants. (1) As required by the IRP, the cabinet's Division of Road Fund Audits shall perform an audit of fifteen (15) percent of the apportioned registrants based in Kentucky every five (5) years.~~

~~(2) An audit shall be performed in accordance with the IRP Audit Procedures Manual.~~

~~(3) The Division of Road Fund Audits shall notify the apportioned registrant in writing of the date, time, and location of the audit. Thirty (30) days advance notice shall be given to the registrant.~~

~~(4) Failure of the registrant to make the records required by Section 3 of this administrative regulation available upon request shall:~~

~~(a) Result in a penalty assessment as established in the IRP Audit Procedures Manual; or~~

~~(b) Cancellation of apportioned registration as established in the IRP.~~

~~(5)(a) An auditor shall conduct and document a pre-audit conference with the registrant outlining:~~

~~1. Operation;~~

~~2. Audit procedures;~~

~~3. Records to be examined;~~

~~4. Sample period; and~~

~~5. Sampling procedures.~~

~~(b) The motor carrier and auditor shall determine at the pre-audit conference who has responsibility for final acceptance of the findings and the persons to be involved in the close-out conference.~~

~~(6) An auditor shall conduct and document a close-out conference with the registrant outlining preliminary findings that shall include:~~

~~(a) Applicable penalty and interest;~~

~~(b) Recommendations;~~

~~(c) Rights of appeal; and~~

~~(d) To whom the audit report should be addressed.~~

~~(7)(a) The Transportation Cabinet shall furnish the registrant a letter of audit findings and recap schedules.~~

~~(b) If requested, the cabinet shall supply other work papers to the registrant.~~

~~(8) If an audit indicates that additional tax is owed, the Transportation Cabinet shall issue a tax due statement.~~

~~(9) Within forty-five (45) days of the date of the tax due statement, the registrant shall:~~

~~(a) Pay the supplemental tax; or~~

~~(b) Protest in writing to the Transportation Cabinet, Division of Road Fund Audits.~~

~~Section 11.[12.] Protest or Appeal of Audit Results. (1)(a) A written protest may be filed by a taxpayer, or a person representing a taxpayer, and shall include a supporting statement, and~~

documents that identify the specific adjustments requested, or the portion of the audit protested, and shall establish the reason for the protest as required by KRS 131.110(1).

(b) A protest shall be filed with the Transportation Cabinet, Division of Road Fund Audits within forty-five (45) days from the date of the tax due statement.

(2) If the supporting statements and documentation are not sufficient to change the assessment results, the taxpayer may request an information gathering, or protest conference with the Division of Road Fund Audits in writing by using regular mail, facsimile, or electronic mail.

(3) Within sixty (60) days from the date the taxpayer submits additional information, or within sixty (60) days of a protest conference, the Division of Road Fund Audits shall issue a final ruling to the taxpayer.

Section 12.143. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky IRP Apportioned Registration Application, Schedule B", TC Form 95-303B, August, 2014~~[November 2006]~~;

(b) "Kentucky IRP Apportioned Registration Supplemental Application, Schedule C", TC Form 95-303C, March 2015~~[June, 2008]~~;

(c) "Affidavit for Replacement or Non-Exchange", TC Form 96-167, October, 2014~~[April, 1992]~~;

(d) "International Registration Plan with Official Commentary", January 1, 2015~~[2013]~~; and

(e) "Kentucky IRP Apportioned Registration Policies and Procedures Manual", February, 2013~~[May, 2012]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, as follows:

(a) For the items incorporated by reference in paragraphs (a), (b), (c), and (e)~~and (f)]~~ of this subsection, at the Department of Vehicle Regulation, Division of Motor Carriers, 200 Mero Street, Third Floor, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) For the item incorporated by reference in paragraph (d) of this subsection, at the Office of Audits, Division of Road Fund Audits, 200 Mero Street, Fourth Floor, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

RODNEY KUHLE, Commissioner

MICHAEL W. HANCOCK, P.E., Secretary

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: April 10, 2015

FILED WITH LRC: April 14, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 28, 2015 at 10:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C117, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. 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 wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business, June 1, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Service, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation supports the administration of the federal International Registration Plan or "IRP".

(b) The necessity of this administrative regulation: An amendment to this administrative regulation is required to update the state requirements due to a change in IRP requirements in January, 2015.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 186.050 requires the cabinet to promulgate an administrative regulation concerning the registration of motor vehicles pursuant to the IRP. KRS 186.051 requires the cabinet to develop a system of staggered registration time periods.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will update the definitions and processes used in registering vehicles pursuant to the IRP.

(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: These amendments update and remove language reflecting changes in IRP requirements effective January 1, 2015.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to conform to the requirements of federal law.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments update the processes required by KRS 186.013.

(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: This administrative regulation affects approximately 4,500 IRP applicants. Within the cabinet, it affects the IRP Section of the Division of Motor Carriers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no changes in how the entities comply with the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): These amendments do not establish any new costs or fees. IRP membership dues are \$19,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be aware of the latest forms and processes required by state and federal law.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: There are no known costs associated with implementing this new administrative regulation.

(a) Initially: There are no known costs.

(b) On a continuing basis: There are no known costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Road funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established by this regulation either directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not applied because no distinction is made between applications to the cabinet.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Motor Carriers, IRP Section; and the Department of Vehicle Regulation, Division of Road Fund Audits.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 186.050; 186.051; 49 U.S.C. 31704

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

(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 procedures in this administrative regulation generate approximately \$60 million dollars annually.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue will remain constant in subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs are required.

(d) How much will it cost to administer this program for subsequent years? No additional costs are expected.

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:

TRANSPORTATION CABINET
Department of Highways
Division of Maintenance
(Amendment)

603 KAR 10:010. Static advertising devices.

RELATES TO: KRS 177.572-177.576, 177.830-177.890, 177.990(2), 23 U.S.C. 131, 23 C.F.R. Part 750

STATUTORY AUTHORITY: KRS 177.860, 23 U.S.C. 131[;23 C.F.R. Part 750]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.860 requires the Commissioner of the Department of Highways to promulgate administrative regulations establishing standards for advertising devices. KRS 177.890 authorizes the Commissioner of the Department of Highways to enter into agreements with the United States Secretary of Transportation in order to carry out national policy relating to interstate, defense, and federal-aid primary highways within the state. 23 U.S.C. 131, the Highway Beautification Act, authorizes retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices. This administrative regulation establishes the standards for on-premise and off-premise static advertising devices. KRS 177.860 authorizes the Department of Highways to establish reasonable standards for advertising devices on or visible from interstate, parkway, and federal-aid primary highways. KRS 177.867 requires the Department of Highways to pay just compensation for the removal of legally erected advertising devices that are no longer in compliance with state law or administrative regulation. KRS 177.890 authorizes the Commissioner of Highways to enter into agreements with the United States Secretary of Transportation in order to carry out national policy relating to interstate, defense, and federal-aid primary highways within the state. Compliance with the "Highway Beautification Act", 23 U.S.C. Section 131 is required to receive federal highway funds. Control of outdoor advertising devices adjacent to the national highway system is required by 23 U.S.C.

~~Section 131. 23 U.S.C. Section 131(d) conditions retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices which are more stringent than required by the general federal mandate. Commonwealth v. G.L.G., Inc., Ky., 937 S.W.2d 709 (1997) ruled that the exemption to the billboard advertising prohibition established by KRS 177.860(4) did not require a commercially or industrially developed area in which the billboard was located be zoned commercial or industrial if the billboard otherwise complied with applicable local zoning ordinances].~~

Section 1. General Conditions Relating to Off-Premise Static Advertising Devices. (1) A static advertising device shall not be converted to an electronic advertising device prior to receiving a permit pursuant to 603 KAR 10:020.

(2) A static advertising device within 660 feet of the right-of-way shall be prohibited unless the device:

(a) Is not visible from the main travelled way of an interstate, parkway, national highway system, or federal-aid primary highway; or

(b) Complies with applicable zoning ordinances and regulations of a county or city.

(3) A static advertising device that is visible from more than one (1) interstate, parkway, national highway system, or federal-aid primary highway shall meet the requirements for each highway independently.

(4) The erection or existence of a static advertising device shall be prohibited in a protected area if the device:

(a) Advertises an activity that is prohibited by law;

(b) Is abandoned or discontinued;

(c) Is not clean and in good repair;

(d) Is not securely affixed to a substantial structure permanently attached to the ground;

(e) Directs the movement of traffic;

(f) Interferes with, imitates, or resembles an official traffic sign, signal, or traffic control device;

(g) Prevents the driver of a vehicle from having a clear and unobstructed view of an official sign or approaching or merging traffic;

(h) Includes or is illuminated by flashing, intermittent, or moving lights;

(i) Uses lighting, unless the lighting is:

1. Effectively shielded to prevent a beam of light from being directed at the main traveled way of the interstate, parkway, national highway system, or federal-aid primary highway;

2. Of low intensity that shall not cause glare or impair the vision of a driver or interfere with the operation of a motor vehicle; or

3. Of a luminance less than 300 nits;

(j) Is erected or maintained upon a tree;

(k) Is painted or drawn on rocks or another natural feature;

(l) Is erected upon or overhanging the right-of-way; or

(m) Is mobile, temporary, or vehicular.

(5)(a) A static advertising device shall not exceed the maximum size established in KRS 177.863(3)(a) and may contain up to two (2) advertisements per facing pursuant to KRS 177.863(3)(b).

(b) A static advertising device that has more than two (2) faces shall not have an interior angle between two (2) facings larger than forty-five (45) degrees.

(c) A static advertising device may contain extensions up to fifteen (15) percent of the face of the advertising device but shall not exceed the maximum size of the facing of the device established in KRS 177.863(3)(a).

(6) An on-premise advertising device shall not affect spacing requirements for an off-premise static advertising device.

(7) Static advertising devices that are no more than fifteen (15) feet apart at the nearest point between the devices and have the same ownership shall be counted as a single device.

(8) A static advertising device that utilizes lighting to illuminate the advertising device shall use white lights.

(9) The name of the owner of a static advertising device shall:

(a) Be legible from the main traveled way;

(b) Not be larger than twenty (20) square feet;

- (c) Be shown without other owner information; and
- (d) Not be considered an advertisement.

(10) To establish a protected area, the distance from the edge of a state-owned right-of-way shall be measured horizontally and at a right angle to the centerline of the interstate, parkway, national highway system, or federal-aid primary highway for a distance of 660 feet.

Section 2. Off-Premise Static Advertising Devices on Interstates and Parkways. (1) If it is visible from the main traveled way of an interstate or parkway and meets the permitting criteria established in this administrative regulation, a static advertising device located in a protected area of an interstate or parkway shall be permitted by the department.

(2) A permit shall not be issued unless a static advertising device:

(a) Complies with KRS 177.830 through 177.890, this administrative regulation, and county or city zoning ordinances and regulations; and

(b) Is erected or maintained in:

1. A protected area of an interstate or parkway that is zoned industrial or commercial and was an incorporated municipality on September 21, 1959; or

2. Was zoned commercial or industrial and included a commercial or industrial land use on September 21, 1959.

(3) A static advertising device shall not be closer than fifty (50) feet to the edge of the main traveled way or turning roadway of the interstate or parkway.

(4) An off-premise static advertising device visible from an interstate or parkway shall not be erected within 500 feet of another off-premise static advertising device on the same side of the interstate or parkway.

(5) An off-premise static advertising device visible from an interstate or parkway shall not be erected within 500 feet of an off-premise electronic advertising device visible in the same direction of travel.

Section 3. Off-Premise Static Advertising Devices on National Highway System and Federal-Aid Primary Highways. (1) A static advertising device visible from the main traveled way of a national highway system or federal-aid primary highway shall be permitted by the department if the device:

(a) Complies with KRS 177.830 through 177.890, this administrative regulation, and county or city zoning ordinances;

(b) Is erected and maintained in a protected area of a national highway system or federal-aid primary highway:

1. In a commercial or industrial zone; or

2. In an unzoned commercial or industrial area with a commercial or industrial activity that is located on the same side of the highway and within 700 feet of the activity boundary line measured along or parallel to the pavement of the highway.

(2) (a) A non-billboard off-premise static advertising device shall be prohibited on or over a state-owned right-of-way.

(b) A non-billboard off-premise static advertising device shall not affect the spacing requirements for off-premise static advertising devices on national highway system and federal-aid primary highways.

(c) A non-billboard off-premise static advertising device with multiple messages shall be limited to an overall facing size of no more than 150 square feet, and each individual message shall be limited to eight (8) square feet.

(d) Non-billboard off premise static advertising devices shall be separated by at least 200 feet.

(e) A permit shall not be required for a non-billboard advertising device.

Section 4. Nonconforming Static Advertising Devices. (1) A nonconforming static advertising device in a protected area shall not require a permit and shall continue to exist if the device is:

(a) Not abandoned or discontinued;

(b) Subjected to only routine maintenance;

(c) In compliance with state law and administrative regulations as well as local zoning, sign, or building restrictions at the time of

the erection; and

(d) Substantially the same as it was on the effective date of the state law or administrative regulation that made the device nonconforming.

(2) The owner of a nonconforming advertising device shall submit biennial updates on a completed Advertising Device Biennial Certification Form, TC Form 99-206.

(3) An incomplete or inaccurate submission shall not be considered an update submittal.

(4) The update submittal for a nonconforming advertising device shall be submitted electronically to the department pursuant to the following table:

Dept. of Highways' District #	Submittal Year	Submittal Period*
1 & 7	Odd	January 1- April 30th
2 & 4	Even	January 1- April 30th
3 & 9	Odd	May 1st- August 31st
6 & 8	Even	May 1st- August 31st
5 & 11	Odd	September 1st – December 31st
10 & 12	Even	September 1st – December 31st

*A submittal shall be received during the submittal period to be considered.

(5) Failure to submit an update within thirty (30) days of the deadline established in subsection (4) of this section shall subject the owner of the nonconforming static advertising device to a fine of \$250 per permit pursuant to KRS 177.990(2).

(6)(a) A nonconforming advertising device may be sold, leased, or transferred without affecting its status, but its location shall not be changed.

(b) A transfer of ownership for a nonconforming advertising device shall be submitted on a completed Advertising Device Ownership Transfer, TC Form 99-205.

(7) An owner may conduct routine maintenance of a nonconforming advertising device. The following shall be considered routine maintenance:

(a) In kind replacement of material components with a like material component;

(b) Painting of supports and frames;

(c) Changing an advertising message;

(d) The change of existing nonstructural external light fixtures for energy efficiency;

(e) Replacement of nuts, bolts, or nails;

(f) A safety related addition such as a catwalk that does not prolong the life of the advertising device but provides protection for workers; and

(g) Rebuilding a destroyed advertising device.

(8) The following shall be considered non routine maintenance:

(a) Enlargement of the device;

(b) A change in the structural support including material diameters, dimensions, or type that result in increased economic life such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;

(c) The addition of lights, either attached or unattached, to help illuminate the nonconforming static advertising device structure that previously had no lighting for illumination;

(d) The addition of a variable or changeable message capability including a numerical display that is changed by an electronic or mechanical process;

(e) The addition of bracing, guy wires, or other reinforcement;

(f) A change in the location of the structure; or

(g) A change in the direction of the face.

(9) Non-routine maintenance on a nonconforming advertising device shall constitute a violation of this administrative regulation, and action shall be taken pursuant to Section 9 of this administrative regulation.

Section 5. On-premise Static Advertising Devices. (1) An on-premise static advertising device shall only advertise or promote the activities or products offered on the property where the advertising device is located.

(2) An on-premise static advertising device shall be erected:

(a) On the property where the business is located and inside

the activity boundary line; or

(b) On the property where the business is located and no further than 400 feet from the activity boundary line.

(3) An on-premise static advertising device placed within fifty (50) feet of the activity boundary line shall not exceed the maximum size established in KRS 177.863(3)(a). An entrance or exit shall be considered within the activity boundary line.

(4) An on-premise static advertising device that complies with this administrative regulation shall only be erected:

(a)1. Within 660 feet of the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway both in and outside of an urban area; or

2. Outside of an urban area and beyond 660 feet of the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway; and

(b) If the device complies with this administrative regulation, and county or city zoning ordinances as established in KRS 177.860(4).

(5) If further than fifty (50) feet outside the activity boundary line, an on-premise static advertising device shall not exceed:

(a) Twenty (20) feet in length, width, or height; and

(b) 150 square feet in area, including border and trim and excluding supports.

(6) No more than one (1) on-premise static advertising device or one (1) on-premise electronic advertising device shall be located at a distance greater than fifty (50) feet outside the activity boundary line.

(7) If taking measurements for the placement of an on-premise static advertising device for an industrial park, the service road shall be considered within the activity boundary line for the industrial park.

(8) An on-premise static advertising device erected to advertise one (1) of the businesses in a shopping center, mall, or other combined business location shall not be located more than fifty (50) feet outside the activity boundary line of the business being advertised.

(9) If taking measurements for the placement of an on-premise static advertising device for a shopping center, mall, or other combined business location, the combined parking area shall be considered within the activity boundary line.

(10) An on-premise static advertising device erected for a shopping center, mall, or other combined business location shall either:

(a) Identify a business or businesses conducted at the location; or

(b) Include a display area used to advertise on-premise activities.

(11) An on-premise advertising device shall not:

(a) Be of such intensity as to cause glare or impair the vision of a driver;

(b) Move or have moving or animated parts;

(c) Be erected or maintained on a tree;

(d) Be painted or drawn on rocks or another natural feature; or

(e) Be erected upon or overhanging the right-of-way.

(12) An on-premise advertising device shall not affect the spacing requirements of an off-premise device as established in KRS 177.863(2)(d).

(13) Extensions of a facing up to fifteen (15) percent shall be allowed:

(a) Within fifty (50) feet of the activity boundary line but shall not exceed the maximum size of the facing of the device as established in KRS 177.863(3)(a); or

(b) Outside of fifty (50) feet of the activity boundary line but shall not exceed the maximum size of an advertising device as established in subsection (4)(b) of this section.

(14) An on-premise advertising device shall be in compliance with the provisions of this administrative regulation but shall not require a permit.

Section 6. Scenic Highways and Byways. (1) After the designation of a scenic highway by the Transportation Cabinet, additional off-premise static advertising devices shall not be erected, allowed, or permitted that are visible from the scenic

highway.

(2) The sponsor of a scenic byway application may petition the Transportation Cabinet to impose the same administrative regulations for static advertising devices located on scenic byways as those located on scenic highways.

(3) Only routine maintenance shall be performed on an off-premise static advertising device legally in existence on the date of the scenic highway designation.

Section 7. Permits, Renewals, and Transfers. (1) The requirements of this section shall apply to an off-premise static advertising device on an interstate, parkway, national highway system, or federal-aid primary highway.

(2) With the exception of a nonconforming static advertising device, a permit shall be required from the department for a static advertising device located in a protected area.

(3) The initial permit shall be valid until the expiration of the applicable renewal period. If the renewal period falls within six (6) months of the initial permit issuance, the initial permit shall be good until the next renewal period.

(4) An application for a static advertising device permit shall be made on a completed Application for Off-Premise Advertising Device, TC Form 99-31.

(5) The issuance of an advertising device permit shall be determined based on the order in which a completed application is made to the department.

(6) A permittee shall submit biennial renewals. A renewal shall be made on a completed Advertising Device Biennial Certification Form, TC Form 99-206. An incomplete or inaccurate submission shall not be considered.

(7)(a) If submitting a biennial renewal, the permittee shall certify that the off-premise static advertising device meets the permit requirements of this administrative regulation.

(b) If the static advertising device no longer meets the permit requirements of this administrative regulation, the permittee may request a conditional renewal to allow the permittee to become compliant with the permit requirements.

(c) If the permittee fails to become compliant within thirty (30) days, the permit shall not be renewed.

(8) A renewal submittal for a static advertising device shall be submitted electronically to the department pursuant to the following schedule:

Dept. of Highways' District #	Submittal Year	Submittal Period*
1 & 7	Odd	January 1- April 30th
2 & 4	Even	January 1- April 30th
3 & 9	Odd	May 1st- August 31st
6 & 8	Even	May 1st- August 31st
5 & 11	Odd	September 1st – December 31st
10 & 12	Even	September 1st – December 31st

*A submittal shall be received during the submittal period to be considered.

(9) Failure to submit an update within thirty (30) days of the deadline established in subsection (8) of this section shall subject the owner of the nonconforming static advertising device to a fine of \$250 per permit pursuant to KRS 177.990(2).

(10) A static advertising device may be sold, leased, or otherwise transferred without affecting its status, but its location shall not be changed. A transfer of ownership for a static advertising device shall be submitted on a completed Advertising Device Ownership Transfer, TC Form 99-205.

(11) An application amendment for substantial change to an approved static advertising device permit shall be submitted and approved by the department prior to work being performed. Substantial change to an advertising device shall include:

(a) Enlargement of the device;

(b) Replacement, rebuilding, or re-erection of a device that has not been destroyed;

(c) A change in the structural support including material diameters, dimensions, or type that would result in increased economic life such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;

(d) The addition of lights, either attached or unattached, to help illuminate the static advertising device structure that previously had no lighting for illumination. The addition of lights may include a numerical display that is changed by an electronic or mechanical process that was not included in the original permit;

(e) The addition of bracing, guy wires, or other reinforcement;

(f) A change in the location of the structure; or

(g) A change in the direction of the face.

(12) The permit for an off-premise static advertising device that has not been constructed prior to the renewal date shall be cancelled.

Section 8. Notice of Violations; Appeals. (1) The department shall notify the owner of the static advertising device by certified letter that the static advertising device is in violation of KRS Chapter 177 or this administrative regulation.

(2)(a) An owner aggrieved by the findings of the department may request an administrative hearing pursuant to KRS Chapter 13B. The request shall be in writing and within twenty (20) days of the certified letter.

(b) A request for a hearing shall thoroughly detail the grounds upon which the hearing is requested.

(c) The hearing request shall be addressed to the Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622.

(3) If the owner fails to request an administrative hearing or fails to remedy the violations within thirty (30) days, the department shall proceed to take legal action pursuant to Section 9 of this administrative regulation.

Section 9. Penalties. (1) A static advertising device owner who violates a provision of this administrative regulation shall be assessed a penalty of \$500 per violation pursuant to KRS 177.990(2).

(2) The department shall deny or revoke a permit if the permit application contains false or materially misleading information.

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

(a) "Application for Off-Premise Advertising Device", TC Form 99-31, May 2013;

(b) "Advertising Device Ownership Transfer", TC Form 99-205, December 2013;

(c) "Advertising Device Biennial Certification Form", TC Form 99-206, December 2013; and

(d) "Agreement for Carrying Out National Policy Relative to Control of Outdoor Advertising in Areas Adjacent to the National System of Interstate and Defense Highways and the Federal-Aid Primary System", December 23, 1971.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the cabinet's Web site at <http://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx#Definitions>. (1) "Abandoned" or "discontinued" means that for a period of one (1) year or more that the device has:

(a) Not displayed any advertising matter;

(b) Displayed obsolete advertising matter; or

(c) Needed substantial repairs.

A notice that the device is for sale, rent, or lease shall not be considered advertising matter.

(2) "Activity boundary line" means the delineation on a property of those regularly used buildings, parking lots, storage and process areas which are an integral part of and essential to the primary business activity which takes place on the property. In an industrial park, the service road shall be considered within the activity boundary line for the industrial park as a separate entity.

(3) "Advertising device" or "device" means as defined in KRS 177.830(5).

(4) "Allowed" means legal to exist without a permit from the Department of Highways.

(5) "Billboard" or "off-premise advertising device" means a device that contains a message relating to an activity or product that is foreign to the site on which the device and message are located or an advertising device erected by a company or individual for the purpose of selling advertising messages for profit.

(6) "Centerline of the highway" means a line equidistant from the edges of the median separating the main traveled ways of a divided highway, or the centerline of the main traveled way of a nondivided highway.

(7) "Commercial or industrial activities" means as defined in KRS 177.830(9).

(8) "Commercial or industrial enterprise" means any activity carried on for financial gain except that it shall not include:

(a) Leasing of property for residential purposes;

(b) Agricultural activity or animal husbandry; or

(c) Operation or maintenance of an advertising device.

(9) "Commercially or industrially developed area" means:

(a) Any area within 100 feet (thirty and five-tenths (30.5) meters) of, and including any area where there are located within the protected area at least ten (10) separate commercial or industrial enterprises, not one of the structures from which one (1) of the enterprises is being conducted is located at a distance greater than 1620 feet (493.8 meters) from any other structure from which one (1) of the other enterprises is being conducted; and

(b) 1. Within the area there was a commercial or industrial enterprise in existence on September 21, 1959; or

2. The land use for the area was within an incorporated municipality as the boundaries existed on September 21, 1959.

(10) "Commercial or industrial zone" means as defined in KRS 177.830(7).

(11) "Comprehensively zoned" means, as it is applied to FAP highways only, that each parcel of land under the jurisdiction of the zoning authority has been placed in some zoning classification.

(12) "Department" means the Department of Highways within the Kentucky Transportation Cabinet.

(13) "Destroyed" means damage to an advertising device in excess of fifty (50) percent of the device:

(a) Including:

1. Supports;

2. Poles;

3. Guys;

4. Struts;

5. Panels;

6. Facing; and

7. Bracing; and

(b) That to be structurally and visually acceptable, requires adding:

1. A guy or strut;

2. New supports or poles by splicing or attaching to an existing support;

3. Separate new auxiliary supports or poles;

4. New or replacement peripheral or integral structural bracing or framing; or

5. New or replacement panels or facing.

(14) "Electronic sign" means an on-premise advertising device whose message may be changed by electrical or electronic process, and includes the device known as the electronically changeable message center for advertising on-premise activities.

(15) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any way bring into being or establish, but it shall not include any of the foregoing activities if performed as an incident to:

(a) The change of an advertising message; or;

(b) Customary maintenance; or

(c) Repair of an advertising device.

(16) "Federal-aid primary highway" or "FAP highway" means as defined in KRS 177.830(3) and 23 U.S.C. 103(b) and as it existed on June 1, 1991.

(17) "Identifiable" means capable of being related to a particular product, service, business or other activity even though there is no written message to aid in establishing the relationship.

(18) "Interstate highway" means as defined in KRS 177.830(2) and 23 U.S.C. 131(t).

(19) "Legible" means capable of:

(a) Being read without visual aid by a person of normal visual acuity; or

(b) Conveying an advertising message to a person of normal visual acuity.

(20) "Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, each direction has its own main traveled way. It does not include such facilities as frontage roads, turning roadways, access ramps, or parking areas.

(21) "National highway system" or "NHS" means the Kentucky highways defined in 23 U.S.C. 103 which for the purpose of outdoor advertising shall exclude the highways which are part of the interstate, parkway, or FAP system of highways.

(22) "Nonbillboard off-premise advertising device" means, as it is applicable to FAP and NHS highways only, an advertising device not located on the property which it is advertising and limited to advertising for a city, church, or civic club which includes any nationally, regionally or locally known religious or nonprofit organization.

(23) "Nonconforming advertising device" means an off-premise advertising device that was lawfully erected but:

(a) Does not comply with the provisions of a subsequent:

1. State law; or

2. Administrative regulation; or

(b) Later fails to comply with state law or administrative regulation due to changed conditions similar to the following:

1. Zoning change;

2. Highway relocation;

3. Highway reclassification; or

4. Change in a restriction on size, spacing or distance.

(24) "Official sign" means a sign:

(a) Located within the highway right-of-way; and

(b) Installed by or on behalf of:

1. The Department of Highways; or

2. Another public agency having jurisdiction; and

(c) Which meets one (1) of the following purposes:

1. Denotes the location of underground utilities;

2. Is required by a federal, state, or local government to delineate the boundaries of a:

a. Reservation;

b. Park; or

c. District;

3. Identifies the street or highway;

4. Controls traffic; or

5. Is required by state law.

(25) "On-premise advertising device" means an advertising device that contains a message relating to an activity conducted or the sale of goods and services within the boundaries of the property on which the device is located. It does not mean a sign which generates rental income.

(26) "Parkway" means any highway in Kentucky originally constructed as a toll road whether or not a toll for the use of the highway is currently being collected. As it relates to an advertising device, a parkway shall be considered the equivalent of an interstate highway.

(27) "Permitted" means legal to exist only if a permit is issued from the Department of Highways.

(28) "Primary business or activity" means that the sale of one product or a business activity which takes precedence over other product sales or business activities.

(29) "Protected area" means all areas within the boundaries of this Commonwealth which are adjacent to and within 660 feet (210.17 meters) of the state-owned highway right-of-way of the interstate, parkway, NHS, and FAP highways and those areas which are outside urban area boundary lines and beyond 660 feet (210.17 meters) from the right-of-way of an interstate, parkway, NHS, or FAP highway within the Commonwealth. If this highway terminate at a state boundary which is not perpendicular or normal to the center line of the highway, "protected area" also means all of these areas inside the boundaries of the Commonwealth which are adjacent to the edge of the right-of-way of an interstate highway in an adjoining state.

(30) "Public service message" means a message pertaining to an activity or service which is performed for the benefit of the public and not for profit or gain of a particular person, firm or corporation or information such as time or temperature.

(31) "Routine change of message" means, as it relates to a nonconforming advertising device, the message change on an advertising device from one (1) advertised product or activity to another. This includes the lamination or preparation of the existing panels or facings at a plant or factory for the changing of messages when this is the normal operating procedure of a company.

(32) "Routine maintenance" means, as it relates to a nonconforming advertising device:

(a) The maintenance of an advertising device which is limited to replacement of nuts and bolts, nailing, riveting or welding, cleaning and painting, or manipulating to level or plumb the device;

(b) The routine change of message; and

(c) The lamination or preparation of existing panels or facings at a location other than that of the advertising device.

(d) Routine maintenance shall not mean:

1. Adding guys or struts for the stabilization of the device or substantially changing the device; or

2. Replacement or repair of panels, poles, or facings or the addition of new panels, poles, or facings;

(33) "Traveled way" means the portion of a roadway dedicated to the movement of vehicles, exclusive of shoulders.

(34) "Turning roadway" means a connecting roadway for traffic, turning between two (2) intersecting legs of an interchange.

(35) "Unzoned commercial or industrial area" means as defined in KRS 177.830(8).

(36) "Urban area" means as defined in KRS 177.830(10).

(37) "Visible" means capable of being seen, whether or not legible or identifiable without visual aid by a person of normal visual acuity and erected for the purpose of being seen from the traveled way.

Section 2. Signs on Highway Right-of-way. (1) Official signs allowed. An advertising device shall not be erected or maintained within or over the state-owned highway right-of-way except a directional or other official sign or signal erected by or on behalf of the state or other public agency having jurisdiction.

(2) Types of official signs. The following official signs (with size limitations) may be allowed on state-owned highway right-of-way:

(a) Directional and other official device including a sign or device placed by the Department of Highways;

(b) A sign or device, limited in size to two (2) square feet (0.186 square meters), denoting the location of underground utilities; or

(c) A sign, limited in size to 150 square feet (thirteen and nine-tenths (13.9) square meters), erected by a federal, state, or local government to delineate boundaries of a reservation, park, or district.

Section 3. General Conditions Relating to Advertising Devices. The requirements of this section shall apply to an advertising device on an interstate, parkway, NHS, and FAP highway.

(1) FHWA/Kentucky agreement for the control of outdoor advertising.

(a) An advertising device which is visible from an interstate highway, parkway, NHS, or FAP highway shall be governed by the provisions of the agreement between the Kentucky Department of Highways and the Federal Highway Administration which was executed on December 23, 1971.

(b) This agreement is authorized by KRS 177.890 and 23 C.F.R. Part 1.35 and required by 23 C.F.R. Parts 190 and 750.

(2) Advertising device allowed if not visible. An advertising device which is not visible from the main traveled way of the interstate, parkway, NHS, or FAP highway shall be allowed in protected areas.

(3) Visible from more than one (1) highway. If an advertising device is visible from more than one (1) interstate, parkway, NHS, or FAP highway on which control is exercised, the appropriate provisions of this administrative regulation or KRS 177.830 through

177.890 shall apply to each of these highways.

(4) Nonconforming advertising device may exist. An off-premise nonconforming, but otherwise legal, advertising device may continue to exist until just compensation has been paid to the owner, if it is:

- (a) Not destroyed, abandoned or discontinued;
- (b) Subjected to only routine maintenance;
- (c) In conformance with local zoning or sign or building restrictions at the time of the erection; and
- (d) In compliance with the provisions of Section 4(3) of this administrative regulation and KRS 177.863.

(5) Nonroutine maintenance on a nonconforming device. Performance of other than routine maintenance on a nonconforming, but otherwise legal, advertising device shall cause it to lose its legal status and to be classified as illegal.

(6) Vandalized nonconforming device.

(a) The owner of a nonconforming, but otherwise legal, advertising device destroyed by vandalism or other criminal or tortious act may apply to the Department of Highways to reerect the advertising device in kind.

(b) The application for the reerection of the advertising device shall:

1. Be on Transportation Cabinet Form TC 99-31; and

2. Contain the following:

a. Plans and pictures showing the proposed new structure to be as exact a duplicate of the destroyed nonconforming advertising device as possible, including the same number of poles, type of stanchion, supports, material of poles or stanchion, and material of facing;

b. Sufficient proof that the destruction was the result of vandalism or other criminal or tortious act;

c. Ownership of the advertising device;

d. Dimensions of the destroyed advertising device;

e. Material used in erection of the destroyed advertising device;

f. Durability of the new device;

g. Stanchion type; and

h. Current lease from land owner.

(c) The Department of Highways shall not issue a notice to reconstruct until all of these conditions have been met.

(d) The owner of the vandalized nonconforming advertising device shall not reerect the advertising device until a notice to reconstruct has been issued by the Department of Highways.

(7) Required measuring methods.

(a) To establish a protected area, the distance from the edge of a state-owned highway right-of-way shall be measured horizontally along a line at the same elevation and at a right angle to the centerline of the highway for a distance of 660 feet (210.17 meters) inside urban area boundaries and to the horizon outside urban area boundary lines.

(b)1. A V-shaped or back-to-back type billboard advertising device shall not be more than fifteen (15) feet apart at the nearest point between the two (2) sign facings and shall be connected by bracing or a maintenance walkway.

2. The angle formed by the two (2) sign facings shall not be greater than forty-five (45) degrees.

(c) The spacing between advertising devices shall be measured as described in KRS 177.863(2)(c).

(8) Criteria for off-premise advertising devices. The following criteria are applicable to any off-premise advertising device located in a protected area:

(a) An off-premise advertising device shall not exceed the maximum size stated in KRS 177.863(3)(a);

(b) A V-shaped, double-faced, or back-to-back billboard advertising device shall be considered as specified in KRS 177.863(2)(b);

(c)1. A billboard advertising device may contain two (2) messages per direction of travel if the device does not exceed the maximum size stated in KRS 177.863(3)(a);

2. If a billboard advertising device contains two (2) messages on a single facing or panel, each one (1) shall occupy approximately fifty (50) percent of the device;

3. If a billboard advertising device contains two (2) messages

in one (1) direction of travel, each on a separate panel or facing where one (1) panel or facing is placed above or beside the other but where the two (2) separate panels or facings are not touching:

a. There may be a size differential in the panels if dictated by the terrain of the site of the billboard advertising device and if the differential is approved by the Transportation Cabinet prior to the erection of the device; and

b. The combined size of the two (2) faces or panels of the advertising device shall not exceed the maximum size stated in KRS 177.863(3)(a).

(d) An on-premise advertising device shall not affect spacing requirements for billboard advertising.

(e) If lit, a billboard advertising device shall be illuminated by white lights.

(9) Criteria for on-premise advertising devices. The following criteria shall be applicable to an on-premise advertising device located in a protected area:

(a) An on-premise advertising device shall not exceed the maximum size specified in KRS 177.863(3)(a) if it is placed within fifty (50) feet (fifteen and two-tenths (15.2) meters) of the advertised activity boundary line.

(b)1. There shall not be more than one (1) on-premise device located at a distance greater than fifty (50) feet (fifteen and two-tenths (15.2) meters) from the activity boundary line.

2. An individual on-premise business sign erected to advertise one (1) of the businesses in a shopping center, mall, or other combined businesses location shall not be located more than fifty (50) feet (fifteen and two-tenths (15.2) meters) from the activity boundary line of the individual business.

(c) If further than fifty (50) feet from the activity boundary line, an on-premise advertising device shall not exceed:

1. Twenty (20) feet (6.09 meters) in:

a. Length;

b. Width; or

c. Height; or

2. 150 square feet (thirteen and eight-tenths (13.8) square meters) in area:

a. Including border and trim; and

b. Excluding supports.

(d)1. An on-premise advertising device shall not be located more than 400 feet (121.9 meters), measured within the property boundary, from the advertised activity boundary line.

2. If using a corridor to reach the location of the device, the corridor shall be not less than 100 feet (thirty and five-tenths (30.5) meters) in width and shall be contiguous to an integral part of and of the same entitlement as the property on which the advertised activity is located.

3. Any other business activity which is in any manner foreign to the advertised activity shall not be located on or have use of the corridor between the advertised activity and the location of the device.

4. An activity incidental to the primary activity advertised shall not be considered in taking measurements.

5. If taking measurements for the placement of an on-premise industrial park sign as described in paragraph (j) of this subsection, the access road into the industrial park shall be considered an integral part of the property on which the activity is taking place.

6. If taking measurements for the placement of a single on-premise sign advertising a shopping center, mall, or other combined businesses location, the combined parking area shall be considered as within the activity boundary line.

(e) There shall not be requirements for spacing between on-premise advertising devices.

(f) An advertising device other than one (1) listed here shall not be located as to be visible from the main traveled way of an interstate, parkway, NHS, or FAP highway:

1. One (1) indicating the name and address of the owner, lessee or occupant of the property on which the advertising device is located;

2. One (1) showing the name or type of business or profession conducted on the property on which the advertising device is located;

3. Information required or authorized by law to be posted or

displayed on the property;

4. One (1) advertising the sale or leasing of the property upon which the advertising device is located;

5. One (1) setting forth the advertisement of an activity conducted on or the sale of a product or service on the property where the advertising device is located; or

6. A sign with a maximum area of eight (8) square feet (0.743 square meters) noting credit card acceptance or trading stamps.

(g) An on-premise advertising device shall not advertise an activity, service, or business other than that conducted upon the property on which it is located.

(h) An on-premise electronic sign which contains, includes, or is illuminated by a flashing, intermittent, or moving lights shall not be used except to advertise an activity, service, business, or product available on the property on which the sign is located or to present a public service message.

1. The advertising message may contain words, phrases, sentences, symbols, trade-marks, or logos.

2. A single message or segment of a message shall have a display time of at least two (2) seconds including the time needed to move the message onto the sign board, with all segments of the total message to be displayed within ten (10) seconds.

3. A message consisting of one (1) segment may remain on the sign board any amount of time in excess of two (2) seconds.

4. An electronic sign requiring more than four (4) seconds to change from one (1) single message to another shall be turned off during the change interval.

5. A display traveling horizontally across the sign board shall move between sixteen (16) and thirty-two (32) light columns per second.

6. A display may scroll onto the sign board but shall hold for two (2) seconds including the scrolling time.

7. A display shall not include an art animation or graphic that portrays motion, except for movement of a graphic onto or off of the sign board.

(i) A brand or trade name shall not be advertised on an on-premise advertising device if the sale of a product or service with the brand or trade name is incidental to the primary activity, service, or business.

(j) An industrial park type on-premise advertising device which shall be limited in area to 150 square feet (thirteen and eight-tenths (13.8) square meters) may contain the:

1. Name of the industrial park;

2. City or county associated with the industrial park; or

3. Name of the individual business or industry located in the industrial park.

(k) A single on-premise sign erected for a shopping center, mall, or other combined businesses location may:

1. Identify each of the individual businesses conducted at the location; or

2. Include a single display area used to advertise on-premise activities.

Section 4. Specific Requirements for Advertising Devices on Interstate and Parkway Highways. (1) Permit if visible. Except for a nonconforming advertising device, an advertising device which is located in a protected area and which is visible from the main traveled way of an interstate or parkway highway shall have an approved permit from the Transportation Cabinet, Department of Highways to be a legal advertising device. An advertising device closer than fifty (50) feet (fifteen and two-tenths (15.2) meters) to the edge of the main traveled way of any interstate or parkway highway shall not be issued a permit.

(2) Criteria for billboard advertising devices.

(a) 1. A billboard advertising device may be erected or maintained in a protected area of an interstate or parkway highway if:

a. The area is a commercially or industrially developed area as defined in Section 1 of this administrative regulation; and

b. The advertising device complies with the following provisions:

(i) KRS 177.830 through 177.890;

(ii) This administrative regulation; and

(iii) Applicable county or city zoning ordinances.

2. If a business or industry on which the designation as a commercially or industrially developed area was based is terminated or abandoned, leaving less than ten (10) separate enterprises, the billboard advertising device shall be reclassified as nonconforming.

3. If the Department of Highways reclassifies the device as nonconforming, the owner shall be notified.

(b) A billboard advertising device structure designed to be primarily viewed from an interstate or parkway highway shall not be erected within 500 feet (152.4 meters) of any other off-premise advertising device on the same side of the interstate or parkway highway unless separated by a building, natural obstruction or roadway in a manner that only one (1) off-premise advertising device located within the 500 feet (152.4 meters) is visible from the interstate or parkway highway at any one time.

(3) The erection or existence of an advertising device shall not be permitted in a protected area of an interstate or parkway highway if it:

(a) Advertises an activity that is illegal, pursuant to state or federal law;

(b) Is obsolete;

(c) Is not:

1. Clean;

2. Safe; and

3. In good repair;

(d) Is not securely affixed to a substantial structure permanently attached to the ground;

(e) Attempts to:

1. Direct the movement of traffic; or

2. Interfere with, imitate, or resemble an official traffic sign, signal, or traffic control device;

(f) Prevents the driver of a vehicle from having a clear and unobstructed view of:

1. An official sign; or

2. Approaching or merging traffic;

(g) Includes or is illuminated by flashing, intermittent, or moving lights, except for an on-premise device that meets the requirements of Section 3(9)(h) of this administrative regulation;

(h) Uses lighting, unless it is:

1. Effectively shielded to prevent a beam of light from being directed at the main traveled way of a highway; or

2. Of low intensity that will not cause glare or impair the vision of a driver or interfere with the operation of a motor vehicle;

(i) Moves or has animated or moving parts;

(j) Is:

1. Erected or maintained upon a tree;

2. Painted or drawn on rocks or another natural feature;

(k) Exceeds 1,250 square feet (116.1 square meters) in area:

1. Including border and trim; and

2. Excluding supports;

(l) Is erected upon or overhanging the right-of-way of a highway; or

(m) Interferes with an official:

1. Sign;

2. Signal; or

3. Traffic control device.

(4)(a) To measure distances for the identification of a commercially or industrially developed area, two (2) lines shall be drawn perpendicular to the center line of the controlled interstate or parkway highway, extending from each side of the controlled highway.

(b) The first perpendicular line shall be drawn 100 feet from the outer edge of the first-encountered separate establishment which is within the area being considered as a commercially or industrially developed area.

(c) The second perpendicular line shall be drawn 100 feet from the outer edge of the last-encountered separate establishment which is within the area being considered as a commercially or industrially developed area.

(d) The distance between the first-encountered establishment and the last encountered establishment shall not exceed 1620 feet.

(e) Each perpendicular line shall extend for a distance of 660

from each edge of the right-of-way of the controlled highway.

(f) All area within the confines of the lines perpendicular to the center line of the highway shall be considered when establishing a commercially and industrially developed area.

(g) An enterprise or structure on either side of the controlled interstate or parkway highway within the confines of the lines perpendicular to the centerline of the highway may be counted as part of the ten (10) needed.

(h) A pictorial representation of an eligible commercially or industrially developed area is on the Transportation Cabinet document entitled "Measurement of Commercially or Industrially Developed Area".

Section 5. Specific Requirements for Advertising Devices on Federal-aid Primary and National Highway System Highways. (1) Billboard advertising devices on NHS and FAP highways. A billboard advertising device may be permitted in a protected area of an NHS or FAP highway if it is located in an unzoned commercial or industrial area or a commercial or industrial zone and if the device complies with applicable state, county, or city zoning ordinances or administrative regulations.

(a)1. It shall be legal to have a permitted billboard advertising device in an unzoned commercial and industrial area of an NHS or FAP highway if there is a commercial, business, or industrial activity in the area.

2. Upon the termination or abandonment of the business or industry on which the unzoned commercial or industrial area was based, the billboard advertising device shall be reclassified as nonconforming.

3. If the Department of Highways reclassifies the device as nonconforming, the owner shall be notified.

(b) Except for a nonconforming advertising device, a billboard advertising device which is visible from the main traveled way of an NHS or FAP highway and in a protected area shall have an approved permit from the Department of Highways.

(c) An unzoned commercial or industrial area shall not be created when a commercial or industrial activity is located more than 300 feet (ninety-one and four-tenths (91.4) meters) from the right-of-way of the NHS or FAP highway.

(d)1. Minimum spacing between billboard advertising devices in an unzoned commercial or industrial area shall be 300 feet (ninety-one and four-tenths (91.4) meters) unless separated by a building, roadway, or natural obstruction in a manner that only one (1) device located within the required spacing is visible from the highway at any time.

2. The minimum spacing requirement shall be reduced to 100 feet (thirty and four-tenths (30.4) meters) within an incorporated municipality which does not have comprehensive zoning.

(e) Minimum spacing between billboard advertising devices in any comprehensively zoned commercial or industrial area shall be 100 feet (thirty and four-tenths (30.4) meters) unless separated by a building, roadway or natural obstruction in a manner that only one (1) sign located within the required spacing is visible from the highway at any time.

(f) An advertising device which meet the criteria set forth in KRS 177.863(1) shall be prohibited.

(2) Establishing limits of an unzoned commercial or industrial area.

(a) In measuring distances for the determination of an unzoned commercial or industrial area near an NHS or FAP highway, two (2) lines shall be drawn from the activity boundary line perpendicular to the centerline of the main traveled way to encompass the greatest longitudinal distance along the center line of the highway.

(b) Measurements for establishing unzoned commercial or industrial areas shall begin at the outside edge of the activity boundary lines and shall be measured 700 feet (213.4 meters) in each direction.

(3) Nonbillboard off-premise advertising devices on NHS and FAP highways permitted.

(a) The owner of a nonbillboard off-premise advertising device shall apply for a permit in accordance with the procedures set forth in Section 6 of this administrative regulation. A metal tag

corresponding to the permit shall not be issued by the Department of Highways.

(b) A nonbillboard off-premise advertising device shall not be permitted on or over the state-owned right-of-way of a NHS or FAP highway.

(c) More than one (1) nonbillboard off-premise advertising device relating to a particular city, church, or civic organization shall not be erected in each direction of travel on a NHS or FAP highway.

(d) Spacing between two (2) nonbillboard off-premise advertising devices shall be 100 feet (thirty and four-tenths (30.4) meters).

(e) A nonbillboard off-premise advertising device shall not affect the spacing requirements for billboards.

(f) A church or civic club type nonbillboard advertising device which shall be limited in area to eight (8) square feet (0.743 square meters) shall not contain a message other than the following:

1. Name and address of the church or civic club;
2. Location and time of meetings, and a directional arrow; or
3. Special events such as Vacation Bible School, revival, etc.

These temporary messages shall be in lieu of the original or a part of the original message and shall not exceed the maximum of eight (8) square feet (0.743 square meters) in area.

(4) Public service sign criteria. A public service sign may be allowed on school bus shelter if it conforms to the following requirements:

(a) The maximum size for a public service sign shall be thirty-two (32) square feet (2.97 square meters) in area including border and trim.

(b)1. The public service sign shall contain a message of benefit to the public which occupies not less than fifty (50) percent of the area of the sign.

2. The remainder of the sign may identify the donor, sponsor or contributor of the school bus shelter.

3. The sign shall not contain any other message.

(c) Only one (1) public service sign on each school bus shelter shall face in any one (1) direction of travel.

Section 6. Required Permits for Advertising Devices. (1) Permit required.

(a) Except for a nonconforming advertising device, a permit shall be required from the Department of Highways for any off-premise advertising device located in a protected area of an interstate, parkway, NHS, or FAP highway route.

(b) A permit shall be required for each on-premise advertising device on interstate and parkway highway routes.

(c) Compliance with the provisions of this administrative regulation shall be required for an on-premise advertising device on NHS and FAP routes.

(d) By January 1, 1994 each permitted off-premise advertising device shall have a metal tag supplied by the department attached to the device.

(2) Application for an advertising device permit.

(a)1. Application for an advertising device permit shall be made on Transportation Cabinet form TC 99-31 as revised in October 1997. The application form, completed in triplicate, shall be submitted to the jurisdictional highway district office of the proposed advertising device.

2. The issuance of approved advertising device applications as they relate to the required spacing between billboards shall be determined on a "first-come, first-served" basis.

(b) The application for an advertising device permit shall be accompanied by the following:

1. Vicinity map;
2. Applicant's plot plan;
3. Location, milepoint and sign plans for the advertising device;
4. A copy of all applicable local permits;
5. A copy of the executed lease or ownership of the proposed billboard site, if applicable; and

6. If the request is for an on-premise advertising device, the application shall include a detailed description of the exact wording of the message to be conveyed on the device. This information may be furnished either by photograph, drawing, or illustration.

(c) The applicant shall submit three (3) copies of all required documentation.

(3) An approved advertising device application shall be valid for one (1) year. If the device has not been constructed and inspected for compliance in that year, the applicant shall apply for renewal of the approved application prior to the end of the year of validity.

~~Section 7. Illegal or Unpermitted Advertising Devices. (1) Unpermitted advertising devices. The jurisdictional chief district engineer or his representative shall notify the sign and property owner of an unpermitted or illegal advertising device by registered letter that the advertising device is in violation of Kentucky's advertising device laws or administrative regulation under the following conditions:~~

~~(a) The advertising device which is not located on state-owned highway right-of-way has not been issued a permit; or~~

~~(b) The advertising device which is not located on state-owned highway right-of-way for which a permit has been issued is found in violation of state law or this administrative regulation.~~

~~(2) Content of notice.~~

~~(a) 1. If the advertising device appears to be eligible for a permit, the owner shall be given a period of ten (10) days from the date of notification by registered letter, to make application for a permit.~~

~~2. If by the end of the ten (10) days the owner does not submit a completed application to the Department of Highways, the owner shall be sent a new notice allowing him a period of thirty (30) days from the date of the second notice to remove the device.~~

~~(b) If an advertising device previously issued a permit is changed after the device received approval from the Department of Highways, the owner shall be allowed a period of thirty (30) days from the date of notification by registered letter for making the adjustments or corrections necessary to bring the advertising device into compliance with state law or administrative regulation.~~

~~(c) If a permit is not necessary for a particular advertising device but the advertising device is not in compliance with KRS Chapter 177 or this administrative regulation, the owner shall be allowed a period of thirty (30) days from the date of notification by registered letter for making any necessary adjustments or corrections to the advertising device.~~

~~(d) An advertising device which is ineligible for a permit or otherwise in violation of KRS Chapter 177 or this administrative regulation shall be declared to be a public nuisance and the advertising device shall be removed by the permittee or owner within thirty (30) days after written notification that the advertising device is in violation.~~

~~(e) If after the thirty (30) days the noncompliant advertising device remains, the Department of Highways shall notify the owner or permittee of the action which it intends to take to have the noncompliant advertising device removed or otherwise brought into compliance.~~

~~(3) Request for reconsideration. If the permittee or owner disagrees with a notice received from the Department of Highways, within twenty (20) days of receipt of the notice, he may:~~

~~(a) Contact the person who sent the notice to:~~

~~1. Request reconsideration;~~

~~2. Attempt to correct a problem with his advertising device; or~~

~~3. Provide additional information to the Department of Highways.~~

~~(b) File an appeal in accordance with Section 9 of this administrative regulation.~~

~~Section 8. Just Compensation for the Removal of an Advertising Device. (1) Payment of just compensation shall be determined by:~~

~~(a) An appraisal; or~~

~~(b) A value finding;~~

~~(2) A nonconforming advertising device shall not qualify for just compensation if it:~~

~~(a) Is:~~

~~1. Destroyed;~~

~~2. Abandoned; or~~

~~3. Discontinued;~~

~~(b) Receives more than routine maintenance; or~~

~~(c) Does not comply with the provisions of:~~

~~1. Section 4(3) of this administrative regulation; or~~

~~2. KRS 177.863.~~

~~Section 9. Appeal Procedure. (1)(a) A party aggrieved by the action of the Transportation Cabinet pursuant to the provisions of this administrative regulation within twenty (20) days of the date of the notice or action may file a written appeal with the Office of General Counsel in the Transportation Cabinet, 501 High Street, Frankfort, Kentucky 40622.~~

~~(b) The appeal shall set forth the nature of the complaint and the grounds for the appeal.~~

~~(2) The administrative hearing and subsequent procedures shall be conducted pursuant to the provisions of KRS Chapter 13B.~~

~~Section 10. Scenic Byways. (1) On any NHS, FAP, interstate, or parkway highway designated by the Transportation Cabinet as a scenic byway, additional outdoor advertising devices shall not be erected, allowed or permitted after the date of the designation of the highway as scenic.~~

~~(2) The outdoor advertising devices legally in existence at the time of designation of the highway as scenic may continue to have routine maintenance.~~

~~(3) The sponsor of a scenic byway application for a highway which is not an NHS, FAP, interstate, or parkway highway may petition the Transportation Cabinet to impose the outdoor advertising device restrictions set forth in this section.~~

~~(4) The following NHS and FAP highways in Kentucky have been designated as scenic byways:~~

	Milepoints	
	From	To
(a) Cordell Hull Highway in Barren County:		
KY 70 - From I-65 overpass to KY 90.	5.118	5.359
KY 90 - From KY 70 at Cave City via Happy Valley Road to US 31E (Glasgow Bypass).	.000	9.923
US 31E - From KY 90 to US 68.	14.849	14.258
US 31EX - From US 68 to Washington Street around Courthouse Square in Glasgow.	1.386	1.516
US 68 - From US 31E to US 31EX.	11.741	12.577
(b) Old Kentucky Turnpike in Larue County:		
US 31E - From the entrance to the Abraham Lincoln Birthplace National Historic Site via Hodgenville to the Nelson County Line.	7.300	20.725
(c) Old Kentucky Turnpike in Nelson County:		
US 31E - From the Larue County Line to US 62 in Bardstown.	.000	14.205
US 62 - From US 31E to US 150.	14.294	14.653
US 150 - From US 62 to entrance of My Old Kentucky Home State Park.	0.000	-0.240
(d) Shakertown Road in Mercer County:		
US 68 - From 1.2 miles east of Shaker Village to 1.2 miles west of Shaker Village.	15.652	13.252
(e) Duncan Hines Scenic Highway in Warren County:		
KY 101 - From US 31W (south) to Edmonson County Line.	11.641	12.850
US 31W - From Duncan Hines former home to KY 446 overpass.	16.559	17.569
(f) Duncan Hines Scenic Highway in Edmonson County:		
KY 101 - From Warren County Line to KY 259 at Rhoda.	0.000	4.131
KY 259 - From KY 101 at Rhoda to KY 70 (east).	9.242	12.096
KY 70 - From KY 259 (south) to KY 259 (north).	12.388	9.939
KY 259 - From KY 238 at Bee Spring to KY 738.	18.998	17.568
(g) Great River Road in Fulton County:		

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KY 239 - From Hickman County Line to KY 94 in Cayce.	6.379	3.617
KY 94 - From the Tennessee State Line to KY 1099 west of Hickman.	0.000	10.902
KY 94 - From KY 1099 east of Hickman to KY 239 in Cayce.	13.642	22.121
(h) Great River Road in Hickman County:		
KY 239 - From Fulton County Line to KY 123.	0.000	3.753
KY 123 - From KY 239 to Proposed FAP 94 at Hailwell.	10.048	15.788
KY 123 - From Bottery Road in South Columbus to KY 58.	20.882	21.787
(i) Pine Mountain Road in Letcher County:		
US 119 - From KY 15 in Whitesburg to KY 806 near Oven Fork.	17.308	9.155
(j) US 68 Segment 1 in Boyle County:		
US 68 - From US 150 in Perryville to US 150 in Perryville.	7.369	7.475
(k) US 68 Segment 1 in Mercer County:		
US 68 - From US 127 at Mooreland Avenue to Jessamine County Line.	6.752	20.104
(l) US 68 Segment 1 in Jessamine County:		
US 68 - From Mercer County Line to 0.5 miles south of KY 1980.	0.000	10.610
(m) US 68 Segment 2 in Fayette County:		
US 68 - From Swigert Avenue to Bourbon County Line.	10.565	15.767
(n) US 68 Segment 2 in Bourbon County:		
US 27/68 - From Fayette County Line to US 68X in Paris.	0.000	6.765
US 68X - From 10th Street to 8th Street in Paris.	1.366	1.487
US 68X - From Paris Bypass to North Middletown Road in Paris.	2.583	2.772
US 68 - From US 68X to the Nicholas County Line.	2.360	10.814
(o) US 68 Segment 2 in Nicholas County:		
US 68 - From Bourbon County Line to KY 32/36.	0.000	3.717
(p) US 68 Segment 3 in Nicholas County:		
US 68 - From the Licking River Bridge to the Robertson County Line.	11.687	12.211
(q) US 68 Segment 3 in Robertson County:		
US 68 - From Nicholas County Line to the Fleming County Line.	0.000	1.357
(r) US 68 Segment 3 in Fleming County:		
US 68 - From Robertson County Line to the Mason County Line.	0.000	5.423
(s) US 68 Segment 3 in Mason County:		
US 68 - From Fleming County Line to US 62 in Washington.	0.000	11.854
US 62 - From KY 2515 to Ohio State Line.	13.381	18.000
(t) KY 89 (US 421 in Jackson County:		
US 421 - From the junction with KY 89 north to the junction with KY 89 south.	14.261	14.808

Section 11. Identification of NHS and FAP Highways. The following are the FAP highway segments as designated on June 1, 1991 and the current NHS highway segments which are governed by the provisions of this administrative regulation. If in existence, a noncardinal, one (1) way couplet shall also be part of the NHS and FAP system.

	Milepoint	
	From	To
(1) Adair County:		
KY 55 - From Cumberland Parkway in Columbia to the Taylor County Line.	10.059	19.006
KY 80 - From KY 55 (Courthouse Square) via Burkesville RD in Columbia to KY 61 N.	11.775	12.282

KY 61 - From KY 80 in Columbia to Green County Line.	15.248	23.997
(2) Allen County:		
US 231 - From US 31E northwest of Scottsville to Warren County Line.	.000	9.075
US 31E - From Tennessee State Line via Scottsville Bypass to Barren County Line.	.000	19.189
(3) Anderson County:		
US 127 - From Mercer County Line to US 127 Bypass.	.000	2.535
US 127B - From US 127 south of Lawrenceburg to US 127 north of Lawrenceburg.	.000	6.656
US 127 - From US 127 Bypass to Franklin County Line.	8.897	11.120
KY 151 - From US 127 Bypass to Franklin County Line.	.000	4.587
(4) Ballard County:		
US 51 - From Carlisle County Line via 4th Street in Wickliffe to Illinois State Line.	.000	8.297
US 60 - From Green Street in Wickliffe via 4th Street and Lee Street via Barlow and Kevil to McCracken County Line.	.000	16.937
KY 121 - From Carlisle County Line to 4th Street in Wickliffe.	.000	8.609
(5) Barren County:		
KY 70 - From I 65 at Cave City to KY 90.	5.118	5.359
US 68 - From US 31E (South Green Street) to KY 90 at Broadway.	12.577	12.650
KY 90 - From KY 70 at Cave City via Happy Valley Road to US 31E (Glasgow Bypass).	.000	9.923
KY 90 - From US 68 (Broadway) in Glasgow to Metcalfe County Line.	9.923	22.022
US 68 - From US 31E (Glasgow Bypass) via Main Street to US 31EX (Business) (N Race).	11.741	12.577
US 31EX - From Washington Street in Glasgow via South Green Street to US 68 (E Main St).	1.384	1.461
US 31EX - From US 68 (East Main Street) via West Main Street to North Race Street.	1.461	1.516
US 31E - From Allen County Line via Glasgow Bypass to KY 90.	.000	14.849
(6) Bell County:		
US 25E - From Tennessee State Line to Knox County Line.	.000	18.711
US 119 - From US 25E to Harlan County Line.	.000	15.756
KY 3085 - From KY 2014 via Old US 25E to Knox County Line.	.000	2.025
(7) Bourbon County:		
US 27 - From Fayette County Line via Lexington Road and Paris Bypass to Harrison County Line.	.000	15.435
US 68 - From US 27 in Paris via Paris Bypass to Nicholas County Line.	.000	10.814
US 460 - From Scott County Line to Paris Bypass.	.000	7.696
US 68X - From 10th Street via Main Street to 8th Street in Paris.	1.366	1.487
US 68X - From Paris Bypass via Carlisle Road to North Middletown Road in Paris.	2.583	2.772
US 460 - From US 68X (Carlisle Road) via North Middletown Road to the Montgomery County Line.	9.150	21.933
KY 627 - From Clark County Line via 10th Street to US 68X (Main Street).	.000	9.511
US 460 - From US 68X (Main Street) via 8th Street to US 27 (Paris Bypass).	7.696	9.150
(8) Boyd County:		

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US 23 - From Lawrence County Line via Court Street in Catlettsburg, and Greenup Avenue and Winchester Avenue in Ashland to Greenup Co. Line.	.000	21.042
KY 180 - From south limits of I-64 Interchange to US 60.	.627	2.518
US 60 - From KY 180 near Cannonsburg via 13th Street to Winchester Avenue in Ashland.	4.023	12.198
US 23S - From US 60 (Winchester Avenue) via 13th Street Bridge to Ohio State Line.	.000	.591
(9) Boyle County:		
KY 34 - From US 150 (Main Street) in Danville via Lexington Road to Garrard County Line.	12.406	17.770
KY 52 - From US 150 to Garrard County Line.	.000	5.114
US 127 - From Lincoln County Line to US 150 (3rd and Main Street intersection).	.000	5.440
US 127 - From US 127B near KY 2186 to Mercer County Line.	8.083	10.319
US 127B - From US 127 via the Danville Bypass to US 127 near KY 2168.	.000	5.270
US 150 - From Washington County Line to US 68 in Perryville.	.000	4.495
US 68 - From US 150 in Perryville to US 150 in Perryville.	7.369	7.475
US 150 - From US 68 in Perryville to Lincoln County Line.	4.495	18.766
US 127 - From US 150 at Maple Street Intersection via Main St. to US 150 at 3rd Street Intersection.	5.978	5.440
US 150B - From US 127 (Hustonville Road) to US 150 (Standford Road).	.000	2.272
(10) Bracken County:		
KY 9 - From Mason County Line to Pendleton County Line.	.000	19.857
(11) Breathitt County:		
KY 15 - From Perry County Line to Wolfe County Line.	.000	27.505
(12) Breckinridge County:		
KY 259 - From Grayson County Line to KY 79.	.000	7.901
KY 79 - From KY 259 to US 60.	5.294	14.990
KY 3199 - From Hancock County Line to US 60X (Business).	.000	1.260
US 60X - From KY 3199 to US 60 west.	.000	2.500
US 60 - From US 60X (Business) via the Cloverport and Hardinsburg Bypass to the Meade County Line.	3.500	31.788
(13) Bullitt County:		
US 31E - From Spencer County Line via the Harold Bradley Allgood Memorial Highway to the Jefferson County Line.	.000	5.185
(14) Caldwell County:		
US 641 - From Lyon County Line to Crittenden County Line.	.000	4.269
(15) Calloway County:		
KY 121 - From US 641 to Graves County Line.	14.075	24.156
US 641 - From Tennessee State Line via Murray to Marshall County Line.	.000	17.444
(16) Campbell County:		
US 27 - From Pendleton County Line via new bridge to Ohio State Line.	.000	22.622
KY 8 - From the Kenton County Line to the I-471 underpass.	.000	.998
KY 1120 - From Kenton County Line to York Street.	.000	.668
KY 1998 - From US 27 to KY 8.	2.813	5.014

KY 471 - From US 27 to I-471 (Eastbound I-275 Overpasses).	.000	.729
KY 9 - From Pendleton County Line to north limits of I-275 Interchange.	.000	17.978
(17) Carlisle County:		
US 51 - From Hickman County Line to proposed location of the Great River Road.	.000	10.725
US 51 - From a point on US 51 Mainline via the proposed Great River Road to the Ballard County Line.	.000	1.800
US 94 - From Hickman County Line via the proposed Great River Road to proposed US 51.	.000	9.000
KY 121 - From Graves County Line to Ballard County Line.	.000	9.714
(18) Carter County:		
KY 7 - From Elliot County Line to US 60 in Grayson.	.000	10.865
KY 1 - From US 60 to KY 9.	10.646	11.934
KY 9 - From KY 1 and KY 7 to Lewis County Line.	.000	18.262
(19) Casey County:		
US 127 - From Russell County Line to Lincoln County Line.	.000	23.715
(20) Christian County:		
US 41A - From Tennessee State Line to end of north exit ramp of Pennyrile Parkway.	.000	13.611
US 41LP - From KY 107 to northwest urban limits of Hopkinsville at KY 91/1682.	.000	5.100
KY 3493 - From US 41A at a point south of Hopkinsville to KY 107.	.000	1.892
US 41 - From Todd County Line to southbound exit ramp of the Pennyrile Parkway.	.000	10.325
US 41 - From US 68 to US 68 in Hopkinsville.	11.909	12.441
US 68 - From Trigg County Line to Todd County Line.	.000	21.126
KY 1682 - From US 68 to Pennyrile Parkway.	.000	3.904
(21) Clark County:		
KY 627 - From Madison County Line to KY 1958.	.000	6.360
KY 1958 - From KY 627 to north limits of the I-64 interchange.	.000	2.860
KY 627 - From southern limits of I-64 Interchange to Bourbon County Line.	9.154	14.812
(22) Clay County:		
KY 80 - From south limits of interchange ramps of Daniel Boone Parkway to US 421.	7.101	7.537
US 421 - From KY 80 to Jackson County Line.	16.915	32.841
(23) Clinton County:		
KY 90 - From Cumberland County Line to Wayne County Line.	.000	12.816
US 127 - From Tennessee State Line to Russell County Line.	.000	20.967
(24) Crittenden County:		
US 60 - From Livingston County Line to Union County Line.	.000	23.018
US 641 - From Caldwell County Line to US 60.	.000	7.494
(25) Cumberland County:		
KY 90 - From Metcalfe County Line to Clinton County Line.	.000	22.450
KY 61 - From Tennessee State Line to KY 90 West.	.000	13.701
(26) Daviess County:		

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Proposed FAP 10 - From US 60 near Maceo to Indiana State Line.	.000	3.800
US 60 - From Owensboro Beltline to US 60 (Lewisport Road).	.000	2.600
US 60 - From US 60 Bypass West of Owensboro to Hancock County Line.	10.179	27.979
US 60B - From US 60 to US 60 (Lewisport Road).	.000	10.212
US 60S - From KY 54 to Owensboro Beltline.	.000	.500
KY 54 - From US 431 (Frederica Street) east limits of US 60 Bypass Interchange.	.000	2.663
US 431 - From McLean County Line to 2nd Street.	.000	14.670
KY 2245 - From US 431 (Frederica Street) via 5th Street to US 631 (Lewis Street).	.000	.246
US 231 - From US 60 Bypass via Hartford Road, Breckinridge Street, 5th Street, Lewis Street and Ohio River Bridge to Indiana State Line.	11.243	15.721
KY 2235 - From US 60 via Triplet Street to US 60.	.000	.145
KY 1467 - From US 231 (5th Street) via Breckinridge Street and Leitchfield Road to 2nd Street.	.000	.234
(27) Edmonson County:		
KY 101 - From Warren County Line to KY 259 at Rhonda.	.000	4.131
KY 259 - From KY 101 at Rhonda to KY 70 eastbound.	9.242	12.096
KY 70 - From KY 259 southbound to KY 259 northbound.	9.939	12.388
KY 259 - From KY 70 westbound to Grayson County Line.	12.096	22.692
(28) Elliott County:		
KY 7 - From Morgan County Line to Carter County Line.	.000	19.312
(29) Fayette County:		
US 27 - From Jessamine County Line via Nicholasville Road, South Limestone, Euclid Avenue, South Upper, Bolivar, Broadway, and Paris Pike to Bourbon County Line.	.000	15.767
US 25 - From Main Street (US 421) via Newtown Pike to KY 922 at Georgetown Street.	14.632	15.237
KY 4 - The entire length of New Circle Road.	.000	19.283
KY 922 - From US 25 (Georgetown Road) via Newtown Pike to north limits of I-75 Interchange.	.000	3.055
US 60 - From Woodford County Line to I-75	.000	12.805
US 68 - From southeast urban limits of Lexington at Jessamine County Line via Harrodsburg Road to KY 4.	.000	3.110
US 421 - From KY 4 via West Main Street to US 25.	.000	1.798
US 25 - From KY 418 via Richmond Road, East Main Street, and West Main Street to US 421.	8.244	14.632
KY 418 - From US 25 to southeast limits of I-75 Interchange.	.000	2.602
(30) Fleming County:		
KY 32 - From Rowan County Line KY 11 at a point southwest of Flemingsburg.	10.615	28.293
KY 11 - From junction with KY 32 at point southwest of Flemingsburg to Mason County Line.	10.630	17.105
US 68 - From Robertson County Line to Mason County Line.	.000	5.423

(31) Floyd County:		
KY 114 - From Magoffin County Line to KY 1428 in Prestonsburg.	.000	12.430
US 23 - From Pike County Line to Johnson County Line.	.000	21.878
KY 80 - From Knott County Line to US 23.	.000	14.435
KY 1428 - From KY 114 in Prestonsburg to KY 321 in Prestonsburg.	15.605	16.091
KY 321 - From KY 1428 in Prestonsburg to KY 3 south of Auxier.	.000	4.278
KY 3 - From KY 321 south of Auxier to KY 321 near Auxier.	1.060	2.672
KY 321 - From KY 3 to Johnson County Line.	4.278	5.172
(32) Franklin County:		
US 127 - From Anderson County Line via Capital Plaza West Frankfort Connector Wilkerson Boulevard to Owen County Line.	.000	21.507
US 421 - From US 127 (Owenton Road) via Thornhill Bypass to US 460 (Georgetown Road).	3.072	4.523
KY 151 - From Anderson County Line to I-64.	.000	2.222
US 60 - From US 460 at Georgetown Road in Frankfort via Versailles Road to Woodford County Line.	10.716	14.038
US 421 - From US 127 to Henry County Line.	4.523	17.886
US 460 - From US 60 at Versailles Road in Frankfort via Georgetown RD to Scott County Line.	.000	6.114
KY 676 - From US 127 (Lawrenceburg Road) via East-West Connector in Frankfort to US 60 (Versailles Road).	.000	5.287
(33) Fulton County:		
US 51 - From south limits of Purchase Parkway to Hickman County Line.	.000	5.472
KY 239 - From Hickman County Line to KY 94 in Cayce.	6.379	3.617
KY 94 - From the Tennessee State Line to KY 1099 west of Hickman.	0.000	10.902
KY 94 - From KY 1099 east of Hickman to KY 239 in Cayce.	13.642	22.121
KY 1099 - Fulton Bypass from KY 94 west of Hickman to KY 94 east of Hickman.	.000	2.966
(34) Gallatin County:		
KY 35 - From Owen County Line at Sparta to I-71.	.000	2.128
(35) Garrard County:		
US 27 - From Lincoln County Line to Jessamine County Line.	.000	16.510
KY 34 - From Boyle County Line to US 27.	.000	1.610
KY 1295 - From KY 52 to Madison County Line.	.000	6.928
KY 52 - From Boyle County Line to KY 954.	.000	13.476
KY 954 - From KY 52 to Madison County Line.	.000	7.564
(36) Graves County:		
US 45 - From southern interchange of Purchase Parkway to McCracken County Line.	18.950	31.580
KY 80 - From Purchase Parkway via West Broadway to US 45 at 7th Street in Mayfield.	9.638	11.461
KY 58 - From US 45 at 7th Street via East Broadway to Marshall County Line.	5.530	14.881
KY 121 - From Galloway County Line via Murray Road and 5th Street to KY 58 at Broadway.	.000	10.623

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US 45 - From KY 80 at Broadway via North 8th Street to KY 121 at Housman Street.	17.219	17.952
KY 121 - From US 45 (North 8th Street) via Housman Street to Carlisle County Line.	10.623	22.559
(37) Grayson County:		
KY 259 - From Edmonson County Line to US 62 westbound.	.000	12.954
US 62 - From KY 259 southbound to KY 259 northbound.	20.787	21.296
KY 259 - From US 62 Eastbound to Breckinridge County Line.	12.954	21.459
(38) Green County:		
KY 61 - From Adair County Line to US 68.	.000	8.194
US 68 - From KY 61 southbound to West Hodgenville Avenue in Greensburg.	11.954	13.616
KY 61 - From KY 88 north of Greensburg to Larue County Line.	9.796	24.344
(39) Greenup County:		
KY 8 - From Lewis County Line to KY 8 Spur at South Portsmouth.	.000	1.956
US 23 - From Boyd County Line to south end of US Grant Bridge.	.000	28.760
KY 8 - From KY 8 Spur to US 23 at south limits of U.S. Grant Bridge in South Portsmouth.	1.956	3.023
KY 8S - From KY 8 via Carl Perkins Bridge to Ohio State Line.	.000	.610
KY 10 - From Lewis County Line to the second landward pier from river's edge in Ohio.	.000	12.844
(40) Hancock County:		
US 60 - From Daviess County Line to KY 3199 in Hawesville.	.000	10.782
KY 3199 - From US 60 in Hawesville to another junction with US 60.	.000	3.301
US 60 - From KY 3199 to Squirrel Tail Hollow Road.	13.666	14.270
KY 3199 - From another junction with US 60 to the Breckinridge County Line.	3.301	5.558
KY 69 - From US 60 at Hawesville to Indiana State Line.	13.080	13.972
(41) Hardin County:		
US 31WB - From Western Kentucky Parkway to US 31W.	.202	3.704
US 31W - From US 31W Bypass to Meade County Line.	18.818	33.040
US 31W - From Meade County Line to Jefferson County Line.	33.040	37.143
KY 61 - From Larue County Line to US 31W.	.000	5.309
(42) Harlan County:		
US 119 - From Bell County Line along existing and proposed routes to Letcher County Line.	.000	39.182
US 421 - From Virginia State Line to Leslie County Line.	.000	27.632
(43) Harrison County:		
US 27 - From Bourbon County Line to Pendleton County Line.	.000	19.472
(44) Henderson County:		
US 41 - From Pennyrile Parkway to Indiana State Line (north urban limits of Henderson).	13.414	21.193
US 41A - From Dixon Street to the northern most loop of the interchange with US 41.	13.235	17.760
US 60 - From Union County Line to US 41A (Dixon Road).	.000	10.435

KY 425 - From US 60 (Morganfield Road) via Henderson Bypass to end of the northbound ramp junction with the Pennyrile Parkway.	.000	6.201
(45) Henry County:		
KY 55 - From Shelby County Line to KY 22 west in Eminence.	.000	1.408
KY 22 - From KY 55 south to KY 55 north.	7.420	7.522
KY 55 - From KY 22 east to US 421.	1.408	4.490
US 421 - From Franklin County Line to Shelby County Line at Pleasureville.	.000	6.434
US 421 - From Shelby County Line near Pleasureville to Trimble County Line.	6.434	25.144
(46) Hickman County:		
US 51 - From Fulton County Line to Carlisle County Line.	.000	14.451
KY 239 - From Fulton County Line to KY 123.	0.000	3.753
KY 123 - From KY 239 to Proposed FAP 94 at Hailwell.	10.048	15.788
KY 123 - From Bottery Road in South Columbus to KY 58.	20.882	21.787
Proposed FAP 94 - From KY 123 at Hailwell along Cole and Chalk Bluff Roads to KY 123 at South Columbus.	.000	6.000
KY 58 - From KY 123 to KY 80 at Columbus.	0.573	0.761
KY 80 - From KY 58 to KY 123.	0.000	1.526
KY 123 - From KY 80 to Carlisle County Line.	21.787	22.958
(47) Hopkins County:		
KY 281 - From east limits of interchange ramps of Pennyrile Parkway to US 41.	.000	.712
US 41A - From US 41 and KY 281 to Webster County Line.	.000	13.278
(48) Jackson County:		
KY 30 - From Laurel County Line to Owsley County Line.	.000	20.919
US 421 - From Clay County Line to Rockcastle County Line.	.000	29.585
(49) Jefferson County:		
US 31W - From Hardin County Line via Dixie Highway, Bernheim Lane, 22nd Street, Dumesnil Street and 21st Street to US 31 east at Main and 2nd Streets.	.000	22.135
US 150 - From Main Street via 21st Street and 22nd Street to I-64.	.000	.741
US 150T - From 22nd Street to 21st Street.	.000	.089
US 31 - From US 31E (Main Street) via George Rogers Clark Bridge to 0.02 mile north of 4th Street in Jeffersonville, Indiana.	.000	1.122
US 31E - From Bullitt County Line to US 31W at Main and 2nd Streets.	.000	17.987
US 42 - From Baxter Avenue to US 60.	.000	.805
US 42 - From I-264 to KY 841.	5.779	8.951
KY 841 - From US 31W at Dixie Highway via Gene Snyder Freeway to I-65.	.000	10.250
KY 841 - From I-71 ramps to US 42.	34.758	37.006
KY 1934 - From KY 1230 (Cane Run Road) to I-264.	.000	7.593
US 60 - From US 42 to Story Avenue.	.000	.123
(50) Jessamine County:		
US 27 - From the Garrard County Line to Fayette County Line.	.000	15.070
US 68 - From Mercer County Line to Fayette County Line.	.000	12.060
(51) Johnson County:		
US 23 - From Floyd County Line to Lawrence County Line.	.000	18.386

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US 460 - From Magoffin County Line to US 23 near Paintsville.	.000	7.809
KY 321 - From Floyd County Line to US 23 north of Paintsville.	.000	9.562
KY 40 - From US 460 to KY 321.	8.741	9.293
(52) Kenton County:		
KY 8 - From 4th Street to the Campbell County Line.	6.434	7.662
KY 1120 - From I-75 to Campbell County Line.	.000	1.212
(53) Knott County:		
KY 15 - From Letcher County Line to Perry County Line.	.000	9.380
KY 80 - From Perry County Line to Floyd County Line.	.000	20.093
(54) Knox County:		
US 25E - From Bell County Line to Laurel County Line.	.000	26.571
KY 90 - From Whitley County Line to 1.621 miles south of US 25E at KY 3041 (Proposed).	.000	2.100
KY 3041 - From 1.621 miles south of US 25E to US 25E.	.000	1.621
KY 3085 - From Bell County Line via Old US 25E to junction with US 25E.	.000	2.140
(55) Larue County:		
KY 61 - From Green County Line via Hodgenville Bypass to Hardin County Line.	.000	13.603
US 31E - From KY 61 south via Hodgenville to Nelson County Line.	6.900	20.725
(56) Laurel County:		
US 25E - From Knox County Line in Corbin to west limits of I-75 ramps.	.000	2.024
US 25 - From Daniel Boone Parkway in London to KY 490.	13.612	16.315
KY 490 - From US 25 to KY 30 at East Bernstadt.	.000	.877
KY 30 - From KY 490 to Jackson County Line.	1.404	9.806
KY 80 - From Pulaski County Line to the Daniel Boone Parkway and US 25 near London.	.000	11.083
KY 192 - From west ramps of I-75 to the Daniel Boone Parkway east of London.	18.190	22.041
(57) Lawrence County:		
US 23 - From Johnson County Line to Boyd County Line.	.000	28.947
KY 645 - From US 23 to Martin County Line.	.000	5.205
(58) Lee County:		
KY 11 - From Owsley County Line via Beattyville to Wolfe County Line.	.000	14.845
(59) Leslie County:		
US 421 - From Harlan County Line via Main Street in Hyden to KY 118 (Hyden Spur).	.000	22.613
KY 118 - From US 421 in Hyden via Hyden Spur to Daniel Boone Parkway.	.000	3.524
(60) Letcher County:		
KY 15 - From US 119 at Whitesburg to KY 7 North at Isom.	.000	9.230
KY 7 - From KY 15 to KY 15.	13.497	14.157
KY 15 - From KY 7 South in Isom to Knott County Line.	9.230	10.675
US 23 - From Virginia State Line along existing and proposed alignment to Pike County Line.	.000	7.070
US 119 - From Harlan County Line to proposed US 23 near Virginia State Line.	.000	27.798
(61) Lewis County:		

KY 9 - From Carter County Line to Mason County Line.	.000	31.218
KY 8C - From KY 10 to KY 8 south of Quincy.	.000	.127
KY 8 - From KY 8C south of Quincy to Greenup County Line.	28.575	36.910
KY 10 - From KY 9 Greenup County Line.	6.788	19.834
(62) Lincoln County:		
US 27 - From Pulaski County Line via Stanford to Garrard County Line.	.000	21.982
US 127 - From Casey County Line via Hustonville to Boyle County Line.	.000	10.847
US 150 - From Boyle County Line to US 150 Bypass.	.000	4.347
US 150B - From US 150 to US 150.	.000	3.522
US 150 - From US 150/US 150 Bypass near Preacherville Road to Rockcastle County Line.	8.705	19.665
(63) Livingston County:		
US 60 - From McCracken County Line via Smithland, Burna, and Salem to Crittenden County Line.	.000	29.059
US 62 - From Marshall County Line via Lake City to Lyon County Line.	.000	2.854
(64) Logan County:		
US 79 - From Todd County Line via Clarksville Road and 9th Street to US 431 North.	.000	12.135
US 68 - From Todd County Line via Hopkinsville Road, 4th Street and Franklin Street to Warren County Line.	.000	26.567
US 431 - From Tennessee State Line to Muhlenberg County Line.	.000	31.898
US 68X - From US 68 west of Auburn via Old US 68 to US 60 east of Auburn.	.000	3.035
KY 3172 - From KY 73 via Old US 68 to Warren County Line.	.000	2.515
(65) Lyon County:		
US 62 - From Livingston County Line to US 641 at Fairview.	.000	10.465
US 641 - From US 62 at Fairview to Caldwell County Line.	.000	5.715
(66) McCracken County:		
US 45 - From Graves County Line via Lone Oak Road and Jackson Street to US 60 East (Jackson Street).	.000	10.820
US 60 - From Ballard County Line via Hinkleville Road and Park Avenue to US 45 (28th Street) at Laclede.	.000	13.544
US 60 - From US 45 (28th Street) via Jackson Street, 21st Street, Beltline Highway, and Division Street to the Livingston County Line.	13.544	20.028
US 62 - From US 60 to US 68.	12.881	15.513
US 68 - From US 62 to Marshall County Line.	.000	2.677
(67) McCreary County:		
US 27 - From Tennessee State Line to Pulaski County Line.	.000	22.252
KY 90 - From US 27 to Whitley County Line.	.000	11.920
(68) McLean County:		
US 431 - From Muhlenberg County Line to Daviess County Line.	.000	11.573
(69) Madison County:		
KY 1295 - From Garrard County Line to KY 52.	.000	4.529
KY 52 - From KY 1295 via Lancaster Avenue to KY 876.	5.444	10.910
KY 954 - From Garrard County Line to KY 21.	.000	.139

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KY 21 - From KY 954 via Lancaster Road and Chestnut Street in Berea to US 25 at Mt. Vernon Road.	6.176	9.115
US 25 - From KY 21 West via Chestnut Street in Berea to KY 21 East.	2.863	3.810
KY 21 - From US 25 at Estill Street via Prospect Street and Big Hill Road in Berea to US 421.	9.115	14.196
KY 876 - From west limits of I-75 interchange in Richmond to KY 52 (Irvine Road).	7.097	10.755
US 25 - From US 421 via Big Hill Avenue to KY 876.	11.960	15.500
US 421 - From US 25 to Rockcastle County Line.	.000	13.031
US 421S - From KY 52 (Irvine Road) to north urban limits of Richmond at US 25.	.000	3.900
US 25 - From proposed Richmond Bypass to northwest limits of I-75 interchange at Richmond.	19.188	20.158
KY 627 - From US 25 west of I-75 to Clark County Line.	.000	6.118
(70) Magoffin County:		
KY 114 - From US 460 to Floyd County Line.	.000	5.026
US 460 - From Morgan County Line to Johnson County Line.	.000	20.426
(71) Marion County:		
US 68 - From Taylor County Line to KY 55 (Walnut St.).	.000	10.690
KY 55 - From US 68 (Main Street) via Walnut Street to KY 49 (St. Marys Road).	.000	.389
KY 49 - From KY 55 (St. Marys Road) via Walnut Street to KY 49 (Proctor Knott Avenue).	17.815	17.968
KY 55 - From KY 55 (Proctor Knott Avenue) via Walnut and Spalding Avenue to Washington County Line.	.389	4.669
(72) Marshall County:		
KY 58 - From Graves County Line to KY 80.	.000	2.156
KY 80 - From KY 58 to US 68.	.000	16.926
US 68 - From McCracken County Line to Trigg County Line.	.000	28.085
US 641 - From Calloway County Line to US 62.	.000	19.422
US 62 - From I-24 to Livingston County Line.	8.805	12.081
US 641S - From US 641 to Purchase Parkway.	.000	3.519
KY 348 - From Purchase Parkway to US 641.	7.448	8.325
(73) Martin County:		
KY 645 - From KY 40 at a point west of Inez Bypass to KY 3 northbound south of Inez.	4.682	6.605
KY 3 - From KY 645 westbound via Inez Bypass to KY 645 eastbound.	9.709	10.019
KY 645 - From KY 3 southbound via Inez Bypass to KY 40 southeast of Inez.	6.605	7.632
KY 40 - From KY 645 southeast of Inez to West Virginia State Line.	11.900	20.280
KY 645 - From Lawrence County Line to KY 40 at a point west of Inez.	.000	4.682
(74) Mason County:		
KY 11 - From Fleming County Line to KY 9.	.000	8.452
US 68 - From Fleming County Line to US 62 in Washington.	.000	11.854

US 62 - From US 68 in Washington via Lexington Road, Forest Avenue, and Aberdeen Bridge to Ohio State Line.	12.672	18.000
KY 9 - From Lewis County Line to Bracken County Line.	.000	19.554
KY 546S - From KY 9 to Ohio State Line via proposed New Bridge.	.000	4.600
(75) Meade County:		
US 31W - From Hardin County Line to Hardin County Line.	.000	3.827
US 60 - From Breckinridge County Line to US 31W.	.000	15.644
KY 144 - From US 60 to KY 448 near Buck Grove.	25.390	28.665
KY 448 - From KY 144 to KY 1051 (Brandenburg Bypass).	.000	4.392
KY 1051 - From KY 448 via Brandenburg Bypass to KY 79.	.000	2.218
KY 79 - From KY 1051 via Brandenburg Bypass to Indiana State Line.	8.237	9.912
(76) Menifee County:		
US 460 - From Montgomery County Line to Morgan County Line.	.000	19.750
(77) Mercer County:		
US 127 - From Boyle County Line via Danville Road to US 68.	.000	4.402
US 68 - From US 127 at Mooreland Avenue to Jessamine County Line.	6.752	20.104
US 127 - From US 68 to Anderson County Line.	4.402	17.150
(78) Metcalfe County:		
KY 90 - From Barren County Line to Cumberland County Line.	.000	11.719
(79) Montgomery County:		
US 460 - From Bourbon County Line to KY 686 (Mount Sterling Bypass).	.000	8.281
KY 686 - From US 460 (Maysville Road) via Mount Sterling Bypass to US 460 (Frenchburg Road) at south urban limits of Mount Sterling.	.000	3.460
US 460 - From south urban limits of Mount Sterling to Menifee County Line.	10.702	22.151
(80) Morgan County:		
KY 7 - From US 460 in West Liberty to Elliot County Line.	.000	11.683
KY 203 - From Wolfe County Line to US 460.	.000	3.761
US 460 - From Menifee County Line via West Liberty to Magoffin County Line.	.000	28.634
(81) Muhlenberg County:		
US 431 - From Logan County Line to McLean County Line.	.000	27.779
(82) Nelson County:		
US 31E - From Larue County Line via New Haven Road, Cathedral Street, and Stephen Foster Avenue to Spencer County Line.	.000	27.588
US 62 - From US 31E to US 150.	14.294	14.653
US 150 - From US 62 to Washington County Line.	.000	7.682
(83) Nicholas County:		
US 68 - From Bourbon County Line to Robertson County Line.	.000	12.211
(84) Owen County:		
US 127 - From Franklin County Line to KY 35 at Bromley.	.000	24.687
KY 35 - From US 127 to Gallatin County Line.	.000	4.132
(85) Owsley County:		
KY 30 - From Jackson County Line to KY 11-North.	.000	11.206

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KY 11 - From KY 30 to Lee County Line.	14.227	17.307
(86) Pendleton County:		
US 27 - From Harrison County Line to Campbell County Line.	.000	19.422
KY 9 - From Bracken County Line to Campbell County Line.	.000	4.339
(87) Perry County:		
KY 15 - From Knott County Line at Vicco to Breathitt County Line.	.000	25.179
KY 80 - From KY 15 to Knott County Line.	7.910	15.862
(88) Pike County:		
US 23 - From Letcher County Line along proposed and existing alignments to Floyd County Line.	.000	35.123
US 119 - From US 23 north of Pikeville to West Virginia State Line.	.000	29.748
US 460 - From US 23 north of Shelbiana to Virginia State Line.	.000	24.865
(89) Powell County:		
KY 11 - From Wolfe County Line to Mountain Parkway.	.000	3.504
(90) Pulaski County:		
US 27 - From McCreary County Line to Lincoln County Line.	.000	30.693
KY 80B - From US 27 to KY 80.	.000	2.315
KY 80 - From KY 80 Bypass to Laurel County Line.	21.636	40.393
KY 90 - From Wayne County Line to US 27.	.000	4.169
KY 461 - From KY 80 to Rockcastle County Line.	.000	8.441
(91) Robertson County:		
US 68 - From Nicholas County Line to Fleming County Line.	.000	1.357
(92) Rockcastle County:		
US 150 - From Lincoln County Line to US 25 in Mount Vernon.	.000	10.511
US 25 - From I-75 to US 150.	11.764	13.882
US 421 - From Jackson County Line to Madison County Line.	.000	.601
KY 461 - From Pulaski County Line to US 25.	.000	9.404
US 25 - From KY 461 to I-75.	15.018	15.678
(93) Rowan County:		
KY 32 - From Fleming County Line to south limits of I-64 interchange.	.000	5.784
(94) Russell County:		
US 127 - From Clinton County Line to Casey County Line.	.000	26.998
(95) Scott County:		
US 460 - From Franklin County Line to proposed Georgetown Bypass near Great Crossings.	.000	7.100
Proposed Georgetown Bypass - From US 460 Mainline near Great Crossings to US 25.	.000	3.400
US 460B - From US 25 via US 460 (Georgetown Bypass) to US 62/US 460.	.000	2.891
US 460 - From US 62/US 460B to Bourbon County Line.	8.583	15.421
(96) Shelby County:		
KY 55 - From I-64 via Taylorsville Road to US 60	6.246	7.898
KY 55 - From KY 43/KY 2268 to Henry County Line.	9.131	17.850
US 60 - From KY 55 South (Taylorsville Road) via Midland Trail and Main Street to KY 55 North (Boone Station Road).	8.589	11.398
KY 2268 - From south end of Clear Creek Bridge via 7th Street and Pleasureville Road to KY 55.	0.000	1.308

KY 53 - From I-64 to US 60 (Frankfort Road) via Mt Eden Road.	6.188	7.978
US 421 - From Henry County Line to Henry County Line.	.000	.661
(97) Simpson County:		
US 31W - From south limits of I-65 Interchange to KY 100.	2.300	6.252
KY 100 - From US 31W Mainline to the I-65 ramps east of I-65.	9.675	12.875
(98) Spencer County:		
US 31E - From Nelson County Line to Bullitt County Line.	.000	2.433
(99) Taylor County:		
KY 55 - From Adair County Line to US 68 (Broadway).	.000	10.293
US 68 - From KY 55 via Broadway to Marion County Line.	4.939	13.600
(100) Todd County:		
US 41 - From Tennessee State Line to Christian County Line.	.000	12.458
US 79 - From Tennessee State Line to Logan County Line.	.000	10.606
US 68 - From Christian County Line to Logan County Line.	.000	14.060
(101) Trigg County:		
US 68 - From Marshall County Line to Christian County Line.	.000	28.115
US 68X - From US 68 west of Cadiz to US 68 east of Cadiz.	0.000	4.519
KY 3468 - From US 68 east of Cadiz via Old US 68 to US 68 west of I-24.	0.000	2.840
(102) Trimble County:		
US 421 - From Henry County Line to US 42 South.	.000	6.704
US 42 - From US 421 South in Bedford to US 421 North in Bedford.	8.078	8.249
US 421 - From US 42 North to Indiana State Line.	6.704	19.287
(103) Union County:		
KY 56 - From Illinois State Line to proposed Morganfield Bypass.	.000	11.600
KY 56 - From existing US 56 via proposed Bypass to US 60.	.000	1.400
US 60 - From Crittenden County Line to proposed Morganfield Bypass.	.000	15.500
US 60 - From existing US 60 via proposed Bypass to US 60 east of Morganfield.	.000	2.900
US 60 - From proposed Bypass east of Morganfield to Henderson County Line.	18.100	26.069
KY 109 - From Webster County Line to US 60.	.000	1.536
(104) Warren County:		
KY 101 - From I-65 to US 31W.	7.861	11.641
US 31W - From KY 101 south to KY 101 north.	27.869	28.557
KY 101 - From US 31W to Edmonson County Line.	11.641	12.850
US 68 - From Logan County Line to US 31W.	.000	13.060
US 31W - From US 68 to KY 446 Overpass.	14.670	17.569
KY 446 - From US 31W to I-65.	.000	1.090
KY 880 - From KY 185 to US 68.	.000	5.128
KY 185 - From KY 880 to US 68.	.000	.292
US 231 - From Allen County Line to I-65.	.000	9.106
KY 3172 - From Logan County Line via Old US 68 to KY 240.	.000	0.300
(105) Washington County:		
KY 55 - From Marion County Line to US 150.	.000	4.551

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KY 555 - From US 150 to north end of Bluegrass Parkway Interchange.	.000	14.738
US 150 - From Nelson County Line to Boyle County Line.	.000	21.359
(106) Wayne County:		
KY 90 - From Clinton County Line to Pulaski County Line.	.000	25.235
(107) Webster County:		
US 41A - From Hopkins County Line to KY 670.	.000	1.324
KY 670 - From US 41A to KY 109.	.000	2.712
KY 109 - From KY 670 to Union County Line.	2.876	14.664
(108) Whitley County:		
KY 90 - From McCreary County Line to US 25W.	.000	8.328
US 25W - From KY 90 to east limits of I-75 ramps.	22.183	29.677
KY 90 - From US 25W along proposed alignment to Knox County Line.	.000	2.000
(109) Wolfe County:		
KY 15 - From Breathitt County Line to KY 191.	.000	9.515
KY 15S - From KY 15 to westbound land of Mountain Parkway.	.000	1.054
KY 11 - From Lee County Line to Powell County Line.	.000	5.317
KY 191 - From KY 15 Spur to KY 203.	.000	10.342
KY 203 - From KY 191 to Morgan County Line.	.000	1.323
(110) Woodford County:		
US 60 - From Franklin County Line to Fayette County Line.	.000	13.039

Section 12. No Encroachment Permits for Vegetation Control. An encroachment permit shall not be issued pursuant to the provisions of 603 KAR 5:150 for the clearing or trimming of vegetation on state-owned right-of-way which is in front of an outdoor advertising device.

Section 13. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "The FHWA/Kentucky Agreement for the Control of Outdoor Advertising" between the Kentucky Department of Highways and the Federal Highway Administration, executed December 23, 1974; and

(b) "Application for an Advertising Device Permit," Form TC 99-31, October 1997 edition;

(c) "Measurement of Commercially or Industrially Developed Area," a Transportation Cabinet document effective March 1997.

(2) Material incorporated by reference as a part of this administrative regulation may be viewed, copied, or obtained from the Transportation Cabinet, Permits Branch, 11th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4105. The business hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.]

NANCY ALBRIGHT, Deputy State Highway Engineer

MICHAEL W. HANCOCK, P.E., Secretary

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: April 13, 2015

FILED WITH LRC: April 13, 2015 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2015 at 9:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C117, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be

in writing. 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 wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business June 1, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the erection and maintenance of static advertising devices.

(b) The necessity of this administrative regulation: This regulation is necessary to inform the public of the permit requirements for static advertising devices.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 177.860 requires the cabinet to promulgate administrative regulations to set reasonable standards for advertising devices. 23 U.S.C. 131 ("The Highway Beautification Act") requires the state to maintain effective control over outdoor advertising devices or risk losing its apportionment of federal aid highway funds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will clarify and update the procedures involved in the permitting, and maintenance of static advertising devices.

(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: Routine maintenance has been redefined to allow better maintenance of advertising devices by owners. The proposed administrative regulation allows a device owner to maintain non-conforming devices as long as they are substantially the same, and replace parts where it is an in-kind replacement. The allowable areas on interstates and parkways for advertising devices are now "Kerr areas" in conformance with federal law and the requirement for ten (10) businesses has been removed. The owner of an off-premise advertising device will be required to provide biennial updates and renewals. Owners will furnish current photographs of the front and back of devices and note any changes since the last update and renewal. This administrative regulation also updates the forms involved in the permitting process.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the permit requirements for static billboard devices and to bring them into conformity with 23 U.S.C. 131.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment prescribes standards that pertain to the objectives set forth in KRS 177.850.

(d) How the amendment will assist in the effective administration of the statutes: The amendment updates the permit requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects persons wishing to erect static billboards.

(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: Persons wishing to erect new static billboards will have to file a permit application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no fees involved with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These requirements insure conformity in the erection of static billboard devices.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: There are no known costs associated with the amendments to this administrative regulation.

(a) Initially: None

(b) On a continuing basis: None

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established by this regulation either directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not applied. All persons wishing to apply for a static advertising permit are required to apply to the department.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet's Department of Highways, Division of Maintenance.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 177.860 and 23 U.S.C. 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. There will not be any effect on the expenditures of a state or local agency.

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

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

(c) How much will it cost to administer this program for the first year? No funding increase to implement the administrative regulation will be required.

(d) How much will it cost to administer this program for subsequent years? No subsequent administrative costs are anticipated.

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 containing the federal mandate. 23 U.S.C. 131, 23 C.F.R. Part 750, and the Bonus Agreement

entered into by the Federal Highway Administration (FHWA) and the Kentucky Department of Highways.

2. State compliance standards. Outdoor advertising advices are controlled on interstates, parkways, national highway system, and federal-aid primary highways. Erection of new outdoor advertising devices adjacent to or visible from a scenic highway are prohibited.

3. Minimum or uniform standards contained in the federal mandate. Outdoor advertising devices are to be controlled on interstates, parkways, national highway system, and federal-aid primary highways. No new outdoor advertising devices are allowed on scenic highways.

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. In 1961, Kentucky entered into a Bonus Agreement with FHWA. Per the agreement, Kentucky placed stricter controls on outdoor advertising devices in exchange for approximately \$2.5 million in federal bonus payments. Violation of the agreement could cause those funds to be repaid to the federal government.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Amendment)

704 KAR 3:370. Professional Growth and Effectiveness System.

RELATES TO: KRS 156.557, 156.800(7), 161.740

STATUTORY AUTHORITY: KRS 156.070, 156.557(2), (5)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.557(2) and (5)(c) require the Kentucky Board of Education to promulgate administrative regulations to establish a statewide professional growth and effectiveness system for the purposes of supporting and improving the performance of all certified school personnel and to develop written guidelines for local school districts to follow in implementing a statewide system of evaluation for certified school personnel. This administrative regulation establishes a statewide professional growth and effectiveness system to support and improve the performance of all certified school personnel.

Section 1. Definitions. (1) "Artifact" means a product of a certified school personnel's work that demonstrates knowledge and skills.

(2) "Assistant principal" means a certified school personnel who devotes the majority of employed time in the role of assistant principal, for which administrative certification is required by the Education Professional Standards Board pursuant to Title 16 KAR.

(3) "Certified administrator" means a certified school personnel, other than principal or assistant principal, who devotes the majority of employed time in a position for which administrative certification is required by the Education Professional Standards Board pursuant to Title 16 KAR.

(4) "Certified school personnel" means a certified employee, below the level of superintendent, who devotes the majority of employed time in a position in a district for which certification is required by the Education Professional Standards Board pursuant to Title 16 KAR and includes certified administrators, assistant principals, principals, other professionals, and teachers.

(5) "Conference" means a meeting between the evaluator and the evaluatee for the purposes of providing feedback, analyzing the results of an observation or observations, reviewing other evidence to determine the evaluatee's accomplishments and areas for growth, and leading to the establishment or revision of a professional growth plan.

(6) "Evaluatee" means the certified school personnel who is being evaluated.

(7) "Evaluator" means the primary evaluator as described in

KRS 156.557(5)(c)2.

(8) "Formative evaluation" is defined by KRS 156.557(1)(a).

(9) "Improvement plan" means a plan for improvement of up to twelve (12) months in duration for:

(a) Teachers and other professionals who are rated ineffective in professional practice and have a low overall student growth rating; and

(b) Principals who are rated ineffective in professional practice and have high, expected, or low overall student growth rating.

(10) "Job category" means a group or class of certified school personnel positions with closely related functions.

(11) "Local contribution" means a rating based on the degree to which a teacher, other professional, principal, or assistant principal meets student growth goals and is used for the student growth measure.

(12) "Local formative growth measures" is defined by KRS 156.557(1)(b).

(13) "Observation" means a data collection process conducted by a certified observer, in person or through video, for the purpose of evaluation, including notes, professional judgments, and examination of artifacts made during one (1) or more classroom or worksite visits of any duration.

(14) "Observer certification" means a process of training and ensuring that certified school personnel who serve as observers of evaluatees have demonstrated proficiency in rating teachers and other professionals for the purposes of evaluation and feedback.

(15) "Observer calibration[recalibration]" means the process of ensuring that certified school personnel have maintained proficiency and accuracy in observing teachers and other professionals for the purposes of evaluation and providing feedback.

(16) "Other professionals" means certified school personnel, except for teachers, administrators, assistant principals, or principals.

(17) "Overall student growth rating" means the rating that is calculated for a teacher or other professional evaluatee pursuant to the requirements of Section 7(9) and (10) of this administrative regulation and that is calculated for an assistant principal or principal evaluatee pursuant to the requirements of Section 10(8) of this administrative regulation.

(18) "Peer observation" means observation and documentation by trained certified school personnel below the level of principal or assistant principal.

(19) "Performance criteria" means the areas, skills, or outcomes on which certified school personnel are evaluated.

(20) "Performance rating" means the summative description of a teacher, other professional, principal, or assistant principal evaluatee's performance, including the ratings listed in Section 7(8) of this administrative regulation.

(21)[~~"Preschool teacher" means a certified school personnel who holds a certificate required by 16 KAR 2:040 and who meets the preschool lead teacher qualifications required by 704 KAR 3:410, Section 7.~~]

(22)] "Principal" means a certified school personnel who devotes the majority of employed time in the role of principal, for which administrative certification is required by the Education Professional Standards Board pursuant to 16 KAR 3:050.

(22)[~~(23)~~] "Professional growth and effectiveness system" or "system" means an evaluation system to support and improve the performance of certified school personnel that meets the requirements of KRS 156.557(1)(c), (2), and (3) and that uses clear and timely feedback to guide professional development.

(23)[~~(24)~~] "Professional growth plan" means an individualized plan for a certified personnel that is focused on improving professional practice and leadership skills, aligned with performance standards and the specific goals and objectives of the school improvement plan or the district improvement plan, built using a variety of sources and types of data that reflect student needs and strengths, evaluatee data, and school and district data, produced in consultation with the evaluator as described in Section 9(1), (2), (3), and (4) and Section 12(1), (2), (3), and (4) of this administrative regulation, and includes:

(a) Goals for enrichment and development that are established

by the evaluatee in consultation with the evaluator;

(b) Objectives or targets aligned to the goals;

(c) An action plan for achieving the objectives or targets and a plan for monitoring progress;

(d) A method for evaluating success; and

(e) The identification, prioritization, and coordination of presently available school and district resources to accomplish the goals.

(24)[~~(25)~~] "Professional practice" means the demonstration, in the school environment, of the evaluatee's professional knowledge and skill.

(25)[~~(26)~~] "Professional practice rating" means the rating that is calculated for a teacher or other professional evaluatee pursuant to Section 7(8) of this administrative regulation and that is calculated for a principal or assistant principal evaluatee pursuant to the requirements of Section 10(7) of this administrative regulation.

(26)[~~(27)~~] "Self-reflection" means the annual process by which certified school personnel assess the effectiveness and adequacy of their knowledge and performance for the purpose of identifying areas for professional learning and growth.

(27)[~~(28)~~] "Sources of evidence" means the multiple measures listed in KRS 156.557(4) and in Sections 7[8] and 10 of this administrative regulation.

(28)[~~(29)~~] "State contribution" means the student growth percentiles, as defined in 703 KAR 5:200, Section 1(11), for teachers and other professionals, and the next generation learners goal for principals and assistant principals.

(29)[~~(30)~~] "Student growth" is defined by KRS 156.557(1)(c).

(30)[~~(34)~~] "Student growth goal" means a goal focused on learning, that is specific, appropriate, realistic, and time-bound, that is developed collaboratively and agreed upon by the evaluatee and evaluator, and that uses local formative growth measures.

(31)[~~(32)~~] "Student growth percentile" means each student's rate of change compared to other students with a similar test score history.

(32)[~~(33)~~] "Student voice survey" means the student perception survey provided by the department that is administered annually to a minimum of one (1) district-designated group of students per teacher or other professional evaluatee if the evaluatee directly instructs students throughout the school year, and provides data on specific aspects of the instructional environment[classroom experience] and professional practice of the teacher or other professional evaluatee.

(33)[~~(34)~~] "Summative evaluation" is defined by KRS 156.557(1)(d).

(34)[~~(35)~~] "Teacher" means a certified school personnel who has been assigned the lead responsibility for student learning in a classroom, grade level, subject, or course and holds a teaching certificate under Title 16 KAR [16 KAR 2:010 or 16 KAR 2:020].

(35)[~~(36)~~] "Working conditions survey goal" means a school improvement goal set by a principal or assistant principal every two (2) years with the use of data from the department-approved working conditions survey.

Section 2. Implementation Timeline. (1) Beginning with the 2015-2016 [~~During the 2014-2015~~] school year, all local districts shall fully implement the requirements of KRS 156.557 and this administrative regulation for all certified school personnel except [~~other professionals, preschool teachers, and~~] teachers of career and technical education in area technology centers. [~~If the system plan is approved by the local board of education, a local school district may use the results from the system to inform personnel decisions. The use of a district's present evaluation plan, in addition to the system, during the 2014-2015 school year, shall comply with this administrative regulation. During the 2014-2015 school year, the overall school and district accountability scores described in 703 KAR 5:225 shall not include the results from the system.]~~]

(2) Teachers of career and technical education in area technology centers shall fully implement the requirements of KRS 156.557 and this administrative regulation beginning with the 2016-2017 school year. Beginning in the 2015-2016 school year, a local school district shall use the results from the system to inform

personnel decisions for teachers, principals, and assistant principals and results from the system shall be included in the overall school and district accountability model. Beginning with the 2016-17 school year, a local school district shall use the results from the system to inform personnel decisions for other professionals, certified administrators, and teachers of career and technical education in area technology centers.~~During the 2014-2015 school year, all school districts shall pilot the system for other professionals and preschool teachers. During the 2014-2015 school year, school districts shall evaluate preschool teachers and other professionals pursuant to the requirements of Section 13 of this administrative regulation. Beginning in the 2015-2016 school year, all school districts shall fully implement the system for other professionals and preschool teachers.~~

~~(3) Beginning in the 2015-2016 school year, all school districts shall fully implement the system for all certified school personnel, use the system to inform personnel decisions for all certified school personnel, and the overall school and district accountability scores described in 703 KAR 5:225 shall include the results from the system.~~

Section 3. Approval of Local Professional Growth and Effectiveness System Plan and Procedures. (1) Each local school district shall submit to the department a professional growth and effectiveness system plan and procedures to establish the district's evaluation system for all certified school personnel.

(2) The department shall approve each local school district's plan and procedures that comply with the requirements established in KRS 156.557 and this administrative regulation.

Section 4. Local Professional Growth and Effectiveness Policies. The local board of education shall establish a written policy for implementing the system for all certified school personnel in the district, consistent with the requirements of KRS 156.557 and this administrative regulation. The local board of education shall develop, adopt, and submit to the department for approval a policy for evaluation of the district superintendent, consistent with the requirements of KRS 156.557(6) and this administrative regulation.

Section 5. Local Evaluation Procedures and Forms. (1) A local evaluation committee shall develop, and the local board of education shall review and approve, system procedures and forms for the evaluation of certified school personnel positions.

(2) The local board of education shall review and approve procedures and forms that meet the requirements of KRS 156.557(5)(c) and include the requirements established in this subsection.

(a) The district may require the utilization of additional trained administrative personnel to observe and provide information to the evaluator.

(b) The district shall require a minimum of one (1) peer observation of a teacher or other professional evaluatee during the summative evaluation year~~[-, documentation of peer observations in the department-approved technology platform,]~~ and sharing the documentation with the teacher or other professional for formative evaluation purposes. Documentation of peer observations may be documented in the department approved technology platform. At the request of a teacher or other professional, peer observations may be used in the formative process.

(c) Beyond the minimum observation requirements set forth in KRS 156.557 and this administrative regulation, the district may establish uniform requirements for the length, frequency, and nature of observations conducted by an evaluator for the purpose of evaluation.

(d) The district shall require a teacher or other professional evaluator to conduct a minimum of three (3) observations of a teacher or other professional evaluatee during the summative evaluation cycle, except that the district may reduce the number of minimum observations of a teacher or other professional evaluatee during the summative evaluation cycle for teacher or other professional evaluatees who do not report for work sixty (60) or more consecutive school days. A district shall include a detailed

plan for reduction of minimum observations of teachers or other professional evaluatees who do not report for work sixty (60) or more consecutive school days in the district's system plan and procedures submitted to the department for approval pursuant to Section 3 of this administrative regulation.~~[and,] At a minimum, one (1) full[classroom] observation shall be conducted during the summative year. Observations may be documented[and to document all observations] in the department-approved technology platform.~~

(e) The district shall require a principal evaluator to conduct a minimum of two (2) site visits each year.

(f) The district shall create a process for selection of peer observers.

(g) The district shall require a formative evaluation conference between the evaluator and the evaluatee within five (5) working days following each observation by the evaluator.

(h) The district shall require the summative evaluation conference be held at the end of the summative evaluation cycle and include all applicable system data.

(i) The district shall require summative evaluation, with multiple observations, to occur annually for each teacher or other professional who has not attained continuing service status under KRS 161.740 or continuing status under KRS 156.800(7) and may utilize the formative data collected during the beginning teacher internship period, pursuant to 16 KAR 7:010, in the summative evaluation of an intern teacher.

(j) The district shall require multiple observations of a certified school personnel who has attained continuing service status under KRS 161.740 or continuing status under KRS 156.800(7) and whose observation results are determined to be ineffective.

(k) The district shall require summative evaluation at least once every three (3) years for a teacher or other professional who has attained continuing service status under KRS 161.740 or continuing status under KRS 156.800(7).

(l) The district, upon the request of a teacher or other professional, may use peer observation data in the formative process.

(m) The district shall require summative evaluation annually for a certified administrator, assistant principal, or principal. The evaluation criteria and process used to evaluate a certified administrator, assistant principal, or principal shall be explained to and discussed with the evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of reporting for employment each school year.

(n) The district shall require a summative evaluation of a certified school personnel be documented in writing and be included in the evaluatee's official personnel record.

(o) The district shall require documentation of a summative evaluation of a teacher, other professional, principal, and assistant principal in the department-approved technology platform.

(p) All evidence used to produce a certified school personnel's overall performance rating shall be included in the documentation of the summative evaluation.

(q) The district shall provide an opportunity for a written response by the evaluatee and require the response be included in the official personnel record.~~[(3) The local board of education shall develop, adopt, and submit to the department for approval procedures for evaluation of the district superintendent, consistent with the requirements of KRS 156.557(6) and this administrative regulation.]~~

Section 6. Training and Testing of Evaluators and Observers.

(1) The district shall include evaluation and observation training in the district's system plan and procedures submitted to the department for approval pursuant to Section 3 of this administrative regulation.

(2) The district shall ensure an evaluator meets the requirements of the district's system plan and procedures prior to evaluating a certified school personnel.

(3) An evaluator shall be trained~~[and] tested~~, and approved on a four (4) year cycle.

(4) Year one (1) of the district's evaluator training cycle shall include the following training requirements:

(a) Training on KRS 156.557 and the requirements of this administrative regulation;

(b) Training in identifying effective teaching and management practices, in effective observation and conferencing techniques, in development of student growth goals, in providing clear and timely feedback, in establishing and assisting with a professional growth plan, and in summative decision techniques;

(c) Training provided by the department for all certified administrator evaluators who have never evaluated certified school personnel. Other certified administrators who have not received training in the skill areas listed in paragraph (b) of this subsection may also be trained by the department; and

(d) Training, for all other evaluators, by a provider who has been approved by the department as a trainer for the Instructional Leadership Improvement Program established in 704 KAR 3:325.

(5) Year one (1) of the district's evaluator training cycle shall include the testing requirements established in this subsection.

(a) An evaluator shall successfully complete testing of research-based and professionally accepted teaching and management practices and effective evaluation techniques.

(b) The testing shall be conducted by the department or an individual or agency approved by the department.

(c) The testing shall include certification as an observer through the department-approved observer certification process for an evaluator who is evaluating[observing] teachers or other professionals ~~for the purpose of evaluation~~.

(6) The department shall issue year one (1) approval as an evaluator upon the evaluator's successful completion of the required evaluation training and testing program and successful completion of observer certification.

(7) Years two (2) and three (3) of the district's evaluator training and testing cycle shall include a minimum of six (6) hours in each year and shall include:

(a) Observer calibration[recalibration] training, in the department-approved technology platform, for all evaluators who observe teachers or other professionals for the purpose of evaluation;

(b) Update training on professional growth and effectiveness statutes and administrative regulations; and

(c) Training for evaluators on any changes to the Professional Growth and Effectiveness System and certified evaluation plan, policies, or procedures.

(8) Year four (4) of the district's evaluator training and testing cycle shall include refresher evaluator training and, if evaluating teachers or other professionals, recertification ~~refresher-observer certification~~ training and testing.

(9) The district shall require peer observers to complete the department-approved ~~developed~~ peer observer training at least once every three (3) years.

(10) The district shall designate a contact person responsible for monitoring evaluator training and for implementing the system.

Section 7. Professional Practice Rating and Student Growth Rating for Teachers and Other Professionals. (1) The district's professional practice rating form shall utilize The Framework for Teaching Evaluation Instrument, 2011 Edition, in conjunction with the Teacher and Other Professionals Evaluation Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation and shall include the following:

(a) Planning and Preparation Domain~~[-Components shall include: Knowledge of Content and Pedagogy, Demonstrating Knowledge of Students, Setting Instructional Outcomes, Demonstrating Knowledge of Resources, Designing Coherent Instruction, and Designing Student Assessments]~~;

(b) Classroom Environment Domain~~[-Components shall include: Creating an Environment of Respect and Rapport, Establishing a Culture of Learning, Managing Classroom Procedures, Managing Student Behavior, and Organizing Physical Space]~~;

(c) Instruction Domain~~[-Components shall include: Communicating with Students, Questioning and Discussion Techniques, Engaging Students in Learning, Using Assessment in Instruction, and Demonstrating Flexibility and Responsiveness]~~;

and

(d) Professional Responsibilities Domain~~[-Components shall include: Reflecting on Teaching, Maintaining Accurate Records, Communicating with Families, Participating in a Professional Community, Growing and Developing Professionally, and Showing Professionalism]~~.

(2) The district's professional practice rating evaluation form shall list, in each component, the performance criteria that characterize effective practice[teaching] and apply to the teacher ~~evaluator~~.

(3) The district shall explain and discuss the professional practice rating domains, components, and performance criteria, and the evaluation process with an[a-teacher] ~~evaluator~~ no later than the end of the ~~evaluator's~~ first thirty (30) calendar days of reporting for employment each school year. Amendments to local systems of teacher evaluation approved by the department after the end of the evaluator's ~~teacher's~~ first thirty (30) calendar days of the school year shall not apply to the evaluator ~~teacher~~ until the following school year.

(4) A professional practice rating evaluation form shall be specific to the evaluator's ~~teacher's~~ job category.

(5) The evaluator shall utilize The Framework for Teaching Evaluation Instrument, 2011 Edition, in conjunction with the Teacher and Other Professionals Evaluation Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation, to determine ratings for the evaluator ~~teacher~~ on each of the four (4) domains.

(6) The evaluator shall use evidence from professional growth plans and self-reflection, observation, and student voice surveys, in combination with professional judgment, to inform the teacher's or other professional's rating on each of the four (4) domains listed in subsection (1) of this section.

(7) The evaluator may, if included in the district's approved evaluation plan, use additional district-determined sources of evidence to inform the teacher's or other professional's professional practice rating.

(8) The evaluator shall utilize the decision rules in this subsection for determining the professional practice rating for a teacher or other professional.

(a) The evaluator shall use the following ratings:

1. "Exemplary" shall be the rating for performance that consistently exceeds expectations for effective performance;

2. "Accomplished" shall be the rating for performance that consistently meets expectations for effective performance;

3. "Developing" shall be the rating for performance that inconsistently meets expectations for effective performance; and

4. "Ineffective" shall be the rating for performance that consistently fails to meet expectations for effective performance.

(b) At a minimum, the evaluator shall use the following decision rules in this subsection to determine a professional practice rating.

(c) If a teacher or other professional is rated ineffective in the classroom environment domain or in the instruction domain, the teacher's or other professional's professional practice rating shall be not be exemplary or accomplished.

(d) ~~(e)~~ If a teacher or other professional is rated ineffective in the classroom environment domain and in the instruction domain, the teacher's or other professional's professional practice rating shall be ineffective.

(e) ~~(f)~~ If a teacher or other professional is rated ineffective in any domain, the teacher's or other professional's professional practice rating shall be accomplished, developing, or ineffective.

(f) ~~(g)~~ If a teacher or other professional is rated developing in two (2) domains and accomplished in two (2) domains, the teacher's or other professional's professional practice rating shall be accomplished.

(g) ~~(h)~~ If a teacher or other professional is rated developing in two (2) domains and exemplary in two (2) domains, the teacher's or other professional's professional practice rating shall be accomplished.

(h) ~~(i)~~ If a teacher or other professional is rated accomplished in two (2) domains and exemplary in two (2) domains, the teacher's or other professional's professional practice rating shall be exemplary.

(9) The district shall determine the teacher's or other professional's overall student growth rating as established in this subsection.

(a) The student growth measure shall consist of a state contribution, when available, and a local contribution.

(b) The Kentucky Board of Education shall determine the scale for low, expected, and high growth regarding the state contribution, and the department shall provide the scale to local school districts.

(c) Student growth goals shall be determined as established in this paragraph.

1. The teacher or other professional shall develop and implement a minimum of one (1) student growth goal each year.

2. Because individualized education plan (IEP) goals are student-specific, IEP goals may inform, but shall not be used as, student growth goals.

3. The district shall ensure that student growth goals and measures of student growth are rigorous and comparable across schools in the local school district.

(d) The local school district shall determine the scale for low, expected, and high student growth goal ratings. In determining the scale, local school districts shall consider the definition of typical yearly growth contained in 703 KAR 5:200, Section 1(12).

(10) The local school district shall develop a process for using professional judgment and the following sources of evidence to determine the overall student growth rating:

(a) Growth trends consisting of the three (3) most recent years of student growth percentile data, if available, for teachers; and

(b) Growth trends consisting of the three (3) most recent years of student growth goal data, if available, for all teachers and other professionals.

Section 8. Overall Performance Category of Teachers or Other Professionals. (1) The overall performance category for teachers or other professionals shall be determined by combining the teacher's professional practice rating and the teacher's overall student growth rating, as illustrated by the Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Teachers or Other Professionals.

(2) The district shall determine the teacher's or other professional's overall performance category with the decision rules established in this subsection.

(a) A teacher's or other professional's overall performance rating shall be exemplary if:

1. The professional practice rating is exemplary and the overall student growth rating is high;

2. The professional practice rating is exemplary and the overall student growth rating is expected; or

3. The professional practice rating is accomplished and the overall student growth rating is high.

(b) A teacher's or other professional's overall performance rating shall be accomplished if:

1. ~~The professional practice rating is exemplary and the overall student growth rating is low;~~

2. The professional practice rating is accomplished and the overall student growth rating is expected; or

2. ~~3.~~ The professional practice rating is developing and the overall student growth rating is high;

(c) A teacher's or other professional's overall performance category shall be developing if:

1. The professional practice rating is exemplary and the overall student growth rating is low;

2. The professional practice rating is accomplished and the overall student growth rating is low;

3. ~~2.~~ The professional practice rating is developing and the overall student growth rating is expected;

4. ~~3.~~ The professional practice rating is developing and the overall student growth rating is low; or

5. ~~4.~~ The professional practice rating is ineffective and the overall student growth rating is high.

(d) A teacher's or other professional's overall performance category shall be ineffective if:

1. The professional practice rating is ineffective and the overall student growth rating is expected; or

2. The professional practice rating is ineffective and the overall student growth rating is low.

Section 9. Professional Growth Plan and Cycle for Tenured Teachers or Other Professionals. A teacher or other professional shall be placed on an appropriate plan and summative evaluation cycle based on the professional practice rating and the overall student growth rating, as illustrated by the Kentucky Professional Growth Plan and Cycle for Tenured Teachers or Other Professionals. (1) A teacher or other professional whose professional practice rating is exemplary or accomplished and who has an expected or high overall student growth rating shall have a professional growth plan that includes: goals set by the teacher or other professional, with evaluator input; activities that are evaluated~~teacher~~-directed and implemented with colleagues; a formative review annually; and a summative evaluation that occurs at the end of year three (3) of the evaluation cycle.

(2) A teacher or other professional whose professional practice rating is accomplished or exemplary, with a low overall student growth rating, or developing, with a high overall student growth rating, shall have a professional growth plan that includes: goals set by the teacher or other professional with evaluator input; if there is a low student growth rating, one (1) goal shall focus on low student growth outcome; an annual formative review; and a summative evaluation that occurs at the end of year three (3) of the evaluation cycle.

(3) A teacher or other professional whose professional practice rating is developing, with an expected overall student growth rating, shall have a professional growth plan that includes: goals set by the teacher or other professional with evaluator input; one (1) goal that addresses professional practice or student growth; activities that are evaluated~~teacher~~-directed and implemented with colleagues; an annual formative review; and a summative evaluation that occurs at the end of year three (3) of the evaluation cycle.

(4) A teacher or other professional whose professional practice rating is developing, with a low overall student growth rating, or whose professional practice rating is ineffective, with an expected or high overall student growth rating, shall have a professional growth plan that includes goals determined by the evaluator: goals shall focus on professional practice and student growth, include an annual formative review, and include a summative evaluation that occurs at the end of one (1) year.

(5) A teacher or other professional whose professional practice rating is ineffective, with a low overall student growth rating, shall have an improvement plan with goals determined by the evaluator: the goals shall focus on low performance areas and a summative evaluation shall occur at the end of the plan, whose duration is determined by the evaluator and may last up to one (1) year.

Section 10. Professional Practice Rating and Overall Student Growth Rating for Principals and Assistant Principals. (1) The district's professional practice rating form shall utilize the Principal and Assistant Principal Performance Standards and the Principal and Assistant Principal Performance Standards Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation, and shall include the performance standards and descriptors established in this subsection.

(a) Instructional Leadership Performance Standard. The evaluatee fosters the success of all students by facilitating the development, communication, implementation, and evaluation of a shared vision of teaching and learning that leads to student academic growth and school improvement.

(b) School Climate Performance Standard. The evaluatee fosters the success of all students by developing, advocating, and sustaining an academically rigorous, positive, and safe school climate.

(c) Human Resources Management Performance Standard. The evaluatee fosters effective human resources management by assisting with selection and induction and by supporting, evaluating, and retaining quality instructional and support personnel.

(d) Organizational Management Performance Standard. The

evaluatee fosters the success of all students by supporting, managing, and overseeing the school's organization, operation, and use of resources.

(e) Communication and Community Relations Performance Standard. The evaluatee fosters the success of all students by communicating and collaborating effectively with stakeholders.

(f) Professionalism Performance Standard. The evaluatee fosters the success of all students by demonstrating professional standards and ethics, engaging in continuous professional learning, and contributing to the profession.

(2) The district's professional practice rating evaluation form for assistant principals and principals shall list, in each standard, the performance criteria that characterize professional effectiveness and apply to the evaluatee.

(3) The district shall explain and discuss the professional practice rating standards, indicators, and performance criteria, and the evaluation process to assistant principal and principal evaluatees no later than the end of the evaluatee's first thirty (30) calendar days of the school year. Amendments to local systems of certified personnel evaluation approved by the department after the end of an evaluatee's first thirty (30) calendar days of the school year shall not apply to the evaluatee until the following school year.

(4) The district's professional practice rating evaluation form shall be specific to the evaluatee's job category. The district, at its discretion, may utilize forms for pre- and post-evaluation conferences.

(5) The evaluator shall utilize the Principal and Assistant Principal Performance Standards and the Principal and Assistant Principal Performance Standards Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation, to determine ratings for an assistant principal or principal evaluatee on each of the performance standards.

(6) The evaluator shall use evidence from professional growth plans and self-reflection, the department-approved survey of perception of superintendents, district personnel, and teachers on principal practice; and the department-approved working conditions survey goal. The evaluator shall also use evidence from site visits, for principals only. The evaluator may, if included in the district's approved evaluation plan, use additional district-determined sources of evidence to inform the evaluatee's rating on each of the six (6) standards listed in subsection (1) of this section.

(7) At a minimum, the evaluator shall use the decision rules in this subsection to determine a professional practice rating.

(a) If the evaluatee is rated exemplary in at least four (4) of the standards and no standard is rated developing or ineffective, the professional practice rating shall be exemplary.

(b) If the evaluatee is rated accomplished in at least four (4) standards and no standard is rated ineffective, the professional practice rating shall be accomplished.

(c) If the evaluatee is rated developing in at least five (5) standards, the professional practice rating shall be developing.

(d) If the evaluatee is rated ineffective in two (2) or more standards, the professional practice rating shall be ineffective.

(8) The overall student growth rating for principals and assistant principals shall be determined as established in this subsection.

(a) The student growth measure for principals and assistant principals shall consist of a state contribution and a local contribution.

(b) The state contribution for principals and assistant principals shall be based on the degree to which the evaluatee meets the next generation learners goal. A principal's next generation learners goal shall be the assistant principal's next generation learners goal as well. For schools that do not receive state assessment data, principals shall develop two (2) local student growth goals.

(c) The local contribution for the student growth measure for principals and assistant principals shall be a rating based on the degree to which the principal or assistant principal meets student growth goals. Assistant principals shall share the principal's student growth goals.

(d) All principals and assistant principals shall develop and implement a minimum of two (2) student growth goals each year,

one (1) of which shall focus on school gap population data.

~~(e)[One (1) goal shall address the needs outlined in the school's comprehensive school improvement plan.~~

~~(f)[One (1) goal shall be based on local student growth data.~~

~~(f)[(g)] The district shall ensure that student growth goals are rigorous and comparable across schools in the local district.~~

~~(g)[(h)] The scale for low, expected, and high student growth goal ratings shall be determined by the local school district. In determining the scale, local school districts shall consider the schools goals and measures of success in the comprehensive school improvement plan required in 703 KAR 5:225, Section 9.~~

~~(h)[(4)] The district shall develop a process for using professional judgment and evidence from the following sources of evidence to determine the overall student growth rating:~~

~~1. Growth trends over the three (3) most recent years of next generation learners student growth data, calculated pursuant to 703 KAR 5:200; and~~

~~2. Growth trends over the three (3) most recent years of student growth goal data.~~

Section 11. Overall Performance Category of Principals and Assistant Principals. (1) The overall performance category for principals and assistant principals shall be determined by combining the principal or assistant principal's professional practice rating and overall student growth rating, as illustrated by the Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Assistant Principals and Principals.

(2) The district shall determine the overall performance category for principals and assistant principals with the decision rules established in this subsection.

(a) An evaluatee's overall performance category shall be exemplary if:

1. The professional practice rating is exemplary and the overall student growth rating is high;

2. The professional practice rating is exemplary and the overall student growth rating is expected; or

3. The professional practice rating is accomplished and the overall student growth rating is high.

(b) An evaluatee's overall performance category shall be accomplished if:

1. The professional practice rating is accomplished and the overall student growth rating is expected; or

2. The professional practice rating is developing and the overall student growth rating is high.

(c) An evaluatee's overall performance category shall be developing if:

1. The professional practice rating is exemplary and the overall student growth rating is low;

2. The professional practice rating is accomplished and the overall student growth rating is low;

3. The professional practice rating is developing and the overall student growth rating is expected; or

4. The professional practice rating is developing and the overall student growth rating is low.

(d) An evaluatee's overall performance category shall be ineffective if the professional practice rating is ineffective.

Section 12. Professional Growth Plan for Principals and Assistant Principals. The evaluator shall place an assistant principal or principal evaluatee on an appropriate professional growth plan based on the professional practice rating and the overall student growth rating, as illustrated by the Kentucky Professional Growth Plan for Assistant Principals and Principals.

(1) An evaluatee whose professional practice rating is exemplary, with an expected to high overall student growth rating, shall have, at a minimum, a professional growth plan with goals set by the evaluatee with evaluator input and a summative evaluation that occurs at the end of each school year.

(2) An evaluatee whose professional practice rating is accomplished, with an expected to high student overall student growth rating, shall have, at a minimum, a professional growth plan with goals set by the evaluatee with evaluator input and a

summative evaluation that occurs at the end of each school year.

(3) An evaluatee whose professional practice rating is developing, with a high overall student growth rating, shall have, at a minimum, a professional growth plan with goals set by the evaluator with evaluator input and a summative evaluation that occurs at the end of each school year.

(4) An evaluatee whose professional practice rating is developing, with a low to expected overall student growth rating, shall have, at a minimum, a professional growth plan with goals determined by the evaluator and a summative evaluation at the end of each school year.

(5) An evaluatee whose professional practice rating is ineffective shall have, at a minimum, an improvement plan with the goals determined by the evaluator and a summative evaluation at the end of the plan, as determined by the evaluator, not to exceed one (1) year in duration.

Section 13. Evaluation of Certified Administrators Assigned to the District Level for Purposes of Evaluation. (1) The district's evaluation form for certified administrators assigned to the district level for purposes of evaluation shall:

(a) Utilize the performance criteria outlined in KRS 156.557(4), in compliance with KRS 156.557 and the requirements of this administrative regulation; and

(b) List the performance criteria that characterizes professional effectiveness and apply to the evaluatee.

(2) The district shall explain and discuss performance criteria and the evaluation process to an evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of the school year. Amendments to local systems of certified personnel evaluation approved by the department after the end of an evaluatee's first thirty (30) calendar days of the school year shall not apply to the evaluatee until the following year.

(3) The district evaluation form for certified administrators assigned to the district level for purposes of evaluation shall be specific to the evaluatee's job category. The district, at its discretion, may utilize forms for pre- and post-evaluation conferences.

(4) The evaluator shall use evidence from professional growth plans and self-reflection, one (1) site visit, student growth, and professional judgment to determine the overall performance of certified administrators assigned to the district level for purposes of evaluation[Evaluation of Other Professionals and Preschool Teachers During the 2014-2015 School Year. (1) The district shall include, in its professional growth and effectiveness plan, a plan for the evaluation of other professionals and preschool teachers during the 2014-2015 school year.

(2) The district's procedures for other professional and preschool teacher evaluatees, whose evaluation cycle requires evaluation during the 2014-2015 school year, shall include the requirements established in this subsection.

(a) Beyond the minimum requirements set forth in this administrative regulation, the local district may establish requirements as to the length, frequency, and nature of observations conducted by an evaluator.

(b) The district shall require the evaluation to include a formative evaluation conference between the evaluator and the evaluatee within five (5) working days following each observation, the summative evaluation conference held at the end of an evaluation cycle that ends during the 2014-2015 school year, all evaluation data.

(c) The district shall require multiple observations to be conducted of an evaluatee who has earned continuing service status pursuant to KRS 161.740 and whose observation results are ineffective.

(d) The district shall require a summative evaluation to occur, if required by the evaluation cycle of the evaluatee.

(e) The district shall include the evaluation in the evaluatee's official personnel record.

(f) The district shall provide in the evaluation process an opportunity for a written response by the evaluatee and shall include the response in the evaluatee's official personnel record.

(g) A copy of the evaluation shall be provided to the evaluatee.

~~(3) The evaluation form shall include a list of performance criteria. Under each criterion, specific descriptors or indicators that can be measured or observed and recorded shall be listed. Additionally, standards of performance shall be established for each criterion. The performance criteria shall include those that are identified in KRS 156.557(4) applicable to the evaluatee.~~

~~(4) The evaluation criteria and process shall be explained to and discussed with the evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of the 2014-2015 school year.~~

~~(5) An evaluative form shall be specific to each job category. The district may use forms for pre- and post-evaluation conferences.~~

~~(6) The district shall provide evaluatees an opportunity for an appeal to the local evaluation appeals committee as outlined in Section 18 of this administrative regulation.~~

~~(7) An evaluatee who believes that the local district is not properly implementing the evaluation plan as approved by the department shall have the opportunity to appeal to the Kentucky Board of Education as outlined in Section 19 of this administrative regulation.~~

Section 14. Evaluation of Certified Administrators in the 2014-2015 School Year. (1) The district shall include, in the professional growth and effectiveness plan, a plan for the evaluation of certified administrators.

~~(2) Beyond the minimum requirements set forth in KRS 156.557 and this administrative regulation, the local district may establish requirements as to the length, frequency, and nature of observations conducted by an evaluator.~~

~~(3) The district shall require the evaluation to include a formative evaluation conference between the evaluator and the evaluatee within five (5) working days following each observation, the summative evaluation conference held at the end of the summative evaluation cycle, and the inclusion of all professional growth and effectiveness data.~~

~~(4) The district shall document the certified administrator's summative evaluation decision, include documentation of the sources of evidence used in determining the performance rating of the evaluatee, and include these documentations in the evaluatee's official personnel record.~~

~~(5) The district shall provide an opportunity for a written response by the evaluatee, and the response shall be included in the evaluatee's official personnel record.~~

~~(6) A copy of the evaluation shall be provided to the evaluatee.~~

~~(7) The evaluation form for certified administrators shall include a list of performance criteria that characterize effective administrative practices.~~

~~(8) Under each criterion, specific descriptors or indicators shall be listed.~~

~~(9) The performance criteria shall include those that are identified in KRS 156.557(4) applicable to the evaluatee.~~

~~(10) The evaluation criteria and process used to evaluate certified administrators shall be explained to and discussed with the evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of the school year.~~

~~(11) The district's evaluation form shall be specific to the evaluatee's job category. The district may utilize forms for pre- and post-evaluation conferences.~~

~~(12) The district shall provide certified administrator evaluatees an opportunity for an appeal to the local evaluation appeals committee as outlined in Section 18 of this administrative regulation.~~

~~(13) An evaluatee who believes that the local district is not properly implementing the evaluation plan as approved by the department shall have the opportunity to appeal to the Kentucky Board of Education as outlined in Section 19 of this administrative regulation].~~

Section 14.[15.] District Evaluation Plan. (1) The local board of education shall review, as needed, the district's evaluation plan to ensure compliance with KRS 156.557 and this administrative regulation.

(2) If a substantive change is made to the district's evaluation plan, the local board of education shall utilize the evaluation committee, described in KRS 156.557(5)(c)1, in formulating the revision. Examples of substantive change shall include changes in the evaluation cycle, observation frequency, forms, or appeal procedures.

(3) The local board of education shall review and approve revisions to the plan and submit the amended plan to the department for approval.

Section 15.[16-] Reporting. (1)[Beginning in the 2014-2015 school year,] Districts shall report to the department the percentage of principals, assistant principals,[and] teachers, and other professionals in each professional practice rating category, student growth rating category and overall performance category listed in Sections 7, 8, 10, and 11 of this administrative regulation [and the percentage of teachers on each plan listed in Section 9 of this administrative regulation].

(2) The department shall publicly report, by district, the aggregate number of principals, assistant principals,[and] teachers, including other professionals in each overall performance category.

Section 16.[17-] Monitoring. A district implementing an alternative professional growth and effectiveness plan or system approved by the department pursuant to KRS 156.557(7) shall be monitored within three (3) years of the initial implementation of the alternative plan, and subsequently at the discretion of the department.

Section 17.[18-] Local Evaluation Appeals Panel. The district shall provide the following in its system plan for an appeal to the local evaluation appeals panel:

- (1) A right to a hearing as to every appeal;
- (2) An opportunity, five (5) days in advance of the hearing, for the evaluator and evaluatee to adequately review all documents that are to be presented to the local evaluation appeals panel; and
- (3) A right to have the evaluatee's chosen representative present at the hearing.

Section 18.[19-] State Evaluation Appeals Panel. (1) A certified school personnel who believes that the local district is not properly implementing the evaluation plan as approved by the department shall have the opportunity to appeal to the Kentucky Board of Education.

(2) The appeal procedures shall be as established in this subsection.

(a) The Kentucky Board of Education shall appoint a committee of three (3) state board members to serve on the state evaluation appeals panel (SEAP). The SEAP's jurisdiction shall be limited to procedural matters already addressed by the local appeals panel related to the district's alleged failure to implement an evaluation plan as approved by the department. The SEAP shall not have jurisdiction of a complaint involving the professional judgment conclusion of an evaluation, and the SEAP's review shall be limited to the record of proceedings and documents therein, or lack thereof, at the local district level.

(b) No later than thirty (30) calendar days after the final action or decision at the local district level, a certified school personnel may submit a written request to the chief state school officer for a review before the SEAP. If a certified school personnel does not appeal within the time frame listed in this paragraph, the request shall not be considered. A specific description of the complaint and grounds for appeal shall be submitted with the request.

(c) A brief, written statement or other document that a party wishes to submit for consideration by the SEAP shall be filed with the panel and served on the opposing party at least twenty (20) days prior to the scheduled review.

(d) A decision of the SEAP shall be rendered within fifteen (15) working days after the review.

(e) A determination of district noncompliance with the local evaluation plan or absence of a district local evaluation plan shall render the evaluation void, and the certified employee shall have the right to be reevaluated.

Section 19.[20-] Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "The Framework for Teaching Evaluation Instrument, 2011 Edition", May 2014;
- (b) "Principal and Assistant Principal Performance Standards", May 2014;
- (c) "Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Teachers and Other Professionals", April 2015[May 2014];
- (d) "Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Assistant Principals and Principals", May 2014;
- (e) "Teacher and Other Professional Evaluation Crosswalk", April 2015[May 2014];
- (f) "Principal and Assistant Principal Performance Standards Crosswalk", May 2014;
- (g) "Kentucky Professional Growth Plan and Cycle for Tenured Teachers and Other Professionals", April 2015[July 2014]; and
- (h) "Kentucky Professional Growth Plan for Assistant Principals and Principals", July 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Next Generation Learners, 18th[1st] Floor, Capital Plaza Tower, 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.

ROGER L. MARCUM, Chairperson

APPROVED BY AGENCY: April 14, 2015

FILED WITH LRC: April 15, 2015 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on May 21, 2015, at 1:00 p.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through close of business June 1, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a statewide professional growth and effectiveness system, as required by KRS 156.557, for the evaluation, support and improvement of performance of all certified school personnel in school districts.

(b) The necessity of this administrative regulation: KRS 156.557 requires the agency to develop a framework for a statewide personnel evaluation system for all certified school personnel in school districts and to establish a statewide professional growth and effectiveness system for the evaluation, support and improvement of performance of all certified school

personnel in school districts. This administrative regulation includes a framework for a statewide personnel evaluation system and establishes a uniform method of evaluation of certified school personnel in school districts.

(c) How this administrative regulation conforms to the content of the authorizing statute: As required by KRS 156.557, this administrative regulation establishes a framework for a statewide personnel evaluation system, including a uniform method of evaluation, support and improvement for certified school personnel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets out the requirements for the uniform evaluation of certified school personnel, below the level of superintendent as required by KRS 156.557.

(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 to the regulation does the following: Updates implementation timelines for various evaluatee groups. Preschool teachers are no longer a pilot group and will be evaluated as all other certified teachers under the proposed amendment. Other professionals will also end their pilot period and be evaluated pursuant to the system established for certified teachers. A system of evaluation of certified administrators at the district level is added to the regulation. The proposed amendment incorporates teachers of career and technical education in area technology centers. The proposed amendment requires that school districts begin using results from the PGES system to inform personnel decisions for teachers, principals and assistant principals beginning in the 2015-2016 school year. Districts must use results from the PGES system to inform personnel decisions for other professionals, certified administrators, and teachers of career and technical education in area technology centers beginning in the 2016-2017 school year. This amendment makes a change to a decision rule for a teacher's overall rating. The United States Department of Education (USED) requires this change as a contingency of approval of Kentucky's ESEA. Finally, the amendment makes entry of data into the state-approved technology platform optional for all evaluation components except the summative rating.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary in order to comply with KRS 156.557, meet the requirements of the USED ESEA waiver and address concerns from the field.

(c) How the amendment conforms to the content of the authorizing statute: The authorizing statute requires a statewide professional growth and effectiveness system for all certified personnel. The proposed amendment ends system pilots and requires evaluation of additional evaluatee groups. The amendment provides for evaluation of all certified school personnel below the level of superintendent as required by KRS 156.557.

(d) How the amendment will assist in the effective administration of the statutes: The regulation and amendments provide the framework for evaluation of all certified school personnel as required by KRS 156.557.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky and all certified school personnel.

(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 districts will revise their certified evaluation plan and submit to the Department of Education for approval. Districts will need to apply the guidelines of the regulation to all certified personnel and not just teachers, principals and assistant principals.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts shall revise their certified evaluation plans to include newly incorporated evaluatees and comply with the proposed amended regulation. School districts

shall provide training and resources to school and district personnel to ensure consistent and accurate implementation of the requirements of the statewide evaluation system for certified school personnel.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs to current operations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Evaluation of certified school personnel will lead to the support and improvement of the performance of all certified school personnel and promote the continuous professional growth and development of skills needed to be a highly effective certified school personnel as intended by KRS 156.557.

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

(a) Initially: Indeterminable. Any funds currently being spent in the local school district on teacher evaluation may be redirected to address the requirements of KRS 156.557 and this administrative regulation. Local school districts should review how they use currently available state and federal grant funds (e.g. school improvement, Title I, Title II, Professional Development) for possible redirection to implementation of KRS 156.557 and this administrative regulation.

(b) On a continuing basis: Indeterminable. Any funds currently being spent in the local school district on teacher evaluation may be redirected to address the requirements of KRS 156.557 and this administrative regulation. Local school districts should review how they use currently available state and federal grant funds (e.g. school improvement, Title I, Title II, Professional Development) for possible redirection to implementation of KRS 156.557 and this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds.

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply because the requirements of this administrative regulation apply to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.557.

(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? Indeterminable. Any funds currently being spent in the local school district on teacher evaluation may be redirected to address the requirements of KRS 156.557 and this administrative

regulation. Local school districts should review how they use currently available state and federal grant funds (e.g. school improvement, Title I, Title II, Professional Development) for possible redirection to implementation of KRS 156.557 and this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Indeterminable. Any funds currently being spent in the local school district on teacher evaluation may be redirected to address the requirements of KRS 156.557 and this administrative regulation. Local school districts should review how they use currently available state and federal grant funds (e.g. school improvement, Title I, Title II, Professional Development) for possible redirection to implementation of KRS 156.557 and 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 (+/-): The Kentucky Department of Education cannot accurately estimate the cost of administering this administrative regulation for each of Kentucky's school districts. Individual costs will vary depending on the size and efficiency of each school district. Local school districts may direct currently available state and federal grant funds, including funds currently used for evaluation of teachers for implementation of this administrative regulation.

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Kentucky Department of Education
(Amendment)

704 KAR 5:070. Common kindergarten entry screener.

RELATES TO: KRS 156.070, 156.160

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 gives the Kentucky Board of Education the management and control over all programs operated in the public schools. KRS 156.160 gives the Kentucky Board of Education specific authority to promulgate administrative regulations establishing standards which school districts shall meet in student, operational, and program service to students. This administrative regulation establishes minimum requirements for administration of a common kindergarten entry screener in school districts, to determine a student's readiness for school in the five (5) domains of school readiness established in this administrative regulation.

Section 1. Definitions. (1) "Prior early learning settings" means the following five (5) categories of early learning settings in which each student participated prior to attending kindergarten:

- (a) Child care center;
- (b) Head Start program;
- (c) State funded preschool;
- (d) Home; or
- (e) Other.

(2) "School readiness" means a student entering school is ready to engage in and benefit from early learning experiences that best promote the student's success.

(3) "Screener" means an instrument designed to identify students who need further diagnostic assessment for evaluation.

(4) "System of measurement" means the use of multiple assessments for multiple purposes across the learning continuum for data to be tracked and used to guide continuous improvement for students.

Section 2. Required Common Kindergarten Entry Screener. In accordance with KRS Chapter 45A, the Department shall adopt a statewide common kindergarten entry screener that:

(1) Aligns with the definition of school readiness and the standards established in Building a Strong Foundation for School

Success: Kentucky's Early Childhood Standards;

(2) Assesses the domains of adaptive, cognitive, communication, motor, and social emotional as established in Building a Strong Foundation for School Success: Kentucky's Early Childhood Standards;

(3) Is a reliable and valid screener for its intended purposes for the target populations, including English learners and students with disabilities; and

(4) Produces point-in-time student level results that indicate level of school readiness in the five (5) domains listed in subsection (2) of this section.

Section 3. Administration of the Common Kindergarten Entry Screener. (1) Beginning in the 2013-2014 academic year, each Kentucky public school district shall administer the common kindergarten entry screener adopted by the Department in accordance with Section 2 of this administrative regulation.

(2) Each school district shall administer the common kindergarten entry screener to each student entering kindergarten in the school district no earlier than fifteen (15) days prior to the start of the current academic year and no later than the thirtieth (30th) instructional day of the academic year.

Section 4. Data Collection and Reporting. (1) Each school containing kindergarten students shall enter the data from the common kindergarten entry screener in the student information system within fifteen (15) instructional~~thirty (30)~~ days of the district's administration of the common kindergarten entry screener but no later than October 15 of each academic year.

(2) Data shall be reported by the Department at an aggregate level by:

- (a) School district;
- (b) School readiness domain;
- (c) Student demographics; and
- (d) Prior early learning settings.

Section 5. District use of the common kindergarten entry screener. (1) A district shall provide individual student results of the screener to parents or guardians of individual students.

(2) A district shall not use the common kindergarten entry screener results to determine eligibility for enrollment. All students who meet the enrollment requirements of KRS 159.010 shall be entitled to enter kindergarten without regard to the results of the common kindergarten entry screener.

(3) Districts may use the common kindergarten entry screener data as a system of measurement in the following ways:

- (a) To inform districts, parents, and communities about early learning in order to close the school readiness gap;
- (b) To make informed policy decisions at the local level to support early learning experiences prior to school entry;
- (c) To establish local goals for program improvement in order to achieve early learning outcomes; and
- (d) To include data as evidences in the kindergarten through 3rd grade Program Evaluation under 703 KAR 5:230.

(4) The results of the screener shall not be utilized as part of the school's or districts' overall score to determine recognition or support contained in any administrative regulation promulgated by the Board pursuant to KRS 158.6455.

Section 6. Incorporation by Reference. (1) "Building a Strong Foundation for School Success: Kentucky's Early Childhood Standards", 2013~~June 2009~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Next Generation Learners, 18th Floor, Capitol Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

TERRY HOLLIDAY, Ph.D.

ROGER L. MARCUM, Chairperson

APPROVED BY AGENCY: April 14, 2015

FILED WITH LRC: April 15, 2015 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on May 21, 2015, at 1:00 p.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through close of business June 1, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a screening program to identify school readiness for each student entering kindergarten in Kentucky public schools.

(b) The necessity of this administrative regulation: This regulation is necessary: (1) As part of a system of measurement to inform districts, parents and communities about early learning in order to close the school readiness gap; (2) To inform policy decisions at the local level to support early learning experiences prior to school entry; (3) To establish local goals for program improvement in order to achieve early learning outcomes; and (4) To utilize the data as part of the Kindergarten through Grade Three (3) Program Review.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 156.160 gives the Kentucky Board of Education specific authority to promulgate administrative regulations establishing standards which school districts shall meet in program service to students. Promulgation and amendment of this administrative regulation falls within the Kentucky Board of Education's authority in this statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a specific program and standards beneficial to the education of children in Kentucky. KRS 156.070 and 156.160 charge the Kentucky Board of Education with the duty to promulgate administrative regulations establishing programs and standards. The amendment to this regulation outlines a new timeframe for the data entry for the common kindergarten entry screener.

(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 revises the timeframe for entering data for the common kindergarten entry screen in order to facilitate statewide data analysis for more timely decision making.

(b) The necessity of the amendment to this administrative regulation: The previous timeframe was prohibiting a timely analysis of statewide data to create reports that inform program decision making/continuous improvement.

(c) How the amendment conforms to the content of the authorizing statute: The amendment merely changes the time

period for entering the data from the administration of the common kindergarten entry screener.

(d) How the amendment will assist in the effective administration of the statutes: Data made available in a more timely fashion ensures actionable decisions that will improve services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky that have kindergarten programs.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed amendment to the regulation will impact identified schools and districts by shortening the window for data entry from the common kindergarten entry screener so that actionable reports can be generated in a more timely manner.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts and schools will need to enter the data from the common kindergarten entry screener provided by the Kentucky Department of Education within fifteen (15) days of the district's administration of the screener but no later than October 15th of each school year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the districts and schools for this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The school districts and schools will benefit from the proposed amendment. School districts and schools will receive more timely data collected during the common kindergarten entry screener, which will enhance the following benefits: Inform districts, parents and communities about early learning in order to close the school readiness gap; Inform policy decisions at the local level to support early learning experiences prior to school entry; Establish local goals for program improvement in order to achieve early learning outcomes; Utilize the data as part of the Kindergarten through Grade three (3) Program Review.

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

(a) Initially: The amendment will not result in additional costs.

(b) On a continuing basis: The amendment will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment will not result in additional costs. The existing common kindergarten entry screener is paid with state general fund dollars.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary. The proposed amendment will not result in additional costs.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts containing kindergarten programs.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070 and 156.160.

(3) Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue or expense as a result of the amendment to this administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? The proposed amendment will cost nothing (The administration of the common kindergarten screener initially cost the Department about \$800,000 for the first two (2) years of implementation.)

(d) How much will it cost to administer this program for subsequent years? The amendment will not result in additional costs. (The cost per year to the Department to implement a statewide kindergarten screener is about \$240,000 each year to maintain the needed implementation level.)

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Libraries and Archives
Archives and Records Management Division
(Amendment)

725 KAR 1:061. Records retention schedules; authorized schedules.

RELATES TO: KRS 171.420(3), 171.450

STATUTORY AUTHORITY: KRS 171.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.420(3) provides that the State Archives and Records Commission shall be the final authority for the disposition of all public records in Kentucky. KRS 171.450(1)(a) requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal. KRS 171.450(2) requires the department to promulgate administrative regulations to enforce the provision of KRS 171.410 to 171.740. This administrative regulation identifies records retention and disposition schedules approved by the commission that state and local agencies shall follow for retention and disposition of public records.

Section 1. Schedules. (1) A Kentucky state government agency shall comply with:

(a) Records Retention Schedule, General Schedule for State Agencies;

(b) Records Retention Schedule, General Schedule for Electronic and Related Records; and

(c) The applicable schedule for the specific agency from among the following:

1. Records Retention Schedule, Department of Agriculture;
2. Records Retention Schedule, Auditor of Public Accounts;
3. Records Retention Schedule, Economic Development Cabinet;
4. Records Retention Schedule, Education and Workforce Development Cabinet;
5. Records Retention Schedule, Energy and the Environment Cabinet;
6. Records Retention Schedule, Finance and Administration Cabinet;
7. Records Retention Schedule, General Government;

8. Records Retention Schedule, Office of the Governor;

9. Records Retention Schedule, Cabinet for Health and Family Services;

10. Records Retention Schedule, Justice and Public Safety Cabinet;

11. Records Retention Schedule, Department of Law;

12. Records Retention Schedule, Labor Cabinet;

13. Records Retention Schedule, Legislative Branch;

14. Records Retention Schedule, Office of the Lieutenant Governor;

15. Records Retention Schedule, Personnel Cabinet;

16. Records Retention Schedule, Public Protection Cabinet;

17. Records Retention Schedule, Office of the Secretary of State;

18. Records Retention Schedule, Tourism, Arts and Heritage Cabinet;

19. Records Retention Schedule, Transportation Cabinet; or

20. Records Retention Schedule, Department of the Treasury.

(2) State universities and the Kentucky Community and Technical College System shall comply with the Records Retention Schedule, State University Model.

(3) Kentucky local government agencies shall comply with:

(a) Records Retention Schedule, Local Government General Records Schedule;

(b) Records Retention Schedule, General Schedule for Electronic and Related Records; and

(c) The applicable schedule for the specific agency from among the following:

1. Records Retention Schedule, Area Development District;
2. Records Retention Schedule, County Attorney;
3. Records Retention Schedule, County Clerk;
4. Records Retention Schedule, County Coroner;
5. Records Retention Schedule, County Judge Executive;
6. Records Retention Schedule, County Sheriff;
7. Records Retention Schedule, County Treasurer;
8. Records Retention Schedule, County Jail;
9. Records Retention Schedule, Lexington Fayette Urban County Government;
10. Records Retention Schedule, Public Library and Library Board;
11. Records Retention Schedule, Local Health Department;
12. Records Retention Schedule, Louisville Metro Government;
13. Records Retention Schedule, Municipal Government;[-or]
14. Records Retention Schedule, Public School District (K-12/Central Office);_or
15. Records Retention Schedule, Kenton County Airport Board.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Records Retention Schedule, General Schedule for State Agencies", 2014[2014];

(b) "Records Retention Schedule, General Schedule for Electronic and Related Records", 2014[2014];

(c) "Records Retention Schedule, Department of Agriculture", 2014[2014];

(d) "Records Retention Schedule, Auditor of Public Accounts", 2014[2014];

(e) "Records Retention Schedule, Economic Development Cabinet", 2014[2014];

(f) "Records Retention Schedule, Education and Workforce Development Cabinet", 2014[2014];

(g) "Records Retention Schedule, Energy and Environment Cabinet", 2014[September-2014];

(h) "Records Retention Schedule, Finance and Administration Cabinet", 2014[2014];

(i) "Records Retention Schedule, General Government", 2014[September-2014];

(j) "Records Retention Schedule, Office of the Governor", 2014[2014];

(k) "Records Retention Schedule, Cabinet for Health and Family Services", 2014[September-2014];

(l) "Records Retention Schedule, Justice and Public Safety

Cabinet", 2014[2014];
 (m) "Records Retention Schedule, Department of Law", 2014[Labor Cabinet", 2014];
 (n) "Records Retention Schedule, Labor Cabinet", 2014[Department of Law", 2014];
 (o) "Records Retention Schedule, Legislative Branch", 2014[2014];
 (p) "Records Retention Schedule, Office of the Lieutenant Governor", 2014[2014];
 (q) "Records Retention Schedule, Personnel Cabinet", 2014[2014];
 (r) "Records Retention Schedule, Public Protection Cabinet", 2014[2014];
 (s) "Records Retention Schedule, Office of the Secretary of State", 2014[2014];
 (t) "Records Retention Schedule, Tourism, Arts and Heritage Cabinet", 2014[Transportation Cabinet", 2014];
 (u) "Records Retention Schedule, Transportation Cabinet", 2014[Tourism, Arts and Heritage Cabinet", 2014];
 (v) "Records Retention Schedule, Department of the Treasury", 2014[2014];
 (w) "Records Retention Schedule, State University Model", 2014[September 2014];
 (x) "Records Retention Schedule, Local Government General Records", 2014[2014];
 (y) "Records Retention Schedule, Area Development District", 2014[2014];
 (z) "Records Retention Schedule, County Attorney", 2014[2014];
 (aa) "Records Retention Schedule, County Clerk", 2014[2014];
 (bb) "Records Retention Schedule, County Coroner", 2014[2014];
 (cc) "Records Retention Schedule, County Judge Executive", 2014[Jailer", 2014];
 (dd) "Records Retention Schedule, County Sheriff", 2014[Judge Executive", 2014];
 (ee) "Records Retention Schedule, County Treasurer", 2014[Sheriff", 2014];
 (ff) "Records Retention Schedule, County Jailer", 2014[Treasurer", 2014];
 (gg) "Records Retention Schedule, Lexington Fayette Urban County Government", 2014[2014];
 (hh) "Records Retention Schedule, Public Library and Library Board", 2014[2014];
 (ii) "Records Retention Schedule, Local Health Department", 2014[2014];
 (jj) "Records Retention Schedule, Louisville Metro Government", 2014[2014];
 (kk) "Records Retention Schedule, Municipal Government", 2014[2014; and
 (ll) "Records Retention Schedule, Public School District (K-12/Central Office)", 2014; and
 (mm) "Records Retention Schedule, Kenton County Airport Board", 2014[2014].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Archives and Records Management Division[Public Records Division], Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

WAYNE ONKST, Commissioner

APPROVED BY AGENCY: March 31, 2015

FILED WITH LRC: April 15, 2015 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2015, at 10:00 a.m., at the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Conference Room. Individuals interested in being heard at this hearing shall notify this agency in writing by the close-of-business May 14, 2015, of their intent to attend. If no notification of intent to attend the hearing has been 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 the close-of-business, June 1, 2015. 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: Wayne Onkst, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, phone (502)564-8303, fax (502)564-5773.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Wayne Onkst

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies records retention and disposition schedules approved for use by state and local agencies for retention and disposition of public records.

(b) The necessity of this administrative regulation: KRS 171.450(1)(a) requires the Department for Libraries and Archives (department) to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal. KRS 171.450(2) requires the department to enforce the provision of KRS 171.410 to 171.740 by promulgating administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 171.450(1)(a) and (b) require the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal and for the disposal or destruction of public records authorized for disposal or destruction. This regulation identifies those schedules.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation facilitates the permanent retention, disposal or destruction of public records by identifying schedules public agency personnel shall use in meeting their responsibilities related to public records management. The retention and dispositions mandated by the State Archives and Records Commission are documented on approved records retention schedules.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates schedule dates, agency names, and retention decisions.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the regulation is current and up-to-date.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires that schedules be created for public agency records.

(d) How the amendment will assist in the effective administration of the statutes: The amendment of this regulation will ensure that agencies have the most complete information in carrying out their records management programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state and local government agencies must follow this regulation, as all have a responsibility to dispose of records according to decisions of the State Archives and Records Commission, outlined in the records retention schedules.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new responsibilities added to those already existing for public agencies under this

regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no new costs added to those already existing for public agencies under this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agencies who comply with this regulation will recognize more effective and efficient business practices, will recognize cost savings from reduced records storage costs, and will document agency history more effectively.

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

(a) Initially: There will be no costs for agencies to implement this regulation. This regulation merely identifies schedules utilized in activities agencies are undertaking already.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The activities involved in this regulation are already undertaken by public agencies.

(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 required increase is projected.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies uniformly to all public agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state and local government entities are required to use the appropriate documents enumerated in this regulation in order to be compliant with the public records law.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.450(1)(a) requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no net effect on agencies' expenditures and revenues. Continued good records management results in cost savings for government, and in more efficient operation of government.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenues generated for the first year because of this regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenues generated for subsequent years because of this regulation.

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

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs generated for subsequent years because of this regulation.

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

Revenues (+/-): \$0

Expenditures (+/-): \$0

Other Explanation:

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Oil and Gas (Amendment)

805 KAR 1:100. Commission's rules of procedure; spacing of deep well drilling; wildcat wells and pooling of interests.

RELATES TO: KRS 353.651, 353.652

STATUTORY AUTHORITY: KRS[43A.100,] 353.565

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.565 requires the Kentucky Oil and Gas Conservation Commission to administer and enforce the provisions of KRS 353.651 and 353.652 by regulating the spacing of deep well drilling, drilling units and pooling of interests. This administrative regulation provides information necessary for owners and operators to comply with requirements related to drilling deep vertical and deep horizontal wells in the Commonwealth.

~~Section 1. Definitions.[and Construction. Unless the context otherwise requires, the following words and terms shall have the following meanings when used in these administrative regulations:]~~

~~(1) "Commission" is defined by KRS 353.510(4).~~

~~(2) "Commissioner" is defined by KRS 353.510(2).~~

~~(3) "Correlative rights" is defined by KRS 353.510(6).~~

~~(4) "Deep well" is defined by KRS 353.510(16).~~

~~(5) "Department" is defined by KRS 353.510(1).~~

~~(6) "Director" is defined by KRS 353.510(3).~~

~~(7) "Drilling unit" is defined by KRS 353.510(19).~~

~~(8) "Field" is defined by KRS 353.510(10).~~

~~(9) "Gas" is defined by KRS 353.510(8).~~

~~(10) "Horizontal well" is defined by KRS 353.510(25).~~

~~(11) "Just and equitable share of production" is defined by KRS 353.510(11).~~

~~(12) "Oil" is defined by KRS 353.510(7).~~

~~(13) "Operator" is defined by KRS 353.510(17).~~

~~(14) "Overriding royalty interest owner" means a person other than a royalty owner, that has a right to a percentage share of production, or the value derived from production, which is free of all costs of drilling and production and which is created by the lessee or working interest owner and paid by the lessee or working interest owner.~~

~~(15) "Person" is defined by KRS 353.510(5).~~

~~(16) "Pool" is defined by KRS 353.510(9).~~

~~(17) "Prevailing royalty" is defined by KRS 353.510(27).~~

~~(18) "Royalty owner" is defined by KRS 353.510(18).~~

~~(19) "Vertical well" is defined by KRS 353.510(26).~~

~~(20) "Well" is defined by KRS 353.510(14).~~

~~(21) "Wildcat well" means any deep vertical or horizontal well which is:~~

~~(a) Drilled with the intent of discovering or producing hydrocarbons from a formation or formations not previously productive of oil or gas well within 10,000 feet of its location; or~~

~~(b) Drilled under such proven geological conditions that, even though located within 10,000 feet from the nearest deep well previously productive of oil or gas, will not, if completed successfully, produce from a previously productive pool.~~

~~(22) "Working interest owner" means an operator that has the obligation to bear all or a proportionate share of the costs and expenses of unit operation["Department" means the Department of Mines and Minerals as defined in KRS 353.010;~~

~~(2) "Commissioner" means the Commissioner of the Department of Mines and Minerals as defined in KRS 351.010;~~

~~(3) "Director" means the Director of Oil and Gas Conservation as provided in KRS 353.530;~~

~~(4) "Commission" means the Kentucky Oil and Gas Conservation Commission as provided in KRS 353.565;~~

~~(5) "Person" means any natural person, corporation, association, partnership, receiver, governmental agency subject to KRS 353.500 to 353.720, trustee, so-called common-law or~~

statutory trust, guardian, executor, administrator or fiduciary of any kind;

(6) "Correlative rights" means the reasonable opportunity of each person entitled thereto to recover and receive without waste the oil and gas in and under his tract or tracts, or the equivalent thereof;

(7) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir;

(8) "Gas" means all natural gas, including casinghead gas, and all other hydrocarbons not defined above as oil;

(9) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both. Each productive zone of a general structure which is completely separated from any other zone in the structure, or which for the purpose of KRS 353.500 to 353.720 may be so declared by the department, is covered by the word "pool" as used herein;

(10) "Field" means the general area which is underlaid or appears to be underlaid by at least one (1) pool; and "field" includes the underground reservoir containing oil or gas or both. The words "field" and "pool" mean the same thing when only one (1) underground reservoir is involved; however, "field" unlike "pool" may relate to two (2) or more pools;

(11) "Just and equitable share of production" means, as to each person, an amount of oil or gas or both substantially equal to the amount of recoverable oil or gas in that part of a pool underlying his tract or tracts;

(12) "Well" means a borehole drilled, or proposed to be drilled, for the purpose of producing natural gas or petroleum, or one through which natural gas or petroleum is being produced, or a borehole drilled or proposed to be drilled for the purpose of injecting any water, gas or other fluid therein or one into which any water, gas or other fluid is being injected;

(13) "Deep well" means any well drilled and completed below the depth of 4,000 feet or, in the case of a well located east of longitude line eighty-four (84) degrees thirty (30) minutes, a well drilled and completed at a depth below 4,000 feet or below the base of the lowest member of the Devonian Brown Shale, whichever is deeper;

(14) "Operator" means any owner of the right to develop, operate and produce oil and gas from a pool and to appropriate the oil and gas produced therefrom, either for himself or for himself and others; in the event that there is no oil and gas lease in existence with respect to the tract in question, the owner of the oil and gas rights therein shall be considered as "operator" to the extent of seven-eighths (7/8) of the oil and gas in that portion of the pool underlying the tract owned by such owner, and as "royalty owner" as to one-eighth (1/8) interest in such oil and gas; and in the event the oil is owned separately from the gas, the owner of the right to develop, operate and produce the substance being produced or sought to be produced from the pool shall be considered as "operator" as to such pool;

(15) "Royalty owner" means any owner of oil and gas in place, or oil and gas rights, to the extent that such owner is not an operator as defined in subsection (14) of this section;

(16) "Drilling unit" generally means the maximum area in a pool which may be drained efficiently by one (1) well so as to produce the reasonable maximum recoverable oil or gas in such area. Where the regulatory authority has provided rules for the establishment of a drilling unit and an operator, proceeding within the framework of the rules so prescribed, has taken the action necessary to have a specified area established for production from a well, such area shall be a drilling unit.

(17) The singular shall include the plural, and the masculine gender shall include the feminine and neuter].

Section 2. Rules of Procedure. (1) Rules, administrative regulations, and orders of the commission of general, or statewide, effect shall be submitted, published, and reviewed in accordance with KRS Chapter 13A. Hearings on such rules, administrative regulations, or orders shall be held, in accordance with KRS

Chapter 13A.

(2) Rules, administrative regulations, or orders other than those of general, or statewide, effect, including but not limited to orders establishing drilling units, pool or field-wide units, or special field rules, shall be adopted only after notice and hearing in accordance with these rules and consistently with provisions of KRS 353.500 to 353.720.

(3) All hearings before the commission shall be open to the public. Hearings shall be called by the commission for the purpose of taking an action in respect to any matter within its jurisdiction upon its own motion or upon the request[or application] of any interested party.[Applications or] Requests for hearing (except as otherwise provided herein) shall be written and may be in the form of a letter, shall be brief and concise, shall state in general terms the matter upon which action of the commission is desired, the interest of the applicant, or person making the request, the action sought, and the reasons therefor.

(4) The director shall maintain a docket book for the commission.[, and] All applications or requests for hearings and all hearings called on motion of the commission shall be docketed and given a docket number, and a file carrying such number shall be opened by the director. All applications for hearing, a copy of the notice of hearing, together with proof of its publication, the originals of all instruments, documents, plats, and other data filed in connection with the hearing or the subject matter thereof, a transcript of all evidence taken at the hearing, the originals or copies of all correspondence with the commission concerning such hearing or the subject matter thereof shall be stamped with the docket number of the hearing and placed and kept in the file carrying such number. The docket book and all files pertaining to hearings shall be open to the public at all reasonable times but shall not be removed from the custody of the commission or its employees. Copies of all such instruments, documents, plats, other data, and correspondence shall be furnished to any interested party upon payment of the cost of making such copies in accordance with the Kentucky Open Records Act. All notices of hearing shall refer to the docket number thereof. Copies of applications for hearing shall be furnished by the director to any person upon request in accordance with the Kentucky Open Records Act.

(5) All hearings shall be held in Frankfort[Lexington], Kentucky, unless otherwise ordered.

(6) Upon receipt of a proper request or completed application for hearing, the commission shall call a hearing within thirty (30) days, and after such hearing and with all convenient speed, and in any event within thirty (30) days after the conclusion of the hearing, shall take action with regard to the subject matter thereof.

(7) Notice of all hearings shall be given by publication, as authorized by KRS 353.680, in accordance with KRS Chapter 424. When required by KRS 353.651 or 353.652 to give personal notice to all persons reasonably known to own an interest in the oil and gas in an area to be unitized or for which special field rules are proposed, the commission shall give such notice by registered mail unless a person has given a mailing address as provided in subsection (8) of this section.

(8) The director shall maintain a general mailing list and shall place thereon the names and addresses of all persons[, firms, or corporations] who make request in writing to be included on such list. Each person[, firm, and corporation] on such mailing list shall be mailed by first class mail at the address listed a copy of all notices and orders issued by the commission. The director shall maintain a mailing list for each field in the state containing one (1) or more deep wells and shall place on each such list the names and addresses of all persons[, firms, or corporations] who make request in writing to be included thereon. Each person included on the mailing list for[of] any field shall be mailed by first class mail at the address listed a copy of all notices and orders issued by the commission as to such field. The failure to mail a copy of a notice to any such person[, firm, or corporation] shall not affect the validity of any hearing held pursuant to the notice published in accordance with subsection (7) of this section or any rule, administrative regulation, or order issued pursuant to such hearing, unless such person is one reasonably known to own an interest in the oil and

gas in an area to be unitized and for which special field rules are proposed and who is thus entitled to personal notice by KRS 353.651 or 353.652. When a person entitled to personal notice of a hearing has requested to be placed on either the general or a field mailing list, a notice mailed by first class mail to the address given shall constitute compliance with KRS 353.651 or 353.652, as the case may be.

(9) Notices of all hearings shall state the time and place of the hearing, the name of the party requesting the hearing, the nature thereof, the action sought, and the docket number.

(10) No notice by personal service shall be necessary except as required by KRS 353.651 or 353.652 or by special order of the commission entered on its minutes.

(11) After notice of a hearing is once given, the hearing may be continued to another day and from day to day by order of the commission entered on the day fixed for the hearing.

(12) The commission may adopt an emergency rule, administrative regulation, or order of general, or statewide, effect without notice and hearing upon a finding of necessity to prevent waste, prevent irreparable injury, or other cause and issuance by the Governor of an executive order providing that it shall become effective upon submission to the Legislative Research Commission in accordance with KRS Chapter 13A. Such a rule, administrative regulation, or order shall provide that it will remain in force no longer than 120 days from the date of filing. If the commission desires to make such a rule, administrative regulation, or order permanent, it shall proceed as required by KRS Chapter 13A.

(13) The commission may adopt emergency rules, administrative regulations, or orders other than those of general, or statewide, effect without notice and hearing upon a finding of necessity to prevent waste, irreparable injury, or other cause. Any such rule, administrative regulation, or order shall provide that it will remain in force no longer than forty-five (45) days from its effective date. Immediately upon entering such a rule, administrative regulation, or order, the commission shall call a hearing on the subject matter thereof, and such hearing shall be held prior to the expiration of the rule, administrative regulation, or order.

(14) All interested ~~persons~~[parties] shall have the right to be heard at all hearings and to present witnesses and other evidence whether or not represented by legal counsel or technical assistance. The commission may require any protest made to be reduced to writing and filed.

(15) In any proceeding before the commission subpoenas may be issued requiring the attendance of witnesses and the production of books, records, maps, charts, diagrams, and other pertinent documents material to the matters lawfully before the commission at the designated place of hearing.

(16) Hearings shall be opened with the reading of the notice or notices. The request for hearing, the notice or notices thereof, and proof of the due publication of the notice or notices of the hearing shall be made a part of the record of the hearing.

(17) All witnesses shall be required to testify under oath, administered by a member of the commission, to tell the truth, the whole truth, and nothing but the truth, and all witnesses shall be subject, to direct and cross-examination by any member of the commission or by any[interested] party or its legal[by his] representative.

(18) In all noncontested matters or in contested matters where those parties who appear in person at the hearing agree thereto, sworn affidavits may be received in evidence. The commission reserves the right to reject any and all such affidavits and to require the affiant to appear in person.

(19) The materiality, relevancy, and competency of any testimony or other evidence shall be subject to challenge by any party to the hearing or by any member of the commission. When so interposed, such objections shall be acted upon by the chairman or by the acting chairman, his ruling thereon being subject to change by a majority vote of the commission members then sitting.

(20) All ~~parties~~[persons] presenting exhibits shall file a total of eight (8) copies with the reporter. All suggested forms of orders shall be presented in quintuplicate. These requirements may be

waived by the commission.

(21) The commission shall from time to time by order entered on its minutes appoint a competent[shorthand] reporter. All hearings shall be recorded by a reporter appointed by the commission and sworn faithfully to discharge his duties in accordance with law and the direction of the commission. The reporter shall transcribe hearings only upon order of the commission. When such an order has been entered, transcripts shall be available for inspection at the office of the commission in ~~Frankfort~~[Lexington], Kentucky and transcripts shall be available for purchase by[interested] parties from the reporter at rates prescribed for transcripts of evidence in circuit court proceedings in Kentucky, whether ordered transcribed by the commission or not.~~[(22) Regular monthly meetings shall be held by the commission on the first Friday of each month. Where circumstances permit, the commission, after sounding the docket, shall first call up and dispose of all noncontested matters and motions for continuance.]~~

Section 3. Permitting and Spacing of Wildcat Wells. (1) The 10,000 feet from a horizontal wildcat well shall be measured as 10,000 feet from any point along the lateral portion of the wellbore that is located in the productive formation.~~["Wildcat well" means either a deep well drilled with the intent of discovering and producing hydrocarbons from a formation or formations not previously productive of oil or gas from a well within 25,000 feet of its location, or a well drilled under such proven geological conditions that, even though located less than 25,000 feet from the nearest deep well previously productive of oil or gas, will not, if completed successfully, produce from a previously productive pool.]~~ Proof supporting permitting of a well located less than 10,000[25,000] feet from the nearest deep well previously productive of oil or gas should be submitted to the director with the permit application.~~[(2) The director may, however, require additional proof. If a deep well encounters a formation or pool as to which it is not a wildcat well, it may not be produced unless it is otherwise in compliance with the permit requirements and spacing regulations for other wells in that formation or pool. The director may, in his discretion, grant permission to test previously producing formations encountered in the drilling of a wildcat well and may fix such conditions as, in his judgment, will protect the formation or formations tested and the rights of the operator of any well or wells producing therefrom. If the director grants permission for such testing, he shall inform the other members of the commission in writing of his action. If an operator files an application for a wildcat well, pursuant to this section, which does not meet the spacing provisions of this section, the director shall notify the commission. The commission may hear the new application if it finds, from the new application, that conditions may warrant an exception to this section.]~~

(2) Within ninety (90) days following the completion of testing by surface production test of a wildcat well shown to be capable of production of oil or gas, or within ninety (90) days of completion as a producible well, whichever occurs first, the operator thereof shall file with the commission a plat showing a proposed unit for the well conforming to the rules provided in Section 4(1) of this administrative regulation.~~[(3) No additional permits will be issued for the pool until a proposed unit plat is filed, and when the plat is filed for a wildcat well or any subsequent wells, no permits shall be issued which will violate the integrity of the proposed unit or the spacing regulations established by Section 4(2) to (4) of this administrative regulation.]~~

Section 4. Drilling and Spacing of Vertical Deep Oil and Gas Wells. (1) If a permit is requested for a vertical deep gas well other than a wildcat well or a well drilled on a unit previously formed by the commission, the application shall include a plat showing a proposed unit comprising a square with sides of 3,500 feet if the well is to be drilled to a depth less than 7,000 feet and with sides of 5,000 feet if the well is to be drilled to a depth of 7,000 feet or more. If the permit is for a vertical deep oil well, the proposed unit plat shall comprise a square with sides of 1,750 feet if the well is to be drilled to a depth of less than 7,000 feet and 2,500 feet if the

well is to be drilled to a depth of 7,000 feet or more. The first proposed unit for a pool shall be delineated so that the line forming one (1) side of the square is a base line running from south to north parallel to the Kentucky Coordinate System. All other north-south lines for that proposed unit and any additional units for the same pool shall be drawn parallel to the base line.

(2) Except as provided in subsections (4) and (5) of this section no vertical deep gas well drilled to a depth less than 7,000 feet shall be located within 1,072 feet of the boundary of the proposed unit, and no vertical deep gas well drilled to a depth of 7,000 feet or more shall be drilled within 1,532 feet of the boundary of the proposed unit.

(3) Except as provided in subsections (4) and (5) of this section no deep oil well drilled to a depth less than 7,000 feet shall be located within 536 feet of the boundary of the proposed unit, and no deep oil well drilled to a depth of 7,000 feet or more shall be drilled within 766 feet of the boundary of the proposed unit.

(4)(a) Upon receiving evidence showing a necessity therefor, the director may in his discretion grant permits with the following limitation on well location:

1. A vertical deep oil well at a depth less than 7,000 feet may be located no closer than 438 feet to the boundary of the proposed unit.

2. A vertical deep oil well at a depth of 7,000 feet or more may be located no closer than 625 feet to the boundary of the proposed unit.

3. A vertical deep gas well at a depth of less than 7,000 feet may be located no closer than 875 feet to the boundary of the proposed unit.

4. A vertical deep gas well at a depth of 7,000 feet or more may be located no closer than 1,250 feet to the boundary of the proposed unit.

(b) The director shall not grant a permit under the provisions of subsection (4)(a) of this section except in the presence of evidence which reasonably substantiates that the proposed location is justified by either topographical or geological conditions. Upon granting such a permit, the director shall inform the other members of the commission of his action in writing.

(c) Prior to the time a certificate of compliance is granted and a well located in accordance with paragraph (a) of this subsection is produced other than for the purpose of testing, the director shall determine whether a hearing is necessary for the purpose of taking any special action that may be required to offset any advantage resulting from the location of the well according to the permit and thus protecting correlative rights of others with interests in the pool. If it is determined that special action is necessary, the director shall call a hearing of the commission.

(5)(a)~~[Exception]~~ Locations varying from the limitations provided in subsections (2) to (4) of this section may be granted if the commission determines, after notice and hearing, and the facts clearly support the determination, that a proposed unit or a previously formed unit is partly outside the pool, or, for some other reason, a well located in accordance with the statewide rules could not reasonably be expected to be productive or topographical conditions are such as to make the drilling at such a location unduly burdensome. An application for an exception location shall be accompanied by a plat drawn to the scale of not smaller than 1:12,000 accurately showing to scale the proposed location of the well according to the Carter Coordinate System and all other deep wells within two (2) locations of the proposed location. The application shall be verified by some person acquainted with the facts.

(b) When an exception location is sought on the ground of topographical conditions, it must be shown that the commission can effectively offset any advantage to the applicant accruing from such variation.

(c) Whenever an exception location is granted, the commission shall take such concurrent action as may be required to offset any advantage to the applicant and thus to protect the correlative rights of others with interests in the pool. If the proposed unit or already formed unit is of less acreage than that prescribed by the applicable spacing rule for a regular unit, whether proposed or formed according to special field orders for the pool in question,

such special unit shall be allowed to produce only in the proportion that the acreage content of such special unit bears to the acreage content of a regular unit.

(6) No portion of a proposed unit, or unit formed by order of the commission upon which a well is located shall be attributed, in whole or in part, to any other drilling or producible well in the same pool.

(7)(a) Unless authorization to intentionally deviate and directionally drill a well is granted by the commission, every well shall be drilled in such a manner that at any measured depth the actual or apparent location of the well bore shall be within a circle whose center is the surface location and whose radius is equal to the measured depth multiplied by a factor 0.087156. The actual or apparent resultant deviation of the well bore from the vertical shall not be in excess of five (5) degrees at any measured depth. In the event a directional survey indicates that the well bore is outside the above circle at any measured depth, the deviation must be corrected so that drilling will be restored to the specified limit. Upon completion of a survey showing or in the presence of knowledge giving rise to a reasonable belief that a well may be deviated beyond the above prescribed tolerance, the operator shall inform the director. ~~[[After]~~ an operator has commenced drilling a well and desires to change the bottom hole location by directionally controlling and intentionally deflecting the well from the vertical, whether more or less than five (5) degrees, unless done to straighten the hole or to sidetrack junk in the hole or because of other mechanical difficulties, he shall first make application for an amended location showing by attached plat the amended projected bottom hole objective and secure an amended permit to drill before commencing such operations. The amended bottom hole location or objective shall comply with all minimum distances from unit lines as prescribed by all statewide orders or applicable field orders.

(b) In the event a well is to be drilled at a distance from a unit line where such distance is less than the apparent resultant lateral deviation, as determined by multiplying the proposed total depth of the well by the factor 0.087156, a permit to drill will be issued with the understanding that the operator will be required to furnish the commission with inclination or directional survey data as proof that the well will be completed in compliance with the provisions of this administrative regulation~~[order]~~ before a certificate of compliance is issued. An inclination survey shall be made on all wells drilled with the first shot point at a depth not greater than that of the surface casing seat and succeeding shot points not more than 1,000 feet apart. Inclination surveys conforming to these requirements may be made either during the normal course of drilling or after the well has reached total depth. Such survey data shall be certified by the operator's representative or drilling contractor and shall indicate the resultant lateral deviation as the sum of the calculated lateral displacement determined between each inclination survey point, assuming that all such displacement occurs in the direction of the nearest unit line. If a directional survey determining the bottom of the hole is filed with the commission upon completion of the well, it shall not be necessary to furnish the inclination survey data.

(c) The commission may, at its discretion, require an operator to conduct inclination or directional surveys under conditions other than those above specified.

(d) An applicant for a hearing to issue special field orders for a new pool or otherwise to establish a drilling unit, or any interested party, may request that the commission pool the interests of the owners and the royalty owners in any unit or units established as a result of the hearing. A request to pool separately owned tracts concurrently with the establishment of a unit or units shall be submitted with the application for the hearing, or sufficiently in advance to include notice of the request in the notices of hearing. When necessary, the commission may on its own motion include the pooling of separately owned tracts in the notice of a hearing to establish a unit or units. If separately owned tracts are not pooled as a result of the hearing to establish a unit or units, any interested party may request pooling at any subsequent time; provided, however, that if the owners and royalty owners have not agreed to pool their interests within 120 days of the issuance of a certificate of compliance, the operator of the well shall apply for a hearing to issue a pooling order.

(8) No additional permits for a deep vertical well will be issued for the pool until a proposed unit plat is filed, and when the plat is filed for a wildcat well or any subsequent wells, no additional permits for a deep vertical well shall be issued which will violate the integrity of the proposed unit or the spacing regulations established by this section.

Section 5. Horizontal Unitization and Pooling for Deep Well Reservoirs. (1) Under the procedures contained in this section, the commission is authorized to unitize a productive deep well reservoir for the drilling of deep horizontal wells for the purposes of achieving a greater ultimate recovery of oil and gas from such reservoir, preventing waste and protecting the correlative rights of the owners of oil and gas in the unit.

(2) If the application to permit a single deep horizontal well has been submitted or well permits have been submitted for multiple horizontal wells to be drilled from a single well pad, the proposed operator of those wells may simultaneously or thereafter apply to create a unit for the coordinated drilling and operation of such well or wells and the allocation of costs and production from such well. An application to create such a unit, shall include all information required by KRS 353.652 and applicable regulations and a plat of the proposed unit. For a single deep horizontal well, the plat shall also include the surface location of the proposed well, the directional path of the lateral portion of the wellbore, and the point of entry into any proposed producing formation. For multiple deep horizontal wells to be drilled from a single well pad, the plat shall show the plan of development for the unit which shall include the surface location of each well, the directional path of the lateral portion of the wellbore, and the point of entry into any proposed producing formation. The plan of development shall be fair, reasonable and equitable and shall meet all requirements of this section and KRS 353.651 and 353.652.

(3) If the director determines the permit requirements for the wells included in the proposed deep horizontal well unit have been met, the director shall notify the commission within five (5) working days of the pending application, and the commission will set a hearing date for the commission to review and consider the requested unit. Such hearing shall be held within a reasonable period of time, but not more than thirty (30) days from the date the director has notified the commission of the pending application. The director will promptly forward to the commission a complete copy of the applications for the deep horizontal well permits and unit designation and all documents and information filed therewith. If, upon reviewing the application for the unit, the commission determines that it does not have sufficient data to make the findings required under KRS 353.652, it may request additional information from the applicant prior to the hearing. If additional information is requested by the commission, the commission will promptly so notify the operator, and the additional information may be filed with the commission prior to the hearing or it may be presented to the commission at the hearing. Upon the request of the operator, and the extent the commission is legally authorized to do so, the commission shall keep confidential for a period of one (1) year following the date the deep horizontal well is completed, any geological or technical information provided in support of a proposed unit.

(4) The commission shall consider the complete application for the proposed deep horizontal well unit based on information and testimony presented by the operator at the hearing that such unit is necessary to prevent waste and to protect correlative rights and that it will result in the increased recovery of substantially more oil and gas from the reservoir than would otherwise be recovered based upon, but not necessarily limited to, the following factors:

(a) Geological features existing with the proposed unit delineated by the geologically defined limits of the producing reservoir;

(b) Unit size, determined by estimating the likely drainage area for the proposed deep horizontal well(s), considering the well depth, the reservoir pressure, and other geophysical and petrophysical characteristics of the particular formation;

(c) The proposed location or orientation of the proposed deep horizontal well;

(d) The length of the laterals of the proposed deep horizontal well;

(e) The proposed use of multilateral deep horizontal wells, if applicable;

(f) The anticipated principal fluid and anticipated total volume to be used in the well treatment;

(g) Any combination thereof.

(5) After notice and hearing, the commission shall determine if:

(a) The proposed pooling and/or unitization of the reservoir is reasonably calculated to increase the ultimate recovery of oil and gas from the reservoir through the use of horizontal well technology;

(b) The use of horizontal well technology to drill the proposed deep horizontal wells in the reservoir is feasible, will prevent waste, will protect correlative rights and will with reasonable probability result in the increased recovery of substantially more oil and gas from the reservoir within the unit than would otherwise be recovered; and

(c) The unitization and the use of horizontal well technology to drill the proposed deep horizontal wells is for the common good and will result in the general advantage of the royalty owners within the unit. Upon making these findings, the commission shall enter an order approving the creation of the proposed drilling and production unit and providing for the pooled or unitized operation of the deep well reservoir described in the order, all upon terms and conditions as may be shown by the evidence to be fair, reasonable, equitable and which are necessary or proper to protect and safeguard the respective rights and obligations of the working interest owners and the royalty owners.

(6) The order of the commission creating the unit shall:

(a) Approve the size and shape of the unit;

(b) Approve and adopt the plan of development for the unit, with a copy thereof attached to the order;

(c) Designate the unit operator;

(d) Provide that the unit shall automatically terminate upon the expiration of all the well permits for the proposed deep horizontal wells within the approved unit; and

(e) Provide that, within ninety (90) days of the expiration of the permits for the proposed deep horizontal wells remaining undrilled in the approved plan of development, the designated unit operator must apply for reformation of the drilling unit to conform the unit size and shape to the actual development that occurred.

(7) From and after the effective date of the order of the commission approving the unit, the interest of each royalty owner and overriding royalty interest owner in the unit shall be defined as the percentage of interest owned by such royalty owner or overriding royalty interest owner in each separate tract, multiplied by the proportion that the acreage in each separately owned tract bears to the entire acreage of the unit. The order shall provide for the right of the designated operator of the unit to drill through separately owned tracts that have been pooled voluntarily or by order of the commission within the unit as necessary in order to efficiently develop the pooled or unitized production.

(8) The costs incurred in connection with and the production and proceeds from the wells in the unit shall be allocated to each separate tract in the unit and shall be borne or shared by the working interest owners in each separate tract based upon and determined by the interest of each working interest owner in the tract. For the purpose of this section, any owner or owners of oil and gas rights in and under an unleased tract of land within the unit, shall be regarded as a royalty interest owner to the extent of the prevailing royalty in and to the rights and a working interest owner to the extent of the remaining interests therein.

Section 6. Certificate of Compliance. Prior to producing oil or gas from a deep well, other than test production for a period not in excess of sixty (60) days, the operator thereof shall apply for and obtain a certificate of compliance from the director. The application for the certificate of compliance must be verified, and shall provide information, including an "as-built" plat of the well(s) in the unit, adequate to satisfy the director that the permitted deep well as proposed in the unit application and plan of development, if applicable, were completed as set forth therein or in accordance

with the final reformation of the drilling unit approved by the commission. The director shall issue the certificate of compliance or notify the operator of a decision not to issue the certificate of compliance within fifteen (15) days of receipt of an application[Certificate of Compliance. (1) Prior to production from a deep well, other than test production for a period not in excess of fifteen (15) days, the operator thereof shall apply for and obtain a certificate of compliance from the director. The application, which must be verified, shall disclose information adequate to satisfy the director that:

(a) All working interests in the drilling unit or proposed unit are identically owned, or have been pooled by voluntary agreement or order of the commission, or that the well may be produced without violating the correlative rights of any owner in the unit; and

(b) The operator in the location, drilling, and completion of the well has complied with the conservation laws of the Commonwealth and the rules and administrative regulations established by the Director of the Division of Oil and Gas and the commission applicable thereto.

(2) A certificate of compliance for a well for which a unit has not been established may be conditioned by the director by limiting its duration to a period of not more than 180 days unless a unit has been established and separately owned tracts have been pooled voluntarily or by order of the commission].

Section 7[6]. Application for Special Field Orders for Wells. (1) When a new pool is penetrated and a well is proven by surface production test to be capable of producing oil or gas in paying quantities, the operator thereof shall, within 120 days after the test is completed or after the well is completed as a producible well, whichever occurs first, or within sixty (60) days of the completion of a confirmation well in the pool, whether drilled by him or another operator, apply for a hearing to issue special field orders governing the spacing of wells and establishment of units in the pool.

(2) An application for special field orders shall contain a plat showing all wells in the pool affected and the unit or units proposed for the pool.

(3) If upon testing a discovery well an operator believes that the confirmation well should not or cannot reasonably be located in accordance with the statewide spacing rules, he shall proceed by applying for a hearing to obtain an exception location.[Section 7. Pooling of Interests in Units Established by Order of the Commission. (1) An applicant for a hearing to issue special field orders for a new pool or otherwise to establish a drilling unit, or any interested party, may request that the commission pool the interests of the owners and the royalty owners in any unit or units established as a result of the hearing. A request to pool separately owned tracts concurrently with the establishment of a unit or units must be submitted with the application for the hearing, or sufficiently in advance to include notice of the request in the notices of hearing. When in its judgment it is necessary, the commission may on its own motion include the pooling of separately owned tracts in the notice of a hearing to establish a unit or units.

(2) If separately owned tracts are not pooled as a result of the hearing to establish a unit or units, any interested party may request pooling at any subsequent time; provided, however, that if the owners and royalty owners have not agreed to pool their interests within 120 days of the issuance of a certificate of compliance, the operator of the well shall apply for a hearing to issue a pooling order.]

Section 8. Reformation of Drilling Units. (1) Drilling units approved[~~formed~~] by the commission may be reformed upon notice and hearing as required by KRS 353.651, to exclude previously included acreage or to include new acreage, or both.

(2) A request for a hearing to reform drilling units must specify that there is new geological or geophysical data or there was a change in the proposed drilling of well(s) in the approved unit and plan of development which will form a basis for the requested reformation and generally describe the source and nature of the data. Units will not be reformed in the absence of such data. Generally, "new data" must be data not in existence at the time of

the hearing resulting in the formation of the units proposed for reformation. Reinterpretation of data existing at the time of the prior hearing will not serve as a basis for reformation.

Section 9. Testing of Water Sources near Deep Wells Employing High-Volume Horizontal Fracturing. At least twenty (20) days prior to commencement of the high-volume horizontal fracturing treatment on a horizontal deep well, an owner or operator shall conduct baseline water testing from a groundwater source used for domestic, agricultural, or industrial purposes within 1,000 feet of a deep horizontal wellhead pursuant to 2015 Ky. Acts ch. 21, sec. 6(1).

(1) The owner or operator shall complete an Analysis of Groundwater Source within 1,000 ft of Deep High-Volume Horizontal Fracturing Treatment, Form ED-XX, identifying the following:

(a) Well operator;

(b) Well name and number; Division of Oil and Gas permit number;

(c) Water source to include domestic water well, ponds, springs, and streams;

(d) Water source owner and permanent address;

(e) Distance water source from wellhead; and

(f) Dates of initial baseline and subsequent (after fracturing treatment and well completion) water analysis.

(2) Water well quality testing to establish baseline parameters shall be completed and submitted to the Division of Oil and Gas thirty (30) days prior to hydraulic fracturing pursuant to 2015 Ky. Acts ch. 21, sec. 6(2).

Section 10. Incorporation by Reference. (1) "Analysis of Groundwater Source within 1,000 ft of Deep High-Volume Horizontal Fracturing Treatment", Form ED-40, April 2015, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Oil and Gas, 1025 Capital Center Drive, Frankfort, Kentucky 40602-2244, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 2, 2015

FILED WITH LRC: April 7, 2015 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 26, 2015 at 10:00 a.m. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2015, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business, June 1, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides information necessary for owners and operators to comply with requirements related to drilling deep vertical and deep horizontal wells in the Commonwealth. The administrative regulation also provides

information on the functions of the Kentucky Oil and Gas Conservation Commission.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information related to drilling deep wells in the Commonwealth. The administrative regulation is also necessary to provide information to owners and operators on the operations and involvement of the Kentucky Oil and Gas Conservation Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.565 requires the Kentucky Oil and Gas Conservation Commission to administer and enforce the provisions of KRS 353.651 and 353.652 by regulating the spacing of deep well drilling, drilling units and pooling of interests. This administrative regulation complies with those requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 353.565 requires the Kentucky Oil and Gas Conservation Commission to administer and enforce the provisions of KRS 353.651 and 353.652 by regulating the spacing of deep well drilling, drilling units and pooling of interests. This administrative regulation provides the necessary details for drilling a deep well in the commonwealth as well as the commission's role in pooling and spacing of those deep wells.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides information on horizontal unitization and pooling for deep well reservoirs. The amendment also includes definitional amendments that are the result of the passage of SB 186.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide the necessary detail for drilling horizontal deep wells in the Commonwealth and the commission's involvement in the pooling and unitization of those wells.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 353.565 requires the Kentucky Oil and Gas Conservation Commission to administer and enforce the provisions of KRS 353.651 and 353.652 by regulating the spacing of deep well drilling, drilling units and pooling of interests. This administrative regulation includes horizontal deep wells.

(d) How the amendment will assist in the effective administration of the statutes: KRS 353.565 requires the Kentucky Oil and Gas Conservation Commission to administer and enforce the provisions of KRS 353.651 and 353.652 by regulating the spacing of deep well drilling, drilling units and pooling of interests. This amendment provides the necessary information authorized by the statutory amendments related to horizontal deep well drilling.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact approximately 1,000 oil and gas operators within the Commonwealth. It will also have an impact to the members of the Kentucky Oil and Gas conservation Commission. The commission consists of five (5) members.

(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 entities listed above will be required to meet requirements of this administrative regulation related to horizontal deep wells.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs associated with this proposal are difficult to predict as they will depend on the depth at which the well is drilled.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Owners or operators that intend to drill a deep well will be able to do so horizontally.

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

(a) Initially: These amendments will not increase the costs of the agency to implement.

(b) On a continuing basis: These amendments will not increase the costs of the agency on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general funds and restricted funds will be used.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need to increase fees or funding related to the proposed amendments.

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

(9) TIERING: Is tiering applied? No. All entities that drill a horizontal deep well will be treated in the same manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Oil and Gas and the Kentucky Oil and Gas Conservation Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 353.565.

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Oil and Gas (Amendment)

805 KAR 1:130.[Deep well] Administrative regulation relating to casing, cementing, plugging, gas detection and blow-out prevention in oil and gas wells.

RELATES TO: KRS 353.520

STATUTORY AUTHORITY: KRS[Chapter 13A,] 353.540, 353.550, 353.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.550 requires the Department for Natural Resources to regulate the drilling and casing of all wells. This administrative regulation establishes the requirements for the drilling and casing of a[deep] well.

VOLUME 41, NUMBER 11 – MAY 1, 2015

Section 1. Definitions. ~~[The definitions in KRS 353.510 and the following additional definitions shall apply to this administrative regulation:]~~ (1) "Abnormal pressure" means a reservoir pressure that exceeds the hydrostatic pressure of fresh water extending from the reservoir to the surface.

(2) "Annulus" means the space between two (2) strings of casing or between a string of casing and the bore hole wall.

(3) "Blow-out preventer (BOP)" means a device installed on the surface or intermediate casing to prevent the escape of pressure either in the annulus between casing and drill pipe or in the open hole without drill pipe and which is used during drilling operations.

(4) "Casing (casing string)" means steel tubes or pipes installed in a well.

(5) "Cement" means hydraulic cement properly mixed with water or with additives approved by the director, and which is used to fill the annulus of casing ~~string~~~~[string(s)]~~ or to plug the well.

(6) "Deep well" ~~is defined by KRS 353.510(16)~~~~[means any well drilled and completed below the depth of 4,000 feet or, in the case of a well located east of longitude line eighty-four (84) degrees thirty (30) minutes, a well drilled and completed at a depth below 4,000 feet or below the base of the lowest member of the Devonian Brown Shale, whichever is deeper].~~

(7) ~~["DES" means the state Disaster and Emergency Services Office under authority of the Department of Military Affairs in Frankfort, Kentucky with regional offices throughout the Commonwealth.~~

(8) "Intermediate casing" means one (1) or more strings of pipes installed in a well in addition to the surface casing in which each string is smaller in diameter than the previous.

(8) "KYEM" means the state Kentucky Emergency Management office under authority of the Department of Military Affairs in Frankfort, Kentucky with regional offices throughout the Commonwealth.

(9) "Long casing string" means the last casing installed in a well to be used for production or injection purposes.

(10) "Shallow well" is defined by KRS 353.510(15).

(11) "Surface casing" means the first and largest diameter casing installed in a well and its primary uses are to make the bore hole stand up and to protect the fresh water zones.

(12) ~~[(14)]~~ "Zone" means a layer of strata capable of producing or receiving fluids.

Section 2. When an application for a shallow well proposed to be drilled to a depth of less than 4,000 feet or above the base of the lowest member of the Devonian Brown Shale is submitted to the department, the application shall comply with all requirements of 805 KAR 1:020 and shall be exempt from Sections 3 and 4 of this administrative regulation.

Section 3. (1) When an application for a [deep] well permit proposed to be drilled below a depth of 4,000 feet or the base of the lowest member of the Devonian Brown Shale whichever is deeper, is submitted to the department, the operator shall prepare and submit with the permit application a detailed drilling and casing plan on Form ED-7, incorporated by reference in 805 KAR 1:140, Section 7(1)(b), for the review by and approval of the department.

~~(2) [This casing and cementing form dated August 1, 1991 is filed and incorporated herein by reference. Copies of this form may be obtained from the Department for Natural Resources, P.O. Box 14090, Lexington, Kentucky 40512-4090, Monday through Friday, 8 a.m. to 4:30 p.m.] This plan shall include the following:~~

~~(a) [(4)] A drafted schematic showing the hole size and depth of each casing string. The freshwater string shall be set at least thirty (30) feet below the depth recommended by the department; if fresh water is encountered during drilling operations deeper than such recommended depth, the freshwater casing shall be set at least thirty (30) feet below the actual freshwater depth. All freshwater casing strings shall be circulated when they are set before drilling commences; and~~

~~(b) [-(2)] A description of the type, size and grade of casing to be used and the manner in which the annulus of the casing string and well bore will be cemented to protect all fresh water, coal, mineral, and oil and gas producing formation in the area proposed~~

for drilling. The volume, class, additives and weight of the cement to be used shall also be described.

~~(3) If a production packer assembly is included on the long casing string, the number of packers shall be included on the plan.~~

~~(4) If drilling fluid is used, it shall comply with 805 KAR 1:020, Section 2(1)(c).~~

Section 4. ~~(1)[3-]~~ The operator shall install a blow-out prevention device capable of:

~~(a) Closing the top of the well;~~

~~(b) Controlling the release of fluids;~~

~~(c) Permitting pumping into the well; and~~

~~(d) Allowing movement of the inner string of drill pipe.~~

~~(2)(a) The device shall be installed on shallow wells drilled below 4,000 feet or the base of the lowest member of the Devonian Brown Shale whichever is deeper, capable of withstanding a working pressure of 1,500 psi and a test pressure of 3,000 psi.~~

~~(b) The device shall be installed on deep wells and have a minimum working pressure of 3,500 psi and a test pressure of 5,000 psi. A description of this device and its installation shall be included with the drilling and casing plan required in Section 3 of this administrative regulation. A test shall be performed at regular intervals or at the request of the cabinet to ensure the BOP will operate at its rated capacity, and the results of the test shall be kept at the well site and made available to cabinet personnel upon request [withstanding a working pressure of 1500 psi and a test pressure of 3000 psi. A description of this device and its installation shall be included with the drilling and casing plan required in Section 2 of this administrative regulation. The BOP equipment shall be in place at such time as the well is drilled past the depth at which it becomes a deep well. A test shall be performed at regular intervals to ensure the BOP will operate at its rated capacity, and the results of such test(s) shall be kept at the drill site and made available to department personnel upon request].~~

Section 5. ~~[4-]~~ The director may only waive the requirements for a BOP established in Section 4~~[3]~~ of this administrative regulation for shallow wells if the operator submits a written request for such a waiver that includes:

(1) The geologic formations to be drilled through; and

(2) A history of drilling in the vicinity of the proposed well with pressure measurements that show gas pressures were not encountered at such levels to require the BOP equipment; and

(3) The maximum anticipated gas pressure in the proposed well.

Section 6. ~~[5-]~~ The operator shall obtain written instructions from the department prior to plugging the well and the department shall approve the commencement of plugging operations. Upon the department's request, the operator shall submit a well log and completion report and any geophysical logs used for preparing plugging instructions.

Section 7. ~~[6-]~~ The department shall be notified verbally within forty-eight (48) hours of any mechanical failure or other difficulty which may jeopardize the plugging operation or mechanical integrity of the well encountered while conducting any operation or production of a deep well; provided, however, KYEM~~[DES]~~ or the department shall be immediately notified whenever there are any well failures or blow-outs which pose the likelihood of imminent environmental damage or danger to the public. The operator shall correct any and all such difficulties with due diligence.

Section 8. ~~[7-]~~ An operator in noncompliance with the requirements of this administrative regulation is subject to penalties pursuant to KRS 353.991.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 2, 2015

FILED WITH LRC: April 7, 2015 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 26, 2015 at 10:00 a.m. (Eastern Time) at Conference Room

D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2015, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business, June 1, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the drilling and casing of a well.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the criteria for drilling and casing a well in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.550 requires the Department for Natural Resources to regulate the drilling and casing of all wells. This administrative regulation establishes the criteria necessary for an owner or operator to meet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 353.550 requires the Department for Natural Resources to regulate the drilling and casing of all wells. The administrative regulation provides details to owners and operators related to drilling and casing a well. This includes information on blow out preventers, requirements to submit the proper forms for casing and cementing, and pressures wells are to withstand depending on the depth.

(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: Due to the definitional change to the terms deep and shallow wells (SB 186) the blow out preventer pressure requirements were changed to address the pressure differences for shallow wells and the increased drilling depths that will be encountered in deep wells. The cabinet believes the increased depths at which wells will be drilled will provide increased pressures and the administrative regulation needed to be amended in order to address safety concerns.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to amend the pressure requirements for shallow and deep wells due a definitional change and the possibility of increased drilling depths.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 353.550 requires the Department for Natural Resources to regulate the drilling and casing of all wells. The amendments to this administrative regulation changed pressure requirements related to drilling and casing wells.

(d) How the amendment will assist in the effective administration of the statutes: KRS 353.550 requires the Department for Natural Resources to regulate the drilling and casing of all wells. The amendments assist in the administration of the statutes by altering the pressure requirements for wells drilled within the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact approximately 1,000 oil and gas operators within the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed above will be required to meet altered pressure requirements when drilling deep and shallow wells.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cabinet is unable to determine the cost to each permit applicant. The cost to each entity will depend on the depth to which they are drilling. However, most drillers are currently meeting these requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits for those owners and operators that are not already meeting these requirements will be increased safety for their workers and the surrounding area.

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

(a) Initially: These amendments will not increase the costs of the agency to implement.

(b) On a continuing basis: These amendments will not increase the costs of the agency on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general funds and restricted funds will be used.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need to increase fees or funding related to the proposed amendments.

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

(9) TIERING: Is tiering applied? No. All entities that drill a shallow or deep well will be treated in the same manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 353.550.

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): NA

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

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Oil and Gas
(Amendment)

805 KAR 1:140. Directional and horizontal wells.

RELATES TO: KRS 353.050, 353.060, 353.520, 353.590, 353.610, 353.651, 353.652, 353.991

STATUTORY AUTHORITY: KRS 353.540, 353.550
NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.540 authorizes the department to promulgate administrative regulations to administer KRS 353.500 to 353.720. KRS 353.550 authorizes the department to regulate the drilling and casing of all wells and filing of all downhole surveys. This administrative regulation identifies the requirements for permitting directional and horizontal wells.

Section 1. Definitions. (1) "Abnormal pressure" means a reservoir pressure that exceeds the hydrostatic pressure of fresh water extending from the reservoir to the surface.

(2) "Annulus" means the space between two (2) strings of casing or between a string of casing and the bore hole wall.

(3) "Blow-out preventer (BOP)" means a device installed on the surface or intermediate casing to prevent the escape of pressure either in the annulus between casing and drill pipe or in the open hole without drill pipe and which is used during drilling operations.

(4) "Casing" is defined by KRS 353.010(3).

(5) "Deep well" is defined by KRS 353.510(16).

(6) ~~"DES" means the State Disaster and Emergency Services Office.~~

(7) "Directional and horizontal drilling" means the science of directing a well bore along a predetermined course to a target located a given distance from the vertical.

(8) ~~"Directional survey" is defined by KRS 353.010(8).~~

(9) ~~"Intermediate casing" means one (1) or more strings of pipes installed in a well in addition to the surface casing in which each string is smaller in diameter than the previous.~~

(10) ~~"Intersection length" means the horizontal distance between the point at which the well penetrates the top of the intended formation and the end point within that formation.~~

(11) ~~"KYEM" means the state Kentucky Emergency Management office under authority of the Department of Military Affairs in Frankfort, Kentucky with regional offices throughout the Commonwealth.~~

(12) "Long casing string" means the last casing installed in a well to be used for production or injection purposes.

(13) "Measured depth" means the total depth measured in the well from the surface.

(14) "Surface casing" means the first and largest diameter casing installed in a well the primary purpose of which is to make the bore hold stand up and to protect the fresh water zones.

(15) "True vertical depth" means the depth of the well from any point in the well being measured to the surface of the ground above the point being measured.

(16) "Zone" means a layer of strata capable of producing or receiving fluids.

Section 2. Information Submittal. (1) Prior to drilling a directional or horizontal well, the operator shall submit the following information:

(a) An application form ED 1, for a permit to drill the well, with a cover letter from the operator making a request for drilling the horizontal or directional well;

(b) Three (3) copies of a location plat satisfying the requirements of 805 KAR 1:030 (plan view), in addition to the following requirements:

1. The surface location and proposed target formation with their respective "Carter Coordinates";

2. The proposed course of the well; and

3. The identification of the intersection length of the proposed well and the proposed producing formation(s). To avoid any conflicts with the spacing requirements, a dashed line shall be drawn around the intersection length with regard to the spacing requirements in KRS 353.610 or, for deep wells, 805 KAR 1:100 and KRS 353.651 and 353.652. This distance shall be clearly shown in feet;

(c) A bond as required in KRS 353.590(7)(f); and

(d) An application fee of \$300.

(2)(a) In addition to the plan view required in this section, the operator shall submit three (3) copies of a plat which shows a vertical cross-section view of the area to be drilled by the well.

(b) This cross-section shall be prepared from the proposed "predrill hole" directional survey compiled by the contractor responsible for the directional control mechanism and certified as required by 805 KAR 1:030, Sections 2 and 7(1)(k).

(c) The cross-section shall include the area from the well site to the target made through the proposed course of the well.

(d) The surface shall be located as zero in reference to the depth and the lateral distance from the well site and true vertical depths shall be shown for all of the following:

1. The kick-off point or selected depth at which the deviation is started;

2. The known coal seams to be intersected;

3. The producing interval;

4. The proposed producing formation; and

5. The proposed target.

(3) When the permit is issued, the operator shall provide verbal or written notice to the department field inspector at least forty-eight (48) hours in advance of the commencement of drilling operations.

(4) Once the well has been drilled and completed, the following shall be submitted within ten (10) days from the date of completion:

(a) Three (3) copies of an amended plan view of the well location plat required in subsection (1)(b)1. through 3. of this section, with the actual course drilled, the kick-off point, and the actual target superimposed on the proposed well location plat. A correction in the target Carter Coordinates, if necessary, shall then be issued by the department;

(b) Three (3) copies of the side or cross-sectional view plat required in subsection (2)(d)1 through 5 of this section of this section shall be amended for the actual path of the well, showing the actual formation(s), coal seams, target, kick-off point; and

(c) Copies of all directional surveys certified by the operator and the contractor responsible for the directional survey. This survey shall be submitted for the entire well bore, and the operator shall be able to identify the path or depth of the well bore at any given time during and after the drilling of the directional or horizontal well. The survey points shall be made at each tool joint or at any intervals more frequent; and

(d) ~~On Form ED-8, the operator shall record the lateral offset from the well in feet and the true vertical depth for the producing interval and formation and the coal seam intersections and their true vertical depth.~~

(5) The operator shall satisfy spacing requirements of offset mineral boundary lines and between wells for the actual drilled course of the well and its end point and the intersection of the well bore and the producing formations.

(6) All coal operators or owners affected by the drilling of a directional or a horizontal well shall be provided a copy of the predrill plat and cross-section plat described in subsections (1)(b) and (2)(b) of this section of this section as required by KRS 353.050 and 353.060. Within ten (10) days after the well is drilled, the operator shall submit to the coal operator or owner the revised plats and deviation survey log required in subsection (5) of this section.

(7) The requirements for a deep directional or horizontal well shall satisfy those requirements set out in 805 KAR 1:100 and KRS 353.651 and 353.652 regarding the application process and spacing units. Prior to the deep directional or horizontal well being drilled, a hearing shall be held before the Kentucky Oil and Gas Conservation Commission.

Section 3. When an application for a directional or horizontal permit is submitted to the department, the operator shall prepare a detailed drilling and casing plan on Form ED-7 for the review by and the approval of the department. The items requested in 805 KAR 1:130, Section 3[2](1), (2) and (3) shall be submitted with this plan.

Section 4. The operator shall install a blow-out prevention device capable of withstanding a working pressure of 1,500 psi and a test pressure of 3,000 psi. A description of this device and its installation shall be included with the drilling and casing plan required in Section 3 of this administrative regulation. This BOP equipment shall be tested at intervals necessary to maintain its ability to operate at rated capacity. The results of these tests shall be kept at the drill site and made available to department personnel at their request.

Section 5. The requirements of 805 KAR 1:130, Sections 5, 6 and 7[4, 5 and 6] shall also apply to this administrative regulation.

Section 6. An operator in noncompliance with the requirements of this administrative regulation is subject to penalties pursuant to KRS 353.991.

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

- (a) "Application Form", ED 1, March 1990; and
- (b) "Casing and Cementing Plan[Form]", ED-7, March 2015[August 1991; and
- (c) ~~"Operator Certification of Formation Offset and Vertical Depth Form", ED-8, August 1991].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Oil and Gas Conservation, 1025 Capital Center Drive, Suite 201, Frankfort, Kentucky 40602-2244, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 2, 2015

FILED WITH LRC: April 7, 2015 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 26, 2015 at 10:00 a.m. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2015, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business, June 1, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies the requirements for permitting directional and horizontal wells.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish permitting requirements for directional and horizontal wells.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.550 authorizes the

department to regulate the drilling and casing of all wells and filing of all downhole surveys. This administrative regulation is related to permitting directional and horizontal wells.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 353.550 authorizes the department to regulate the drilling and casing of all wells and filing of all downhole surveys. This administrative regulation assist in the administration of the statutes by providing necessary details for owners and operators to obtain permits for drilling directional and horizontal wells.

(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 is necessary to amend form ED-7, Casing and Cementing Form, incorporated by reference in this administrative regulation. The form was amended due to the changes in the 805 KAR 1:130 relating to blow-out preventer pressure.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to amend the amend form ED-7, Casing and Cementing Form. The form was amended due to the changes in the 805 KAR 1:130 relating to blow-out preventer pressure.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 353.550 authorizes the department to regulate the drilling and casing of all wells and filing of all downhole surveys. This amendment is needed to amend form ED-7, Casing and Cementing Form.

(d) How the amendment will assist in the effective administration of the statutes: KRS 353.550 authorizes the department to regulate the drilling and casing of all wells and filing of all downhole surveys. This amendment makes changes to the form ED-7 that is necessary due to the changes in 805 KAR 1:130.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact approximately 1,000 oil and gas operators within the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed above will be required to fill out a new ED-7 form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be an additional cost associated with this amendment. This amendment simply alters the form ED-7 related to the amendments in 805 KAR 1:130.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit by having an updated form to fill out.

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

(a) Initially: These amendments will not increase the costs of the agency to implement.

(b) On a continuing basis: These amendments will not increase the costs of the agency on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general funds and restricted funds will be used.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need to increase fees or funding related to the proposed amendments.

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

(9) TIERING: Is tiering applied? No. All entities that submit an

application to drill a directional or horizontal well will submit an ED-7.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 353.550.

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Oil and Gas (Amendment)

805 KAR 1:170. Content of the operations and reclamation plan[proposal; form on which the proposal is filed].

RELATES TO: KRS 353.520, 353.570, 353.590, 353.5901, 353.595, 353.597

STATUTORY AUTHORITY: KRS 353.540, 353.550, 353.5901, 353.670

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.5901(1) requires a well operator to submit to the Department for Natural Resources an operations and reclamation plan[proposal] applicable to all tracts on which there has been a complete severance of the ownership of the oil and gas from the ownership of the surface to be disturbed. This administrative regulation specifies the content of the operations and reclamation plan[proposal], creates the form on which that plan[proposal] is to be filed, and provides for the form on which well transfers are indicated.

Section 1. Definitions. In addition to those set out in KRS 353.510, the following definitions shall apply to this administrative regulation:

(1) "Best management practices" or "BMPs" is defined by KRS 353.5901.

(2) "Cross drain" means an open ditch, constructed across the roadway, to carry off road surface water and which is not intended to replace culverts or prohibit vehicular traffic.

(3)[(2)] "Diversion ditch" means a channel or ridge constructed across a slope for diverting surface runoff.

(4)[(3)] "Filter strip" means a natural vegetative strip, left undisturbed, between the disturbed construction area and a water course, and which acts as a buffer area to catch sediment before it enters the water course.

(5)[(4)] "Final reclamation" means the date on which the operator has completed his drilling operations at the well site, has plugged the well and has performed all obligations described in the operations and reclamation plan[proposal].

(6) "Well site boundary" means the area of disturbance by an operator, excluding access roads, to drill an oil or gas well.

Section 2. (1) The operations and reclamation plan[proposal] shall be filed on Form ED-10, entitled "Operations and Reclamation Plan"["Plan to Prevent Erosion of and Sedimentation from a Well Site"].

(2) In addition to the requirements set out in KRS 353.5901, the following information shall be submitted[set out] on Form ED-10:

(a) The operator's and surface owner's names, addresses and telephone numbers, the county in which the well is proposed to be drilled, and the well number;

(b) A listing or description of fertilizers and soil amendments and approved seed mixes or trees to be planted for each affected area requiring revegetation treatment and the types and amounts per acre of seed and trees to be planted; and

(c) A detailed map[drawing] of the road, well location and proposed area of disturbance, which shall be in sufficient detail to allow ready identification of surface features and which shall satisfy the following requirements:

1. The surface owner's tract[tract(s)] shall be identified on the map[drawing], with the name of the surface owner if not listed on the legend, which map[drawing] shall also indicate the acreage to be disturbed;

2. The map[drawing] may be made over an enlarged section of the United States Geological Survey (USGS) 1:24000 topographic map, or an equivalent format, and shall[may] be enlarged to [approximately] 1"=400' and be submitted on a minimum of an eight and one-half (8 1/2) inch by fourteen (14) inches sheet, using the symbols set out on Form ED-10;

3. The map[drawing] shall have a legend with the operator's and surface owner's names not listed on the map, the scale of the map, the well name and number, and the lease name. Within 500 feet of the permitted well site boundary and 100 feet of the well site access road centerline, the map shall show:

a. The location of all features listed on the legend of form ED-10;

b. All water bodies; and

c. When reasonably ascertainable, public utility infrastructure [name and location of all streams, rivers, lakes, outstanding state resource waters pursuant to 401 KAR 10:031, or other public water bodies; proposed stream buffer zones; roads, cemeteries, houses, churches, schools and other public buildings; public properties such as, parks, Wildlife Management Areas, and nature preserves, and utility lines on the area to be affected, and within 1,000 feet of the proposed permit boundary. The map shall also delineate wetlands that may be affected by the proposed drilling operation].

4. The map shall show the drainage pattern on and away from the area to be affected, including the direction of flow, proposed constructed drainways, natural drainways to be used for drainage, and the streams or tributaries to receive discharges from the proposed operation.

(3) A signature of the surface owner shall be obtained in instances of a complete severance of the ownership of the oil and gas from the ownership of the surface to be disturbed. Signatory sections for the operator and surface owner shall be completed on Form ED-10 in the following manner:

(a) The name and title, if any, of the operator shall be indicated and his signature notarized, which signature shall be either that of an officer of the company or of some other person who holds a duly recorded power of attorney to execute documents, a copy of which power of attorney shall be filed with the division. If the prospective operator is an individual, the signatory shall be in the same name as the applicant's or a power of attorney to execute

documents shall be submitted to the division if the signatory is someone other than the applicant;

(b) The surface owner's name shall be indicated and his signature notarized if he approves of the operations and reclamation plan[proposal], together with any attachments submitted with it.

Section 3. Unsigned Reclamation Forms. If the owner of the surface of the severed minerals tract is unwilling or for some other reason has failed to execute Form ED-10, the operator shall file a written petition for mediation, together with the following, at the time the application for permit is filed, in accordance with KRS 353.5901:

(1) A copy of the certified mail receipt verifying that the operations and reclamation plan[proposal], the statement required in KRS 353.5901(4)(b)[353.5901(2)(b)], and the plat were mailed to and received by the surface owner or, if not received, the original or a copy of the unclaimed envelope. A copy of the operations and reclamation plan[proposal] and the attachments enclosed in the envelope mailed to the surface owner shall also be included.

(2) If the surface owner cannot be reached at his last known address of record and certified mail is returned as undeliverable or unknown, the operator shall publish a notice of intended activity, together with a request for information on the whereabouts of the surface owner, which publication shall be made two (2) consecutive times in a local newspaper in the county where the proposed well is located and once in a newspaper of general circulation. A copy of the notice of intended activity and request for surface owner information shall be included when the operator files his application for permit and shall include:

- (a) The name and address of the operator;
- (b) A brief description of the intended activity as set out in the operations and reclamation plan[proposal];
- (c) The surface owner must respond to this notice within fifteen (15) days of the second publication in the newspaper; and
- (d) A statement of where interested persons may obtain additional information as to the operator's intended activity.

Section 4. Mediation of Dispute. (1) The surface owner may file with the division a request for mediation at any time after he has received from the operator the proposed operations and reclamation plan[proposal], but only after the operator has filed his request for mediation and not later than the time set forth in the Notice of Request for Mediation provided by the department and mailed to the surface owner. The surface owner's request to participate in mediation shall include the mediation fee, in accordance with KRS 353.5901(6), or a request for waiver of the fee.

(2) Contents of a request for fee waiver. The request for waiver of the mediation fee shall set forth:

(a) A brief statement of facts underlying the request for a determination that the individual is financially unable to pay the mediation fee required by KRS 353.5901(6); and

(b)1. Documentation that the individual is receiving or has been deemed eligible to receive public assistance; or

2. An affidavit, subject to penalties for perjury, setting forth the applicant's individual income, the applicant's household income, property owned, outstanding obligations, the number and age of dependents, and a copy of his most recent Kentucky and federal income tax returns.

(3) Waiver determination. Within thirty (30) days of filing of the petition, the mediator shall issue a determination accepting or denying the request for fee waiver. If the fee waiver is denied, the applicant shall be informed in writing and the applicant shall be given thirty (30) days from the mailing of the mediator's waiver denial to submit the mediation fee to the department, or the surface owner shall be deemed to have failed to satisfy the statutory requirements applicable to mediation and a report shall be issued pursuant to subsection (4) of this section. The mediator's waiver determination is not subject to appeal. In considering the request for fee waiver, the mediator shall consider the statement and affidavit submitted by the surface owner and consult the Federal Poverty Guidelines in effect at the time the request is mailed. The

mediator shall waive the mediation fee for any surface owner whose household income is at or below 100 percent of the Federal Poverty Guidelines. The mediator has the discretion to waive the mediation fee for any surface owner whose household income exceeds 100 percent of the Federal Poverty Guidelines if the mediator determines that the surface owner has demonstrated financial inability to pay the fee. It may be presumed that the surface owner has the financial ability to pay the mediation fee if that person is not receiving, or is not eligible to receive, public assistance payments at the time the affidavit is submitted; or owns more than one (1) motor vehicle[353.5901(2)(b)].

(4)[(2)] If the surface owner does not file his mediation fee within the time and in the manner required in the Notice of Request for Mediation, he shall be deemed to have failed to satisfy the statutory requirements applicable to mediation, the mediator shall file a report noting the failure and recommend the acceptance of the operator's operations and reclamation plan[proposal].

(5)[(3)] The mediator shall not settle damage claims or make any determinations regarding them in his report. However, information presented by the operator or surface owner as to costs incurred by either party as a result of the projected drilling and the loss of minerals or surface damage may be utilized by the mediator in recommending the placement of roads, pits or other construction and reclamation activities in a manner which has the least adverse surface impact.

(6)[(4)] If the operator withdraws his application for a permit to drill, deepen, or reopen a well after receipt by the division of the surface owner's mediation fee, that fee shall be refunded to the surface owner.

Section 5. Construction, Reclamation, and Maintenance. (1) Pre-construction planning shall be performed to design access roads, wellsite, and pits along existing topography to minimize erosion and identify locations for sediment control practices and devices in accordance with the operations and reclamation plan.

(2) Construction activities shall incorporate best management practices for erosion and sedimentation control on all disturbed areas. All cuts and fills shall have side slopes that are stable for the soil or fill material utilized. Wellsites shall be constructed on a stable base. Where practicable pits shall be constructed in solid ground on the cut or highwall side of the wellsites, and in accordance with 401 KAR 5:090, Section 9(5)(a).

(a) All disturbed areas shall be graded and stabilized so that soil erosion, surface disturbances, and stream sedimentation is minimized utilizing best management practices, in accordance with the approved operations and reclamation plan.

(b) Where practicable all topsoil present in the area to be disturbed shall be removed and segregated for redistribution during reclamation.

(c) Temporary erosion control measures shall be implemented during construction of the road to minimize sedimentation and erosion until permanent control measures including seeded and mulched road ditches can be established.

(3)[(1)] The construction of the well site, including roads, pits, tanks, lines and other areas disturbed, shall be performed by the operator in accordance with the operations and reclamation proposal. All cuts and fills shall have side slopes that are stable for the soil or fill material involved. The vertical grades shall be as low as reasonably practicable and compatible with topography.

(2)] If the well produces and the site is kept open for long-term use for well servicing and for oil and gas removal, the operator shall:

(a) Maintain access roads in a manner as to allow access by the operator without causing unreasonable settlement of the roadbed or slides of the cut slopes, and provide that maintenance in accordance with the operations and reclamation plan[proposal];

(b) Establish drainage to adequately accept runoff from access roads, the well site and other areas in a manner which prevents unreasonable interference with the surface owner's property, roads, farming operations, and buildings, and establish that drainage in accordance with the operations and reclamation plan[proposal];

(c) Repair access roads, the well site area, and pits damaged

by events as floods, landslides, or excessive settlement of the embankment as soon as practicable after the damage has occurred; however, the operator shall not be responsible for damage attributable to another party's use of the access road not relating to the drilling, construction or operation of the well by the operator.

Section 6. Site closure. (1) The department shall consider a wellsite closed after:

- (a) All surface production facilities have been removed;
- (b) The well has been plugged under direction of the department; and

(c) Written notice has been provided by the operator to the division that final reclamation and site closure has been completed and the reclamation work pursuant to the operations and reclamation plan has been approved by the cabinet[the operator shall provide written notice to the division when final reclamation and plugging have been completed].

(2) The bond required in KRS 353.590(5) shall not be released until a division inspector has made an inspection of the well site one (1) year after the date of the letter of notification from the operator of final reclamation and plugging and has filed a report to the director documenting that the following have occurred:

- (a) All areas disturbed by the operator have been secured in a manner to prevent runoff, sedimentation, or settlement of the roadway, sliding of cut slopes or any fill material;
- (b) A diverse and effective permanent vegetative cover has been established; and
- (c) Any matters relating to settlement, inadequate vegetative cover or erosion have been corrected.

Section 7. Transfer of Wells having Existing Reclamation Plans. (1) Prior to transferring a well located on a severed minerals tract and for which an approved operations and reclamation ~~plan~~[proposal] is on file with the division, the operator shall:

- (a) Provide the successor operator a copy of the approved reclamation forms and attachments on file with the division before signing Form ED-13, "Well Transfer";
- (b) Advise the successor operator of any reclamation responsibility the transferring operator had with regard to the well and related surface disturbance;
- (c) Secure from the successor operator a letter indicating he has received from the transferring operator a copy of Form ED-10 and that he is willing to accept responsibility for the reclamation of the well site and other surface disturbances related to the operation of the well;
- (d) Submit to the division the executed Form ED-13, applicable fee, and the letter of the successor operator's agreement to accept responsibility for reclamation in the manner set forth on Form ED-10; and
- (e) Provide the surface owner of record with a copy of form ED-13 when he submits it to the division.

(2) The division shall not transfer the well until the requirements of this section are satisfied and shall advise the transferring and successor operators in writing when the well is transferred.

(3) The transferee of a well shall assume all obligations under the terms of the permit and this section upon transfer regardless of whether the transferor commenced the activity and regardless of whether the transferor failed to properly perform the transferor's obligations under the permit and this chapter. The transfer of the permit shall relieve the transferor of any future obligations under the terms of the permit or this chapter, but shall not relieve the transferor of any civil penalties that arose from violations occurring prior to the transfer.

Section 8. If a well is to be drilled and completed on federal lands, the director shall accept a copy of a surface use reclamation agreement between the well operator and the federal agency in lieu of the operations and reclamation ~~plan~~[proposal]. If the operator elects to submit this agreement, it shall be submitted at the time of filing the application for permit to drill a well.

Section 9. (1) If a field inspection indicates there is noncompliance with the approved operations and reclamation ~~plan~~[proposal] or the requirements of Section 6 of this administrative regulation, a written notice of violation describing the noncompliance shall be given to the operator, together with a statement of the action required to correct the noncompliance.

(2) The written notice of violation shall allow the operator up to forty-five (45) days to correct the violation.

(3) An operator may file for an extension of time to correct a violation by submitting a letter to the director describing the need for that extension; if the director concludes that the request is reasonable and that an extension of time will not violate the requirements of this administrative regulation or applicable statutes, he may grant the request for extension of time.

(4) The operator's bond may be forfeited to the department's oil and gas well plugging fund, pursuant to KRS 353.590(10)[353.590(7)], if he fails to make required corrections.

(5) An operator who, after hearing, is determined by the department to be in noncompliance with any section of this administrative regulation, or who fails to abate any noncompliance of the approved operations and reclamation plan, is subject to the penalties described in KRS 353.991.

Section 10. Incorporation[~~Material Incorporated~~] by Reference.

(1) The following material is incorporated by reference:

- (a) "Operations and Reclamation Plan", ED-10, April 2015[~~Form ED-10, "Plan to Prevent Erosion of and Sedimentation from a Well Site", (February 14, 1997 Edition), Division of Oil and Gas~~]; and
- (b) Form ED-13, "Well Transfer", [~~{~~April 16, 1990 edition~~}~~], Division of Oil and Gas.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Oil and Gas[~~These forms may be obtained from, examined, or copied at the Kentucky Department for Natural Resources, 1025 Capital Center Drive, [Suite 201, P.O. Box 2244,] Frankfort, Kentucky 40602-2244, Monday through Friday, 8 a.m. to 4:30 p.m.~~].

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 2, 2015

FILED WITH LRC: April 7, 2015 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 26, 2015 at 10:00 a.m. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2015, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business, June 1, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies the content of the operations and reclamation plan and provides necessary forms to complete the requirements of the administrative regulation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish reclamation

requirements for well sites within the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.5901(1) requires a well operator to submit to the Department for Natural Resources an operations and reclamation plan. This administrative regulation provides the necessary detail for an operations and reclamation plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 353.5901(1) requires a well operator to submit to the Department for Natural Resources an operations and reclamation plan and requires the owner or operator to complete the provisions of that plan. This administrative regulation assists in the administration of the statutes by providing necessary details for owners and operators to submit an operations and reclamation plan as well as complete reclamation on their well sites.

(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 is necessary to require an operations and reclamations plan on non-severed estates. Currently an operations and reclamation plan is only required on estates where the mineral rights have been severed from the surface. The amendment also clarifies the actions and liabilities related to transfer of permits.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify that an operations and reclamation plan is required on all oil and gas well sites.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 353.5901(1) requires a well operator to submit to the Department for Natural Resources an operations and reclamation plan. Currently an operations and reclamations plan is only required on severed estates. This amendment extends those provisions to non-severed estates.

(d) How the amendment will assist in the effective administration of the statutes: KRS 353.5901(1) requires a well operator to submit to the Department for Natural Resources an operations and reclamation plan. This amendment relates to the authorizing statutes by extending the operations and reclamation plan required by KRS 353.5901 to non-severed estates.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact approximately 1,000 active operators within the Commonwealth. The proposal will also impact the surface and property owners which will be dependent on the number of wells permitted. There are approximately 900 permits issued each 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: The entities listed above will be required provide an operations and reclamation plan on non-severed estates.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will vary depending on whether the entity makes the required map from a topographical map which can be generated at no cost or if the map is professionally produced which would cost approximately \$500.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit by fulfilling the requirements of the amendments to KRS 353.5901.

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

(a) Initially: These amendments will not increase the costs of the agency to implement.

(b) On a continuing basis: These amendments will not increase the costs of the agency on a continuing basis.

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: A combination of general funds and restricted funds will be used.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need to increase fees or funding related to the proposed amendments.

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

(9) TIERING: Is tiering applied? No. All entities are required to submit an operation and reclamation plan.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Oil and Gas and Division of Water.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 353.5901.

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

PUBLIC PROTECTION CABINET Department of Financial Institutions Division of Non-Depository Institutions (Amendment)

808 KAR 6:105. Records required.

RELATES TO: KRS Chapter 286.4

STATUTORY AUTHORITY: KRS 286.4-610(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: To promote the proper conduct of business by a consumer loan licensee and to further ensure[insure] effective examination by the commissioner[executive director] or his representatives.

Section 1. Every licensee shall keep and maintain the following books and accounting records:

(1) "Loan register" or its equivalent record, which shall be the book of original entry and permanent record and shall properly identify each account by number, date of loan and amount of loan.

(2) An individual account ledger card with borrowers which shall show the name and address of the borrower, the loan number, the amount and date of the loan and of its maturity, rate of

interest, terms of repayment, the nature of the security, if any, for the loan and the dates of receipt and payment of recording fees together with the amount.

(a) The account ledger or card shall provide separate columns for payments of principal, and shall be kept in such manner as to [show] clearly show the balance due on principal. All payments shall be credited promptly upon the account ledger or card.

(b) Loan or payment cards for consumer loans and/or sales finance loans shall be maintained in separate files at all times.

(c) If any error should be made on the individual account ledger or card, appropriate correction should be made without erasures.

(3) An appropriate filing system, which shall contain all the current evidences of indebtedness or security which have been signed by the borrower.

(4) An individual index record shall be maintained for every endorser, accommodation comaker, or surety, except a spouse listed on the record of the borrower. The above office record shall be made immediately available for examination upon request by the Commissioner of the Department of Financial Institutions or his representatives.

(5) In lieu of the books and records described in Section 1(1), (2), and (4) of this administrative regulation, the licensee may ~~[with the prior written approval of the executive director,]~~ maintain such required information with electronic data processing equipment. Such required information shall be readily accessible and retrievable; its form and content shall be consistent with the information available from the books and records described in Section 1(1), (2), and (4) of this administrative regulation.

This is to certify that the persons signing below have reviewed or approved this administrative regulation, prior to its filing by the Department of Financial Institutions with the Legislative Research Commission as required by KRS 13A.220(6)(b).

CHARLES A. VICE, Commissioner

AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: April 10, 2015

FILED WITH LRC: April 13, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2015, at 2 p.m., EDT, in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on June 1, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Jessica R. Sharpe, General Counsel or John C. Allender, Staff Attorney, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica R. Sharpe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation adopts rules specifying the records that must be maintained by consumer loan licensees with respect to the loans they issue as required by KRS 286.4-600. These requirements aid the commissioner and his representatives in carrying out effective examinations of licensees pursuant to the commissioner's authority set forth in KRS 286.4-610(2).

(b) The necessity of this administrative regulation: The regulation specifies what records must be maintained by licensees so that Department staff can determine the licensee's level of compliance with applicable rules regarding finance charges, disclosures to borrowers, etc.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.4-600 requires licensees to maintain records used in their business. KRS 286.4-610(1) authorizes the commissioner to promulgate administrative regulations for the proper conduct of the consumer loan business.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Thorough recordkeeping is essential for effective monitoring of the licensee's lending practices. The commissioner's ability to carry out his annual examination obligation in KRS 286.4-610(2) is reliant upon accurate records of the licensee's business for the preceding 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 corrects and clarifies existing language, and removes the requirement for licensees to obtain approval from the commissioner prior to using an electronic recordkeeping system.

(b) The necessity of the amendment to this regulation: This change brings the consumer loan licensee recordkeeping requirement into line with the mortgage loan licensee recordkeeping requirements in that commissioner approval is not required for electronic recordkeeping systems, but that those records must be made immediately available to the commissioner or his representative. See 808 KAR 12:023 Section 3.

(c) How the amendment conforms to the content of the authorizing statute: The amendment is within the commissioner's authority to regulate the proper conduct of the consumer loan business pursuant to KRS 286.4-610(1), and specifies how licensees are to comply with KRS 286.4-600.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow greater flexibility to licensees and reduce their administrative burden by removing the requirement for commissioner approval of electronic recordkeeping systems.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Consumer loan licensees, approximately 358 as of February 2015.

(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: No action is required by licensees to comply with this amendment. This amendment removes the burden of obtaining commissioner approval for licensees wishing to use electronic recordkeeping systems.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no change in the cost to licensees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will remove the requirement for licensees to obtain commissioner approval prior to using electronic recordkeeping systems.

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

(a) Initially: No net change anticipated.

(b) On a continuing basis: No net change anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees generated cover the cost of enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None.

(8) State whether or not this administrative regulation

establishes any fees or directly or indirectly increases any fees: This amendment does not establish or increase fees.

(9) TIERING: Is tiering applied? No tiering was applied as there is only one class of regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Financial Institutions 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. The statutory authority for this administrative regulation is found in KRS 286.4-600 and 286.4-610(1) and (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. This administrative regulatory amendment will have no impact on expenditures or revenues.

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

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

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

(d) How much will it cost to administer this program for subsequent years? There will also be no additional cost to administer this program in subsequent years.

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

Revenues (+/-): This amendment will have no impact on revenues.

Expenditures (+/-): This amendment will have no significant impact on expenditures.

Other Explanation: This regulation reduces the burden on licensees wishing to use electronic recordkeeping systems by removing the requirement of commissioner approval. Accordingly, there may be a negligible savings in time and resources for the Department contingent upon the number of licensees that would potentially request approval for electronic systems in subsequent years.

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

810 KAR 1:090. Kentucky Thoroughbred Development Fund.

RELATES TO: KRS 138.510, 230.225(5)(c), 230.400
STATUTORY AUTHORITY: KRS 230.400

NECESSITY, FUNCTION AND CONFORMITY: KRS 230.400 establishes the Kentucky Thoroughbred Development Fund and authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations as may be necessary to carry out its provisions and purposes. This administrative regulation establishes standards for eligibility and the administration of payments from the Kentucky Thoroughbred Development Fund.

Section 1. Definitions. (1) "Applicant" means the qualified entity who registers the foal or horse with the KTDF official registrar.

(2) "Historical horse race handle" means monies wagered at a

licensed Kentucky association on historical horse races as defined in 810 KAR 1:001, Section 1(30).

(3) "Intra-state wagering" means monies wagered at a Kentucky thoroughbred association on thoroughbred races conducted at another Kentucky association.

(4) [(3)] "Inter-state wagering" means monies wagered from a Kentucky thoroughbred association on thoroughbred races conducted outside of Kentucky.

(5) [(4)] "KTDF" means the Kentucky Thoroughbred Development Fund.

(6) [(5)] "KTDF Advisory Committee" means the committee established by KRS 230.400(2) to advise and assist the KHRC in the development of a supplemental purse program pursuant to KRS 230.400(3)(a).

(7) [(6)] "KTOB" means the Kentucky Thoroughbred Owners and Breeders, Inc.

(8) [(7)] "Live racing handle" means the monies wagered by individuals present on association grounds on thoroughbred races physically conducted on association grounds.

(9) [(8)] "Nonlive racing handle" means the monies wagered at an association located in Kentucky on thoroughbred races not physically conducted at the association's grounds.

(10) [(9)] "Official Registrar" means the association recognized and designated as the sole official registrar of the KTDF for the purpose of registering Kentucky thoroughbred stallions and Kentucky bred thoroughbreds in accordance with KRS 230.400.

Section 2. KTDF Monies Earned. (1) One live thoroughbred association.

(a) Live racing handle. An association conducting live racing shall earn KTDF money to be deposited in the KTDF account for that association in the amount of 0.75 percent of the total live racing handle pursuant to KRS 138.510(1).

(b) Nonlive racing handle. An association conducting live racing shall earn KTDF money to be deposited in the KTDF account for that association in the amount of two (2) percent of the total nonlive racing handle pursuant to KRS 138.510(2).

(2) More than one (1) live thoroughbred association. Unless there is an agreement among the thoroughbred associations conducting live racing to the contrary, if two (2) or more thoroughbred associations are conducting live racing on the same day, the monies earned from the handle for that day shall be divided as follows:

(a) The association conducting the live racing shall earn KTDF money to be deposited in the KTDF account for that association in the amount of 0.75 percent of that association's live racing handle pursuant to KRS 138.510(1).

(b) The Intra-state wagering monies shall be allocated to that Kentucky thoroughbred association on which the wagering is placed for purposes of calculating that association's KTDF earnings.

(c) Inter-state wagering monies originating from an association conducting live thoroughbred racing shall be allocated to that association for purposes of calculating that association's KTDF earnings.

(d) Inter-State wagering monies from all other Kentucky associations shall be divided evenly among the associations conducting live racing.

(3) Historical horse race handle. An association offering wagering on historical horse races shall earn KTDF money to be deposited in the KTDF account for that association as provided by KRS 138.510(1).

Section 3. KTDF Reconciliation. (1) Each association shall file with the commission a copy of the pari-mutuel tax form filed with the Department of Revenue, along with a copy of the check submitted for each report. These reports shall be filed weekly.

(2) Each association shall report to the commission the actual KTDF purse distribution no later than fifteen (15) calendar days after the last day of a live race meeting.

(3) The commission shall on a monthly basis reconcile the weekly reports submitted by the association with the Department of Revenue's reports and deposits.

(4) If at the close of a live race meet, an association has a balance of monies earned for that meet which has not been distributed in actual KTDF purse distribution, then the association may choose one of the following options to distribute the remaining balance, subject to the recommendation[approval] of the KTDF Advisory Committee and the approval of the commission:

(a) Use KTDF monies previously earned to supplement purses at future live racing meets held by that association; or

(b) Use KTDF monies previously earned to supplement purses already distributed at the last live racing meet held by the association to the recipients of the original purse allocations.

(5) If at the close of a live race meet, an association offering wagering on historical horse races has a balance of KTDF monies earned from historical horse race wagers, which has not been distributed in actual KTDF purse distribution, then the association may choose one (1) of the following options to distribute a portion of the balance, subject to the recommendation of the KTDF Advisory Committee and the approval of the commission:

(a) Use the historical horse race KTDF monies previously earned to supplement purses at future live racing meets held by that association;

(b) Use historical horse race KTDF monies previously earned to supplement purses already distributed at the last live racing meet held by the association to the recipients of the original purse allocations; or

(c) Use historical horse race KTDF monies previously earned to supplement purses at another licensed thoroughbred Kentucky racetrack.

(6) Reasonable and customary administrative charges for time spent reconciling the KTDF account shall be charged to each association by the commission based on the percentage of funds generated by each association for the previous calendar year.

(7)[(6)] An association, at its option, may pay advertising charges billed to the association by the KTOB from the association's KTDF available balance.

(8)[(7)] Each association shall sign an agreement stating that it accepts and agrees with the reconciliation prior to reimbursement of any KTDF funds.

Section 4. Purse Structure. Each association shall submit its KTDF purse structure proposal to the KTDF Advisory Committee for approval at least forty-five (45) days prior to the opening day of the live racing meet. The KTDF Advisory Committee shall review the proposed purse structure and make a recommendation to the commission whether or not to approve the proposed purse structure based upon the best interests of Kentucky racing.

Section 5. Consent to Investigate by KTDF Applicants. The filing of a registration with the official registrar shall authorize the KTDF Advisory Committee and commission to investigate and verify information provided by the Applicant.

Section 6. Denial or Revocation of Registration. (1) The KTDF Advisory Committee may recommend to the commission to deny or revoke the registration of a horse to the KTDF if the Applicant:

(a) Provides the official registrar of the KTDF, the KTDF Advisory Committee, or the commission with incorrect, false, or misleading information concerning the registration of a foal or horse; or

(b) Violates this administrative regulation in any other manner.

(2) An applicant who provides incorrect, false, or misleading information concerning the registration of a foal or horse or violates this administrative regulation in any other manner shall be subject to the following penalties:

(a) Denial or revocation of the registration of the horse with the KTDF; or

(b) A bar of the applicant from registering foals or horses to the KTDF for a period of one (1) to five (5) years, based on the seriousness of the violation, beginning with the year in which the violation occurred.

(3) A second or subsequent violation of this administrative regulation may result in a lifetime bar of the applicant from being eligible to receive KTDF monies.

(4) The denial or revocation of the registration of a horse to the KTDF, and a bar of the applicant from registering foals or horses to the KTDF shall be subject to appeal and adjudication in accordance with 810 KAR 1:029 and KRS Chapter 13B.

ROBERT M. BECK, JR., Chairman

AMBROSE WILSON, IV, Secretary

APPROVED BY AGENCY: March 27, 2015

FILED WITH LRC: April 8, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2015 at 10:00 a.m., at the offices of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by May 19, 2015, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on June 1, 2015. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Katherine M. Paisley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for eligibility and the administration of payments from the Kentucky Thoroughbred Development Fund ("KTDF").

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the efficient administration of the KTDF. It provides notice to participants regarding registration and eligibility standards for the program, provides the manner in which associations earn and can utilize the money in their respective accounts, and establishes a penalty structure for violations of the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.400(4), which created the KTDF, states: "The Kentucky Horse Racing Commission, with the advice and assistance of the Kentucky Thoroughbred Development Fund Advisory Committee, shall use the Kentucky thoroughbred development fund to promote, enhance, improve, and encourage the further and continued development of the thoroughbred breeding industry in Kentucky by providing, out of the Kentucky thoroughbred development fund, supplemental purses for designated stakes, handicap, allowance, nonclaiming maiden races, and allowance optional claiming races for a claiming price of not less than \$25,000 contested at licensed thoroughbred race meetings in Kentucky, the awarding and payment of which supplemental purses shall be conditioned upon the winning or placing in designated races by Kentucky bred thoroughbred horses. The Kentucky Horse Racing Commission shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, establish the requirements, conditions, and procedures for awarding and payment of supplemental purses in designated races by Kentucky-bred Thoroughbred horses." This administrative regulation establishes the requirements, conditions, and procedures for awarding and payment of supplemental purses for Kentucky bred horses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS

230.400(7) states, "The Kentucky Horse Racing Commission shall promulgate administrative regulations as may be necessary to carry out the provisions and purposes of this section, including the promulgation of administrative regulations and forms as may be appropriate for the proper registration of Kentucky stallions and Kentucky bred thoroughbreds with the official registrar..." This administrative regulation establishes a registration system to facilitate participation in the program. It also creates a system by which racing associations can earn and distribute money for the benefit of owners and trainers of Kentucky-bred horses. The amendment provides the associations with a system by which they can distribute KTDF money earned through wagers on historical horse races.

(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 provides the manner in which a thoroughbred association with an excess of KTDF money accrued through wagers on historical horse races may utilize those funds.

(b) The necessity of the amendment to this administrative regulation: Under the current regulatory structure, an association with an excess of KTDF money earned through wagers on historical horse races can only use those funds at its own live meet. Due to the success of historical horse racing, it will best benefit Kentucky racing to allow for transfer of an excess of these funds to other thoroughbred associations for use in their KTDF accounts for the ultimate goal of increased purses across the state.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to KRS 230.400(7), "The Kentucky Horse Racing Commission shall...administer the Kentucky-bred Thoroughbred program created hereby in a manner best designed to promote and aid in the further development of the Thoroughbred breeding industry in Kentucky, to upgrade the quality of Thoroughbred racing in Kentucky, and to improve the quality of Thoroughbred horses bred in Kentucky." This amendment provides the regulatory structure through which the Commission can follow this mandate.

(d) How the amendment will assist in the effective administration of the statutes: The regulation is currently silent on the manner in which funds accrued through wagers on historical horse races can be distributed. This amendment provides the regulatory structure for such distribution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation directly affects Kentucky's licensed racing associations that offer thoroughbred racing and through purse supplements, the regulation affects owners of Kentucky bred thoroughbreds. The regulation indirectly affects everyone involved in thoroughbred racing, including farm owners and employees; veterinarians and equine health care facilities; horse transportation companies; farriers; suppliers of hay, feed and grain; equine supply companies providing medical sales, daily maintenance care and tack; Kentucky thoroughbred sale companies; equine tourism generating state/local room taxes for lodging, gasoline tax on travel and transportation of horses; farm equipment retail stores and maintenance services; and state and local payroll tax generated by the above businesses.

(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 racing associations will not be required to take any new action but will have an additional option for the use of KTDF money. None of the other entities will be required to take any new action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A transfer of money from one thoroughbred association to another will increase purse amounts at

the receiving association. Increased purses typically result in bigger and better fields. This will allow owners of Kentucky bred horses to run for larger purses at a race meet that might be more conducive to their schedule or a better fit for their horses. An increase in horse population as a result of increased purses will provide additional revenues for the other entities involved in thoroughbred racing as listed in question (3).

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

(a) Initially: No increased costs.

(b) On a continuing basis: No increased costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no increased costs however the KTDF is funded by the pari-mutuel tax established by KRS 138.510.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this administrative regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS § 230.400.

(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 greatest increase to the state and local government will be the increase in payroll taxes by all participants noted in the Regulatory Impact Analysis and Tiering Statement, Section (3).

(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 fiscal impact of the amendment will directly correlate to any increase in horse population, which would in turn drive the local thoroughbred industry.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amendment)

902 KAR 20:160. Chemical dependency treatment services and facility specifications.

RELATES TO: KRS 202A.241, 210.005, 216B.010, 216B.015, ~~216B.030,~~ 216B.105, 216B.990, 309.080, 309.130, 311.560~~(4)~~, 311.571, 311.840 – 311.862, 314.011(8), 314.042~~(8)~~, 319.050, 319.056, 319.064, 319C.010, 320.210(2), 335.100, 335.300, 335.080, 335.500, 42 C.F.R. Part 2, 45 C.F.R. 160, 164, 42 U.S.C. 1320d-2 – 1320d-8, 42 U.S.C. 290ee-3

STATUTORY AUTHORITY: KRS 216B.010, 216B.042(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 require the Cabinet for Health and Family Services to regulate health facilities and health services. This administrative regulation establishes licensure requirements for the operation, services, and facility specifications of chemical dependency treatment programs, including programs which elect to provide outpatient behavioral health services for individuals with a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis.

Section 1. Definitions. (1) "Aftercare" means the process of providing continued services following primary chemical dependency treatment~~[, in order]~~ to support and increase gains made during treatment.

(2) "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).

(3) "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); or

(f) Licensed professional art therapist associate as defined by KRS 309.130(3).

(4) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(5) "Governing authority" means the individual, agency, partnership or corporation that directs and establishes policy concerning the management and operation of a chemical

dependency treatment program.

(6)~~[(3)]~~ "Interdisciplinary team" means a group of at least four (4) professionals including a physician, registered nurse, certified chemical dependency counselor and a person with a master's degree in psychology, social work or counseling.

(7) "Peer support specialist" means a paraprofessional who meets the application, training, examination, and supervision requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240.

(8)~~[(4)]~~ "Qualified dietician" means:

(a) ~~A person who has a Bachelor of Science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or~~

(b) ~~A person who has a Masters Degree in nutrition and is a member of ADA or is eligible for registration by ADA; or~~

(c) ~~A person who has a Bachelor of Science degree in home economics and three (3) years of work experience with a registered dietician.~~

(5)~~[(5)]~~ "Restraint" means a physical or mechanical device used to restrict the movement of the patient or a portion of the patient's body.

Section 2. Scope of Operation and Services. (1) A chemical dependency treatment service shall have a structured inpatient program to provide medical, social, diagnostic, and treatment services to individuals with substance use disorder~~[persons who suffer from illness related to the misuse or abuse of alcohol and other drugs].~~

(2) Chemical dependency treatment services shall:

(a) Have a duration of less than thirty (30) days;

(b) Be hospital based or freestanding;

(c) Have eight (8) or more patient beds;

(d) Be under the medical direction of a physician; and

(e) Provide continuous nursing services.

(3) If a chemical dependency treatment program provides outpatient behavioral health services as described in Section 5 of this administrative regulation for individuals with a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis:

(a) The outpatient behavioral health services shall be provided:

1. On a separate floor, in a separate wing, or in a separate building on the campus of the chemical dependency treatment program's inpatient facility; or

2. At an extension off the campus of the chemical dependency treatment program's inpatient facility;

(b) The chemical dependency treatment program shall pay a fee in the amount of \$250 per off-campus extension providing outpatient behavioral health services, submitted to the Office of Inspector General at the time of:

1. Initial licensure, if applicable;

2. The addition of a new extension to the chemical dependency treatment program's license; and

3. Renewal;

(c) Each off-campus extension or on-campus program of outpatient behavioral health services shall be listed on the chemical dependency treatment program's license;

(d) An off-campus extension or a separate building on the campus of the chemical dependency treatment program's inpatient facility where outpatient behavioral health services are provided shall comply with the physical environment requirements of Section 8 of this administrative regulation and be approved by the State Fire Marshal's office prior to:

1. Initial licensure;

2. The addition of the extension or on-campus program of outpatient behavioral health services in a separate building; or

3. A change of location;

(e) The program shall employ directly or by contract a sufficient number of personnel to provide outpatient behavioral health services;

(f) The outpatient behavioral health services program shall

have a program director who:

1. May also serve as the chemical dependency treatment program's treatment director described in Section 3(10) of this administrative regulation; and

2. Shall be a:

a. Psychiatrist;

b. Physician;

c. Certified or licensed psychologist;

d. Licensed psychological practitioner;

e. Psychiatric nurse;

f. Advanced practice registered nurse;

g. Licensed professional clinical counselor;

h. Licensed marriage and family therapist;

i. Licensed professional art therapist;

j. Licensed board certified behavioral analyst; or

k. Licensed clinical social worker; and

(g) Unless an extension of time is granted pursuant to subsection (4) of this section, the outpatient program shall become accredited by one (1) of the following within one (1) year of adding outpatient behavioral health services to the chemical dependency treatment program's license:

1. Joint Commission;

2. Commission on Accreditation of Rehabilitation Facilities;

3. Council on Accreditation; or

4. A nationally recognized accreditation organization.

(4)(a) If a chemical dependency treatment services outpatient program has not obtained accreditation within the one (1) year timeframe required by subsection (3)(g) of this section, the program 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 expiration of the one (1) year deadline described in subsection (3)(g) of this section;

2. Include evidence that the program initiated the process of becoming accredited within sixty (60) days of adding outpatient behavioral health services to the program's license and is continuing its efforts to obtain accreditation; and

3. Include an estimated timeframe by which approval of accreditation is anticipated.

(5) A program shall cease providing outpatient behavioral health services if the program fails to meet one (1) of the following requirements:

(a) Become accredited in accordance with subsection (3)(g) of this section;

(b) Request an extension in accordance with subsection (4) of this section if accreditation has not been obtained; or

(c) Maintain accreditation.

(6) Proof of accreditation shall be provided to the Office of Inspector General upon receiving accreditation and at the time of annual renewal.

Section 3. Administration and Operation. (1) The licensee shall be responsible for compliance with federal, state, and local laws and regulations~~[law]~~ pertaining to the operation of chemical dependency treatment programs.

(2)(~~(4)~~)(a) The governing authority shall appoint a program administrator who shall have a:

1. Bachelor's degree in a health or human services field;

2. Bachelor's degree in another field supplemented with one (1) year of work experience in the field of chemical dependency; or

3. High school diploma and four (4) years of experience in the field of chemical dependency.

(b) The governing authority shall establish, in writing:

1. Program goals and objectives; and

2. An evaluation plan for annual assessment of the attainment of the goals and objectives.

(3)(~~(2)~~) Program administrator.

(a) The program administrator shall:

1. Be responsible for the daily management of the facility; and

2. Serve as the~~[shall provide]~~ liaison between the governing authority and staff members.

(b) The program administrator shall keep the governing

authority informed of the operations of the facility through ~~[periodic]~~ reports and attendance at meetings of the governing authority.

(4)(~~(3)~~) Administrative records and reports.

(a) A medication error, drug reaction, accident, or other incident involving a patient, visitor, or staff member, shall be ~~documented~~~~[reported]~~ in writing, signed by the program administrator and any witness to the event, and placed in an incident file.

(b) Licensure inspection reports, plans of correction, and program evaluations shall be available to the public, upon request, at the facility.

(5)(~~(4)~~) Policies.

(a) Administrative policies. The program shall have a written administrative policy to cover each aspect of the facility's operation, as follows:

1. A description of the organizational structure, staffing, and allocation of responsibility and accountability;

2. A description of referral linkages with other facilities and providers;

3. A description of the services included in the program, including outpatient behavioral health services if provided;

4. An expense and revenue accounting system following generally accepted accounting procedures;

5. A volunteer program; and

6. Program evaluation and quality assurance review.

(b) Patient care policy. A written patient care policy shall be developed and shall include a description of:

1. Actions to be taken when a patient is lost, unaccounted for, or otherwise absent without authorization;

2. Provisions for patient visitation and use of telephones;

3. Provision of emergency medical services; and

4. Patient admission and discharge criteria, including the categories of individuals accepted and not accepted by the program.

(c) Patient rights policy. A written policy shall be developed to enhance patient dignity and to protect human rights. The policy shall assure that each patient or client receiving outpatient behavioral health services is:

1. Informed of rules and regulations governing patient conduct and responsibilities, including the procedure for handling grievances;

2. Informed, prior to admission for rehabilitation or receipt of outpatient behavioral health services, of services available and charges for treatment, including charges not covered under Medicare, Medicaid, or other third-party payor;

3. Encouraged and assisted to:

a. Understand and exercise patient rights;

b. Voice grievances; and

c. Recommend changes in policies and services. Upon request by a patient~~[If a patient so requests]~~, a grievance or recommendation shall be conveyed to that body within the organization with authority to take corrective action;~~[-]~~

4. Presented with the opportunity to participate in the planning of his or her treatment;

5. Informed of the right to refuse to participate in experimental research;

6. Assured confidential treatment of records and presented with the opportunity to approve or refuse release of records to any individual not involved in his or her care, except as required by Kentucky law or third party payment contract; and

7. Treated with consideration, respect, and recognition of personal dignity and individuality, including privacy in treatment and personal health needs.

(6)(~~(5)~~) Personnel.

(a) The governing authority shall:

1. Establish a personnel policy; and

2.~~[which the governing authority shall]~~ Review the personnel policy at least one (1) time annually and update as needed~~[on an annual basis]~~.

(b) There shall be a personnel record for each person employed by the chemical dependency treatment inpatient facility and, if applicable, the outpatient behavioral health services program, which shall include the following:

1. Evidence of the results of a tuberculosis test, performed either prior to or within the first week of employment and annually thereafter;

2. Evidence of education, training, and experience, and a copy of current license or certification credentials, if applicable;

3. Evidence that the employee received orientation to the facility's written policies within the first week of employment; and

4. Evidence of regular in-service training which corresponds with job duties and includes a list of training and dates completed.

(7)(6) Staffing requirements.

(a) The chemical dependency treatment program shall have personnel sufficient to meet patient needs at the inpatient facility on a twenty-four (24) hour basis.

(b) The number and classification of personnel required shall be based on the number of patients and the individual treatment plans.

(8) Medical director. The chemical dependency treatment program's inpatient facility shall have a medical director who shall:

(a) Be a physician licensed in accordance with KRS 311.571;

(b) Be responsible for the medical aspect of the program; and

(c) Have duties which (a) Responsibility for the medical aspect of the program shall reside with a qualified physician, in the post of medical director. The duties of the medical director shall include:

1. Patient admission;

2. Approval of patient treatment plans;

3. Participation in the quality assurance review; and

4. Provision of medical services, personally or by a designated physician, either in-house or on-call, on a twenty-four (24) hour basis.

(9)(b) Interdisciplinary team. The chemical dependency treatment program shall have ~~There shall be~~ an interdisciplinary team responsible for:

(a) ~~1.~~ Developing individual treatment plans;

(b) ~~2.~~ Developing aftercare plans; and

(c) ~~3.~~ Conducting quality assurance reviews.

(10)(e) Treatment director. The chemical dependency treatment program shall have a full time treatment director responsible for:

(a) ~~1.~~ Coordinating the interdisciplinary team in developing individual treatment plans;

(b) ~~2.~~ Initiating a periodic review of each patient's treatment plan;

(c) ~~3.~~ Supervising the maintenance of patient records; and

(d) ~~4.~~ Coordinating the interdisciplinary team in developing an aftercare plan for each patient to provide continuity of care.

(11)(f) Nursing services within the chemical dependency treatment program's inpatient facility.

(a) Nursing services shall be available on a twenty-four (24) hour basis.

(b) The program shall have at least one (1) full-time registered nurse.

(c) ~~If~~ When a registered nurse is not on duty, ~~there shall be~~ a licensed practical nurse shall be ~~present who is~~ responsible for the nursing care of patients and ~~during her tour of duty. When a licensed practical nurse is on duty,~~ a registered nurse shall be on call.

(12)(e) Medical supervision. A physician, or registered nurse under the direction of a physician, shall supervise:

(a) Implementation of the medical aspects of the treatment plan; and

(b) All staff directly involved in patient medical care.

(13)(f) In-service training.

(a) All personnel of the chemical dependency treatment program's inpatient facility or, if applicable, the outpatient behavioral health services program, shall participate in ongoing in-service training specific to the employee's ~~programs relating to their respective~~ job activities.

(b) Training ~~These programs~~ shall include:

1. Thorough job orientation for new personnel; and

2. Regular in-service training ~~programs~~ emphasizing professional competence and the human relationship necessary for effective health care.

(14)(7) Patient records of the chemical dependency treatment

program's inpatient facility.

(a) 1. An individual record shall be maintained for each patient.

2. Each entry shall be signed and dated by the person making the entry.

(b) At the time of admission, the following information shall be entered into the patient's record:

1. Name, date of admission, birth date and place, marital status and Social Security number;

2. Person to contact in case of emergency;

3. Next of kin; and

4. Type and place of employment.

(c) The record shall contain documentation of medical services provided during detoxification and rehabilitation, including the results of physical examinations.

(d) 1. The record shall contain the patient's treatment plan outlining goals and objectives for the individual during treatment.

2. The record shall also contain documentation of how the plan was implemented and of patient progress in meeting the goals and objectives outlined in the treatment plan.

(e) The record shall contain notation of medication administered, stating the date, time, dosage, and frequency of administration and the name of the person administering each dose.

(f) The record shall contain a discharge summary and a plan for aftercare.

(g) The discharge summary shall be entered in the patient's record within seven (7) days after discharge and shall include:

1. The course and progress of the patient with regard to the individual treatment plan;

2. General observations of the patient's condition initially, during treatment and at discharge; and

3. The recommendations and arrangements for further treatment including prescribed medications and aftercare.

(h) If the patient is referred to another service provider after discharge, and if the patient executes a written release, a copy of the discharge summary shall be with the patient's permission sent to the provider with the patient's permission.

(i) After a patient's death or discharge, the completed record shall be placed in an inactive file and:

1. Retained for ~~six (6)~~ five (5) years; or

2. ~~If in case of~~ a minor, three (3) years after the patient reaches the age of majority under state law, whichever is longest.

(15) Confidentiality and Security: Use and Disclosure.

(a) The chemical dependency treatment program shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law, 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 chemical dependency treatment program may use and disclose medical records. Use and disclosure shall be as established or required by:

1. HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164; or

2. 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(c) This administrative regulation shall not be construed to forbid the chemical dependency treatment program 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.

(16)(8) Linkage agreements.

(a) The program shall have linkages through written agreements with providers of other levels of care which may be medically indicated to supplement the services available in the program.

(b) ~~These~~ Linkages shall include a hospital and an emergency medical transportation service in the area.

(17)(9) Quality assurance. The program ~~service~~ shall have a

quality assurance program that includes an effective mechanism for reviewing and evaluating patient care on a regular basis by the interdisciplinary team.

(18)[(40)] Medications.

(a) A prescription or nonprescription medication administered to a patient shall be noted in the patient's records with the date, time and dosage, and signed by the person administering the medication.

(b) Each prescription medication shall be plainly labeled with the:

1. Patient's name;
- 2.[-the] Name of the drug;
- 3.[-] Strength;
- 4.[-] Name of pharmacy;
- 5.[-] Date;
- 6.[-] Physician name;
- 7.[-] Caution statement; and
8. Directions for use.

(c) 1. A prescription or nonprescription medication shall not be administered to a patient except on the written order of a physician or other practitioner acting within his or her statutory scope of practice.

2. A medication shall be administered by licensed personnel.

(d) 1. Medication shall be kept in a locked storage area which shall be well lighted and of sufficient size to permit storage without crowding.

2. Medication requiring refrigeration shall be kept in a separate locked box in a refrigerator.

3. Medication for external use shall be stored separately from medication administered by mouth or injection.

(e) A medication error or drug reaction shall be reported immediately to the medical director and treatment coordinator and an entry shall be made in the patient's record.

(f) An emergency medical kit, with contents approved by a physician, shall be:

1. Maintained at the facility; and[-]

2. [-It shall be] Inspected after use or at least monthly to remove deteriorated and outdated drugs and to ensure completeness of content.

(19)[(44)] Restraints. Requirements for the use of restraints shall be met pursuant to KRS 202A.241 and 908 KAR 3:010, Section 9(9).

(20)[(42)] Activities schedule. A daily schedule of program activities shall be posted in the chemical dependency treatment program's inpatient facility.

Section 4. Provision of Services. (1) Detoxification. A chemical dependency treatment program's inpatient facility shall provide medical detoxification services pursuant to the requirements of 902 KAR 20:111[~~shall be available~~] directly or through another licensed provider[-] for a patient who requires detoxification.

(2) Rehabilitation. A chemical dependency treatment program's inpatient facility[The program] shall provide:

(a) Medical services as needed, under the supervision of a physician;

(b) Scheduled individual, group, and family counseling;

(c) Psychological testing and evaluation as needed;

(d) Education of the patient on the subject of chemical dependency and related lifestyle issues, including nutrition and communication skills;

(e) Recreational activities with facilities and equipment, consistent with the patient's needs and the therapeutic program;

(f) Referral to other rehabilitative or community service agencies providing services not available through the program; and

(g) Aftercare services provided directly or through arrangement with another agency.

(3) Physical examinations. Within ten (10) days prior to, or three (3) days after admission to the chemical dependency treatment program's inpatient facility for rehabilitation, a patient shall have a physical examination with tests ordered by a physician.

(4) Psychosocial history.

(a) A patient in a chemical dependency treatment program's

inpatient facility shall have a psychosocial history and assessment interview within seventy-two (72) hours after admission for rehabilitation.

(b) The following data shall be collected and recorded in the patient record:

- 1.[-(a)] History of alcohol and drug use;
- 2.[-(b)] A determination of current emotional state;
- 3.[-(c)] Vocational history;
- 4.[-(d)] Familial relationships; and
- 5.[-(e)] Educational background.

(5) Treatment plan.

(a) The interdisciplinary team, with the participation of the patient, shall develop an individual treatment plan within four (4) days after admission to the chemical dependency treatment program's inpatient facility for rehabilitation, based on the patient's medical evaluation and psychosocial history and assessment.

(b) The treatment plan shall:

1.[-(a)] Specify the services required for meeting the patient's needs;

2.[-(b)] Identify goals necessary for the patient to achieve, maintain or reestablish physical health and adaptive capabilities;

3.[-(c)] Establish goals with both long-term and short-term objectives and the anticipated time expected to meet these goals; and

4.[-(d)] Identify the location and frequency of treatment procedures, including referrals for a required service not provided by the program.

(6) The treatment plan shall be reviewed and updated at least weekly for the duration of the inpatient treatment.

(7) (a) The patient's family or significant others shall be involved in the treatment process, if approved by the patient.

(b) An attempt to involve family members or significant others shall be reported in the patient's medical record.

(8) Aftercare plan.

(a) 1. A written aftercare plan shall be developed prior to completion of treatment in the chemical dependency treatment program's inpatient facility by[-] the:

a. Interdisciplinary team;

b.[-the] Patient; and

c.[-] With the patient's permission, the patient's family or significant others[~~shall develop a written aftercare plan~~].

2. The aftercare plan shall be designed to establish continued contact for the support of the patient.

(b) The aftercare plan shall include methods and procedures to meet patient needs through direct contact or with assistance from other community human services organizations.

(c) ~~If~~When aftercare services are provided directly, review and update[~~a periodic review and updating~~] of the aftercare plan shall be conducted with the frequency of review determined by the:

1. Interdisciplinary team;

2.[-the] Patient;[-] and

3. With the patient's permission, the patient's family or significant others.

(d) If the patient is referred to another agency for aftercare services, follow-up shall be conducted to determine if services are being provided.

Section 5. Provision of Outpatient Behavioral Health Services, Plan of Care, and Client Records. (1) Pursuant to Section 2(3) of this administrative regulation, a chemical dependency treatment program may provide one (1) or more of the following outpatient behavioral health services for individuals with a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis:

(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 substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis; and

2. Need for an assessment;

(b) Assessment which shall:

1. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, 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 substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis;

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 chemical dependency treatment program'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;

4. Be a multi-disciplinary team based intervention that ensures access to acute substance use services and supports to:

a. Reduce symptoms or harm; or

b. Safely transition an individual in an acute crisis to 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;

6. Be provided by a:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision; or

c. Certified alcohol and drug counselor; and

7. 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 or co-occurring disorder in which substance use disorder is the primary diagnosis;

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 or co-occurring disorder in which substance use disorder is the primary diagnosis;

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; and

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 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, or a certified alcohol and drug counselor;

(j) Group outpatient therapy 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, 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, at least one (1) member of the client's family, and the client unless the client's presence is not required in his or her plan of care;

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, 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, 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) 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; or

(n) Targeted case management services which shall:

1. Include services to an:

a. Adult or a child with substance use disorder; or

b. Adult or child with co-occurring mental health or substance use disorder and chronic or complex physical health issues;

2. Be provided by a case manager as described in subsection (2) or (3) of this section; 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;

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.

(2) A case manager who provides targeted case management services to clients with a substance use disorder shall:

(a) Be a certified alcohol and drug counselor, meet the grandfather requirements of 907 KAR 15:040, Section 4(1)(a)3, or 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;

- 8. Behavioral analysis;
- 9. Public health;
- 10. Special education;
- 11. Gerontology;
- 12. Recreational therapy;
- 13. Education;
- 14. Occupational therapy;
- 15. Physical therapy;
- 16. Speech-language pathology;
- 17. Rehabilitation counseling; or
- 18. Faith-based education;

(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 the requirements 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 in accordance with 908 KAR 2:260; and

2. Successfully complete continuing education requirements in accordance with 908 KAR 2:260; and

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

1. Has completed case management training 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.

(3) A case manager who provides targeted case management services to clients with a mental health or substance use disorder and chronic or complex physical health issues shall:

(a) Meet the requirements of subsection (2)(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 a human services field as described in subsection (2)(a) of this section, 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 in accordance with 908 KAR 2:260; and

2. Successfully complete continuing education requirements in accordance with 908 KAR 2:260; and

(d) For a bachelor's level case manager, be supervised by a behavioral health professional who:

1. Has completed case management training 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.

(4) Plan of care.

(a) Each client receiving outpatient behavioral health services from a chemical dependency treatment program shall have an individual plan of care signed by a behavioral health professional.

(b) A plan of care shall:

1. Describe the services to be provided to the client, including the frequency of services;

2. Contain measurable goals for the client to achieve, including the expected date of achievement for each goal;

3. 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;

4. Specify each staff member assigned to work with the client;

5. Identify methods of involving the client's family or significant others if indicated;

6. Specify criteria to be met for termination of treatment;

7. Include any referrals necessary for services not provided directly by the chemical dependency treatment program; and

8. State the date scheduled for review of the plan.

(c) 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.

(d)1. The initial plan of care shall be developed through multidisciplinary team conferences at least thirty (30) days following the first ten (10) days of treatment.

2. The plan of care for individuals receiving intensive outpatient program services shall be reviewed every thirty (30) days thereafter and updated every sixty (60) days or earlier if clinically indicated.

3. Except for intensive outpatient program services, the plan of care for individuals receiving any other outpatient behavioral health service described in subsection (1) of this section shall be reviewed and updated every six (6) months or earlier if clinically indicated.

4. 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.

(6) Client Records.

(a) A client record shall be maintained for each individual receiving outpatient behavioral health services.

(b) Each entry shall be current, dated, signed, and indexed according to the service received.

(c) Each client record shall contain:

1. An identification sheet, including the client's name, address, age, gender, marital status, expected source of payment, and referral source;

2. Information on the purpose for seeking a service;

3. If applicable, consent of appropriate family members or guardians for admission, evaluation, and treatment;

4. Screening information pertaining to the mental health or substance use disorder;

5. If applicable, a psychosocial history;

6. If applicable, staff notes on services provided;

7. If applicable, the client's plan of care;

8. If applicable, disposition;

9. If applicable, assigned status;

10. If applicable, assigned therapists; and

11. If applicable, a termination study recapitulating findings and events during treatment, clinical impressions, and condition on termination.

Section 6. Compliance with Building Codes, Ordinances and Regulations; Chemical Dependency Treatment Program's Inpatient Facility. (1) Nothing stated herein shall relieve the licensee from compliance with building codes, ordinances, and regulations which are enforced by city, county, or state jurisdictions.

(2) The following shall apply:

(a) Requirements for safety pursuant to the National Fire Protection Association 101, Life Safety Code adopted by the Kentucky Department of Housing, Buildings and Construction;

(b) Requirements for plumbing pursuant to 815 KAR 20:010 through 20:191;

(c) Requirements for making buildings and facilities accessible to and usable by persons with disabilities.

(3) The facility shall be approved by the Fire Marshal's Office before a license or license renewal is granted.

(4) The facility shall receive necessary approval from appropriate agencies prior to occupancy and licensure.

(5) Physical and sanitary environment.

(a) The physical plant and overall facility environment shall be maintained to protect the safety and well-being of patients, personnel and visitors.

(b) A person shall be designated responsible for services and for the establishment of practices and procedures in each of the

following areas:

1. Plant maintenance;
2. Laundry operations either on site or off site; and
3. Housekeeping.

(c) The facility buildings, equipment, and surroundings shall be kept in good repair, neat, clean, free from accumulation of dirt and rubbish and free from foul, stale or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.

2. Written housekeeping procedures shall be established for each area and copies shall be available to personnel.

3. Equipment and supplies shall be provided for cleaning surfaces. The equipment shall be maintained in a safe, sanitary condition.

4. A hazardous cleaning solution, compound, or substance shall be labeled, stored in an approved container, and kept separate from nonhazardous cleaning materials.

5. The facility shall be free from insects, rodents, and their harborage.

6. Garbage and trash shall be stored in closed containers in an area separate from an area used for the preparation or storage of food.

7. The garbage and trash area shall be cleaned regularly and shall be in good repair.

(d) The facility shall have available at all times a quantity of linen essential to the proper care and comfort of residents.

1. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose.

2. Soiled linen and clothing shall be placed in suitable bags or closed containers and stored in a separate area ventilated to the exterior of the building.

Section 7. Chemical Dependency Treatment Program's Inpatient[6-] Facility Requirements and Special Conditions. (1) Patient rooms. Each patient room shall meet the following requirements:

(a) The maximum room capacity shall be six (6) patients.

(b) The minimum room area, exclusive of toilet room, closet, locker, wardrobe, or vestibule, shall be:

1. 100 square feet for a one (1) bed room; and
2. Eighty (80) square feet per bed for multibed rooms.

(c)1. Partitions, cubicle curtains, or placement of furniture shall be used to provide privacy in a multiperson room.

2. Ample closet and drawer space shall be provided for the storage of each patient's personal property.

(d) The placement of a patient in a multibed room shall be appropriate to the age and program needs of the patient.

(2) Lavatory.

(a) In a single or multibed room with a private toilet room, the lavatory may be located in the toilet room.

(b) If two (2) or more patients share a common toilet a lavatory shall be provided in each patient room.

(3) Centralized toilet area.

(a) If a centralized toilet area is used, the facility shall provide, for each gender on each floor, one (1) toilet for each eight (8) residents or a major fraction thereof.

(b) Toilets shall be separated by a permanent partition and at least one (1) toilet for each gender shall be designed for wheelchair use.

(4) Patient baths.

(a) There shall be one (1) shower stall or one (1) bathtub for each fifteen (15) patients not individually served.

(b) Each bathtub or shower shall provide space for the private use of the fixture and for dressing.

(5) The patient shall be encouraged to take responsibility for maintaining his or her own living quarters and for other day-to-day housekeeping activities of the program, as appropriate to his or her clinical status.

(6) Dietary service.

(a) The facility shall have a dietary department, organized, directed, and staffed to provide quality food service and optimal nutritional care.

1. The dietary service shall be directed on a full-time basis by

an individual who, by education or specialized training and experience, is knowledgeable in food service management.

2. The dietary service shall have at least one (1)[qualified] dietician licensed pursuant to KRS 310.021 to supervise the nutritional aspects of patient care and to approve menus on at least a consultative basis.

3. If food service personnel are assigned a duty outside the dietary department, the[a] duty shall not interfere with the sanitation, safety, or time required for regular dietary assignments.

(b)1. A menu shall be planned, written, and rotated to avoid repetition.

2. Nutritional needs shall be met in accordance with:

a. Recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences;[;] and

b.[in accordance with] Physician orders.

(c)1. A meal served shall correspond with the posted menu.

2. If[When] a change in the menu is necessary;

a.[;] Substitution shall provide equal nutritive value;[;] and

b. The change shall be recorded on the menu.

3. A menu shall be kept on file for thirty (30) days.

(d) Food shall be:

1. Prepared by methods that conserve nutritive value, flavor, and appearance;[;] and

2.[shall be] Served at the proper temperature.

(e)1. At least three (3) meals shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and breakfast.

2. Each meal shall be served at a regular time and a nourishing between-meal or bedtime snack offered.

(f) Food services shall be provided in accordance with[The facility shall comply with relevant provisions of] 902 KAR 45:005.

Section 8. Physical environment of an off-campus extension or separate building on the campus of the chemical dependency treatment program's inpatient facility where outpatient behavioral health services are provided. (1) Accessibility. The off-campus extension or separate building on the campus of the chemical dependency treatment program's inpatient facility 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.

(2) Physical location and overall environment.

(a) The program 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.

(3) Prior to occupancy, the facility shall have final approval from appropriate agencies.

MARYELLEN B. MYNEAR, Inspector General

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 9, 2015

FILED WITH LRC: April 10, 2015 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 22, 2015 at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2015, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date,

the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business June 1, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for licensure as a chemical dependency treatment service program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum requirements for licensure as a chemical dependency treatment service program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health 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 the minimum requirements for licensure as a chemical dependency treatment service program.

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

(a) How the amendment will change this existing administrative regulation: This amendment expands the scope of services which may be provided by a chemical dependency treatment service program to include outpatient behavioral health services for individuals with a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to expand the scope of services which may be provided under a chemical dependency treatment service program's license, thereby increasing access to substance abuse treatment services.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing requirements for the operation of chemical dependency treatment services programs.

(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 expanding the scope of services which may be provided under a chemical dependency treatment service program's license, thereby increasing access to substance abuse treatment services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently four (4) licensed chemical dependency treatment service programs.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Chemical dependency treatment service programs may elect to provide outpatient behavioral health services for individuals with a substance use disorder or co-

occurring disorder in which substance use disorder is the primary diagnosis.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The provision of outpatient behavioral health services by chemical dependency treatment service programs is optional.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Chemical dependency treatment service programs will be eligible to enroll in the Kentucky Medicaid Program for reimbursement of outpatient behavioral health services provided to Medicaid recipients.

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

(a) Initially: The cost of implementing the amendment of this administrative regulation is expected to be absorbable.

(b) On a continuing basis: The cost of implementing this administrative regulation is expected to be absorbable.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation will be from agency and state general funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities who elect to be regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation establishes standards for the licensure of chemical dependency treatment service programs.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function.

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

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

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

(c) How much will it cost to administer this program for the first year? The cost of implementing this administrative regulation is expected to be absorbable.

(d) How much will it cost to administer this program for subsequent years? The cost of implementing this administrative regulation is expected to be absorbable.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General
Division of Health Care
(Amendment)

902 KAR 20:180. Psychiatric hospitals; operation and services.

RELATES TO: KRS 200.503, Chapter 202A, Chapter 202B, 210.005, 216.380(7) and (8), 216B.010-216B.131, 216B.175, 216B.990, 309.080, 309.130, 311.560[(3), (4)], 311.571, 311.840 – 311.862, 314.011(8), 314.042, 319.050, 319.056, 319.064, 319C.010, 320.240(14), 335.100, 335.300, 335.080, 335.500, 42 C.F.R. Part 2, 45 C.F.R. 160, 164, 42 U.S.C. 1320d-2 – 1320d-8, 42 U.S.C. 290ee-3

STATUTORY AUTHORITY: KRS [202B-060,] 216B.042[(1)(a)], 216B.175(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services[require the Kentucky Cabinet for Health Services] to regulate health facilities and health services. This administrative regulation establishes minimum licensure requirements for the operation and services of psychiatric hospitals and for the provision of psychiatric services in general acute care hospitals or critical access hospitals which have a psychiatric unit. In addition, this administrative regulation establishes requirements for psychiatric hospitals and general acute care hospitals or critical access hospitals that have a psychiatric unit and elect to provide outpatient behavioral health services.

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); 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 patient's behavior in a way that reduces the safety risk to the patient or others;

(b) Has the temporary effect of restricting the patient's freedom of movement; and

(c) Is not a standard treatment for the patient's medical or psychiatric condition.

(6) "Child with a severe emotional disability" is defined by KRS 200.503(3).

(7) "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.

(8) "Governing authority" means the individual, agency, partnership, or corporation in which the ultimate responsibility and authority for the conduct of the hospital[institution] is vested.

(9) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(10) "Licensed behavior analyst" is defined by KRS 319C.010(6).

(11) "Mechanical restraint" means any device attached or adjacent to a patient's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body.

(12) "Peer support specialist" means a paraprofessional who meets the application, training, examination, and supervision requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240.

(13) "Personal restraint" means the application of physical force without the use of any device for the purpose of restraining the free movement of a patient's body and does not include briefly holding without undue force a patient in order to calm or comfort him or her or holding a patient's hand to safely escort him or her from one (1) area to another.

(14) "Professional staff" means psychiatrists and other physicians, psychologists, psychiatric nurses and other nurses, social workers and other professionals with special education or experience in the care of persons with mental illness and who are involved in the diagnosis and treatment of patients with mental illness.

(15)[(3)] "Psychiatric unit" means a department of a critical access hospital with a maximum of ten (10) psychiatric beds or general acute care hospital consisting of eight (8) or more psychiatric beds organized for the purpose of providing psychiatric services.

(16) "Seclusion" means the involuntary confinement of a patient alone in a room or in an area from which the patient is physically prevented from leaving.

(17) "Severe mental illness" means the conditions defined by KRS 210.005(2) and (3). [(4) "Restraint" means the application of a physical device, the application of physical body pressure by another person in such a way as to control or limit physical activity, or the intravenous, intramuscular, or subcutaneous administration of a pharmacologic or chemical agent to a patient with a mental illness, with the sole or primary purpose of controlling or limiting the physical activities of the patient.

(5) "Seclusion" means the confinement of a patient with a mental illness or mental retardation alone in a locked room.]

Section 2. Applicability. (1)(a) A general acute care hospital or a critical access hospital with a psychiatric unit shall:

1. Designate the location and number of beds for which licensure is sought;

2. Meet the requirements of 902 KAR 20:016; and

3. Meet the requirements of this administrative regulation.

(b) A facility requesting licensure[as an] exclusively as a psychiatric hospital shall be[is] subject to the requirements of this administrative regulation.

(2)[(a)] A facility shall not be licensed as, or be called, a psychiatric hospital unless the facility:

(a)[(i)] Provides the full range of services required by Section 5 of this administrative regulation; and

(b) Provides for the treatment of a variety of mental illnesses.

(3) A psychiatric hospital and a general acute care hospital or critical access hospital with a psychiatric unit~~(b)1. A facility with a certificate of need that is licensed after the effective date of this administrative regulation and~~ that has a mean daily census of patients whose primary ~~diagnosis~~~~[illness]~~ is chemical dependency exceeding ten (10) percent of the licensed bed capacity shall:

(a) Apply for a certificate of need in order to convert the necessary number of beds to chemical dependency services;

(b) Meet the~~[2-]~~ licensure requirements~~[are]~~ established in 902 KAR 20:160; and

(c) Report the~~[3-]~~ mean daily census~~[shall be as reported]~~ in the~~[last]~~ Annual Hospital Utilization Report.

(4) If a psychiatric hospital or a general acute care hospital or a critical access hospital with a psychiatric unit provides outpatient behavioral health services as described in Section 6 of this administrative regulation:

(a) The outpatient behavioral health services shall be provided:

1. On a separate floor, in a separate wing, or in a separate building on the hospital's campus; or

2. At an extension off the campus of the hospital;

(b) The hospital shall pay a fee in the amount of \$250 per off-campus extension providing outpatient behavioral health services, submitted to the Office of Inspector General at the time of:

1. Initial licensure, if applicable;

2. The addition of a new outpatient behavioral health services extension to the hospital's license; and

3. Renewal;

(c) Each off-campus extension or on-campus program of outpatient behavioral health services shall:

1. Be listed on the hospital's license;

2. Have a program director who shall be a:

a. Psychiatrist;

b. Physician;

c. Certified or licensed psychologist;

d. Licensed psychological practitioner;

e. Psychiatric nurse;

f. Advanced practice registered nurse;

g. Licensed professional clinical counselor;

h. Licensed marriage and family therapist;

i. Licensed professional art therapist;

j. Licensed board certified behavioral analyst; or

k. Licensed clinical social worker; and

3. Employ directly or by contract a sufficient number of personnel to provide outpatient behavioral health services; and

(d) An off-campus extension or a separate building on the campus of the hospital where outpatient behavioral health services are provided shall comply with the physical environment requirements of Section 7 of this administrative regulation and be approved by the State Fire Marshal's office prior to:

1. Initial licensure;

2. The addition of the extension or on-campus program of outpatient behavioral health services in a separate building; or

3. A change of location.

Section 3. Administration and Operation. (1) General requirements. A psychiatric hospital and a general acute care hospital or critical access hospital with a psychiatric unit shall comply with:

(a) This section;

(b) 902 KAR 20:016, Section 3; and

(c) KRS Chapters 202A and 202B.

(2) Professional staff. A facility requesting licensure~~[as an]~~ exclusively as a psychiatric hospital~~[that operates with an organized professional staff]~~ shall comply with the following staffing requirements~~[in this subsection]~~ rather than those in 902 KAR 20:016, Section 3(8):

(a) The psychiatric~~[A]~~ hospital shall have a professional staff:

1. Organized under bylaws approved by the governing authority;

2. Responsible to the governing authority for the quality of clinical care provided to patients; and

3. Responsible for the ethical conduct and professional practice of its members; and

4. Responsible for developing and adopting~~[(b) The professional staff shall develop and adopt]~~ bylaws, subject to the approval of the governing authority, which shall:

a~~[4-]~~ Require that a licensed physician be responsible for admission, diagnosis, all medical care and treatment, and discharge;

b~~[2-]~~ State the necessary qualifications for professional staff membership;

c~~[3-]~~ Define and describe the responsibilities and duties of each category of professional staff (e.g., active, associate, courtesy, consulting, or honorary);

d~~[1-]~~ Delineate the clinical privileges of staff members;

e~~[1- and]~~ Establish a procedure for granting and withdrawing staff privileges, including~~[to include]~~ credentials review;

f~~[4-]~~ Provide a mechanism for appeal of decisions regarding staff membership and privileges;

g~~[5-]~~ Provide a method for the selection of officers of the professional staff;

h~~[6-]~~ Establish requirements regarding the frequency of, and attendance at, general staff and department or service meetings of the professional staff;

i~~[7-]~~ Provide for the appointment of standing and special committees, which may include the following:

(i) Executive committee;

(ii) Credential committee;

(iii) Medicaid audit committee;

(iv) Medical records committee;

(v) Infections control committee;

(vi) Pharmacy and therapeutic committee;

(vii) Utilization review committee;

(viii) Quality assurance committee; and

(ix) Behavioral health committee;

j. Establish the~~[and include requirements for]~~ composition and organization of the standing and special committees, and assure that the committees' minutes and reports~~[which]~~ shall be part of the permanent records of the hospital; and

k~~[1-]~~ Committees may include: executive committee, credentials committee, medical audit committee, medical records committee, infections control committee, pharmacy and therapeutic committee, utilization review committee, and quality assurance committee; and

8-] Establish a policy requiring a physician, or other member of the professional staff permitted to order diagnostic testing and treatment, to sign telephone orders for diagnostic testing and treatment within seventy-two (72) hours of the time the order was given.

(b) A psychiatric~~[(e) A]~~ hospital shall develop a process of appointment to the professional staff which shall ensure that the individual~~[will assure that the person]~~ requesting staff membership is appropriately licensed, certified, registered, or experienced, and qualified for the privileges and responsibilities sought.

(3) Background checks.

(a) All personnel of a state-owned and operated psychiatric hospital and all personnel of a privately operated psychiatric center under contract with the Department for Behavioral Health, Developmental and Intellectual Disabilities who are hired after the effective date of this administrative regulation and have duties that involve or may involve one-on-one contact with a patient or client shall:

1. Have a criminal record check performed upon initial hire through the Administrative Office of the Courts or the Kentucky State Police;

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 required by KRS 209.032 and established by 922 KAR 5:120.

(b) A state-owned and operated psychiatric hospital, or a privately operated psychiatric center under contract with the Department for Behavioral Health, Developmental and Intellectual Disabilities, 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 state-owned and operated psychiatric hospital and a privately operated psychiatric center under contract with the Department for Behavioral Health, Developmental and Intellectual Disabilities shall perform annual criminal record and registry checks as described in paragraph (a) of this subsection on a random sample of at least fifteen (15) percent of all personnel.

(4) Policies for psychiatric hospitals and general acute care hospitals or critical access hospitals with a psychiatric unit.

(a)[A hospital's] Written admission and discharge policies shall be consistent with the requirements of KRS Chapters 202A and 202B.

(b)[A hospital shall have] Written policies pertaining to patient rights and the use of restraints and seclusion shall be[.] consistent with KRS Chapters 202A and 202B.

(c)[A hospital shall have] Written policies concerning the use of special treatment procedures as described in Section 4(3) of this administrative regulation[that may have abuse potential, or be life-threatening, and] shall specify the qualifications required for professional staff using special treatment procedures.

(5)[(4)] Patient rights. A psychiatric hospital and a general acute care hospital or critical access hospital with a psychiatric unit shall assure that patient rights are provided for pursuant to KRS Chapters 202A and 202B.

(6)[(5)] Medical records.

(a) Ownership.

1. Medical records shall be the property of the hospital.

2. The original medical record shall not be removed from the facility except by court order or subpoena.

3. Copies of a medical record or portions of the record may be used and disclosed. Use and disclosure shall be as established in this administrative regulation.

(b) Confidentiality and security: use and disclosure.

1. The psychiatric hospital and general acute care hospital or critical access hospital with a psychiatric unit shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law, including 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

2. The psychiatric hospital and general acute care hospital or critical access hospital with a psychiatric unit may use and disclose medical records. Use and disclosure shall be as established or required by:

a. HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164; or

b. 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

3. This administrative regulation shall not be construed to forbid the hospital 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.

(c) Patient information[shall be released only on written consent of the patient or the patient's authorized representative, or as otherwise authorized by law. The written consent shall contain the following information:

1. The name of the person, agency or organization to which the information is to be disclosed;

2. The specific information to be disclosed;

3. The purpose of disclosure; and

4. The date the consent was signed and the signature of the individual witnessing the consent.

(b) In addition to the requirements of 902 KAR 20:016, Section

3(11)(d)] The medical record shall contain:

1. Appropriate court order or consent of patient, authorized family member or guardian for admission, evaluation, and treatment;

2. A provisional or admitting diagnosis which includes a physical diagnosis, if applicable, and a[psychiatric] diagnosis of mental health disorder, substance use disorder, or co-occurring disorder;

3. Results of the psychiatric evaluation;

4. A complete social history;

5. An individualized comprehensive treatment plan;

6. Progress notes, dated and signed by physician, nurse, social worker, psychologist, or other individuals involved in treatment of patient. Progress notes shall document services and treatments provided and the patient's progress in response to the services and treatments;

7. A record of the patient's weight;

8. Special clinical justification for the use of special treatment procedures described in Section 4(3)[specified in Section 5(3)] of this administrative regulation;

9. A discharge summary which includes a:

a. Recapitulation of the patient's hospitalization and recommendations from appropriate services concerning follow-up or after care[.]; and

b.[a] Brief summary of the patient's condition on discharge;

10. If a patient dies, a summation statement in the form of a discharge summary, including events leading to the death, signed by the attending physician; and

11. If an autopsy is performed, a provisional anatomic diagnosis shall be included in the patient's record within seventy-two (72) hours[.] with the complete summary and pathology report, including cause of death, recorded within three (3) months.

Section 4. Patient Management. (1) Assessment. A psychiatric hospital and a general acute care hospital or critical access hospital with a psychiatric unit shall be responsible for conducting a complete assessment of each patient.

(a) A provisional or admitting diagnosis, which includes the diagnosis of physical diseases, if applicable, and the psychiatric diagnosis, shall be made for each patient at the time of admission.

(b) A history and physical examination shall be conducted according to the requirements of KRS 216B.175(2).

1. The history and physical examination shall include:

a. A description of the patient's chief complaint, the major reason for hospitalization;

b. A history of the patient's:

(i) Present illness;

(ii) Past illnesses;

(iii) Surgeries;

(iv) Medications;

(v) Allergies;

(vi) Social history; and

(vii) Immunizations;

c. A review of the patient's anatomical systems and level of function at the time of the exam;

d. A patient's vital signs; and

e. A general observation of the patient's:

(i) Alertness;

(ii) Debilities; and

(iii) Emotional behavior.

2. The results of the history and physical examination shall be recorded, reviewed for accuracy, and signed by the practitioner conducting the examination.

(c) A psychiatric evaluation for each patient shall:

1. Be completed within seventy-two (72) hours of admission; and

2.[.It shall] Include the following:

a. A medical history;

b. A record of mental status;

c. Details regarding onset of illness and circumstances leading to admission;

d. A description of attitudes and behavior;

e. An estimate of intellectual functioning, memory functioning,

and orientation; and

f. An inventory of the patient's assets in a descriptive, not interpretative, fashion.

(d) A social assessment of each patient shall be recorded.

(e) An activities assessment of each patient shall be prepared and shall include information relating to the patient's current skills, talents, aptitudes, and interest.

(f) 1. ~~If~~When appropriate, nutritional, vocational, and legal assessments shall be conducted.

2. The legal assessment shall be used to determine the extent to which the patient's legal status will influence progress in treatment.

(2) Treatment plans.

(a) Each patient shall have a written individualized treatment plan that is based on assessments of the patient's~~his~~ clinical needs and approved by the patient's attending physician.

(b) Overall development and implementation of the treatment plan shall be assigned to appropriate members of the professional staff.

(c) ~~(a)~~ Within seventy-two (72) hours following admission, a designated member of the professional staff shall develop an initial treatment plan that is based on an assessment of the patient's:

1. Presenting problems;

2. ~~;~~ Physical health;

3. ~~;~~ Emotional and behavioral status; ~~;~~ and

4. Other relevant factors.

(d) Appropriate therapeutic efforts shall begin before a master treatment plan is finalized. ~~(b)~~ A master treatment plan shall:

1. Be developed by a multidisciplinary team within ten (10) days for any patient remaining in treatment beyond the initial evaluation;

2. ~~It shall~~ Be based on a comprehensive assessment of the patient's needs; ~~and~~

3. Include a substantiated diagnosis;

4. ~~Include~~and the short-term and long-range treatment needs; ~~and~~

5. Address the specific treatment modalities required to meet the patient's needs;

6. ~~1. The treatment plan shall~~ Include referrals for services not provided directly by the facility;

7. ~~2. The treatment plan shall~~ Contain specific and measurable goals for the patient to achieve;

8. ~~3. The treatment plan shall~~ Describe the services, activities, and programs to be provided to the patient;

9. ~~shall~~ Specify staff members assigned to work with the patient ~~and~~also the time and frequency for each treatment procedure;

10. ~~4. The treatment plan shall~~ Specify criteria to be met for termination of treatment;

11. ~~5. The~~ Include participation by the patient~~shall participate~~ to the maximum extent feasible in the development of the patient's~~his~~ treatment plan; ~~and~~ document patient~~such~~ participation~~shall be documented~~ in the patient's record;

12. ~~6. Include~~ a specific plan for involving the patient's family or significant others~~shall be included~~ in development of the treatment plan ~~if~~when indicated; ~~and~~

13. ~~7. The treatment plan shall~~ Be reviewed and updated through multidisciplinary case conferences as frequently as clinically indicated ~~and in accordance with the following~~:

a. ~~The~~ ~~but in no case shall this~~ review and update shall be completed;

(i) No later than thirty (30) days following the first ten (10) days of treatment; ~~and~~

(ii) Every sixty (60) days thereafter for the first year of treatment; ~~and~~;

b. ~~8. Following one (1) year of continuous treatment, the review and update may be conducted at three (3) month intervals.~~

(3) Special treatment procedures.

(a) Special documentation shall be included in the patient's medical record concerning the use of chemical, personal, or mechanical restraints ~~or~~ seclusion~~and other special treatment procedures which may have abuse potential or be life threatening~~.

(b) The documentation shall include:

1. The written order of a physician, advanced practice registered nurse, or physician's assistant;

2. Justification for the use of the restraint or seclusion~~procedure~~;

3. The required consent forms;

4. A description of procedures employed to protect the patient's safety and rights; and

5. A description of the procedure used.

(c) The use of chemical, personal, or mechanical~~physical~~ restraints and seclusion shall be governed by the following:

1. Restraint or seclusion shall be used only to prevent;

a. A patient from injuring himself, herself, or others; ~~;~~ or

b. ~~to prevent~~ Serious disruption of the therapeutic program;

2. A written, time-limited order from a physician, advanced practice registered nurse, or physician assistant shall be required for the use of restraint or seclusion;

3. The head of the medical staff shall give written approval when restraint or seclusion is utilized for longer than twenty-four (24) hours;

4. PRN orders shall not be used to authorize the use of restraint or seclusion;

5. The head of the medical staff or his ~~or her~~ designee shall:

a. Review daily all uses of restraint or seclusion; ~~and~~

b. ~~shall~~ Investigate unusual or possibly unwarranted patterns of utilization;

6. Restraint or seclusion shall not be used in a manner that causes undue physical discomfort, harm, or pain to the patient;

7. a. Appropriate attention shall be paid every fifteen (15) minutes to a patient in restraint or seclusion, including attention~~especially~~ in regard to regular meals, bathing, and use of the toilet; ~~and~~

b. Staff shall document in the patient's record that the attention was given to the patient.

(d) Locking mechanical restraints may be used pursuant to~~in the circumstances outlined in~~ subparagraph 5 of this paragraph; ~~if the cabinet has previously found that the facility has instituted policies which comply with the provisions of paragraph (c) of this subsection and the following requirements:~~

1. Keys. A facility's direct care nursing staff shall:

a. Have in their possession at least two (2) keys to a locking restraint so that the restraint can be removed immediately in the case of an emergency;

b. Have a plan which designates~~designating~~ nursing staff responsible for the keys; ~~and~~

c. Follow written policy which explains~~An explanation of~~ how the keys are to be used.

2. An order for a locking mechanical restraint~~Orders for the locking restraints~~ shall be time-limited as follows:

a. Four (4) hours for adults eighteen (18) years of age or older up to a maximum of twenty-four (24) hours, during which time the continued need for the restraint shall be evaluated at fifteen (15) minute intervals until the maximum time is reached;

b. Two (2) hours for children and adolescents ages nine (9) to seventeen (17) up to a maximum of twenty-four (24) hours, during which time the continued need for the restraint shall be evaluated at fifteen (15) minute intervals until the maximum time is reached;

c. One (1) hour for patients under the age of nine (9) up to a maximum of twenty-four (24) hours, during which time the continued need for the restraint shall be evaluated at fifteen (15) minute intervals until the maximum time is reached; ~~and~~

d. Orders pursuant to this paragraph shall specify the restraint type and criteria for release in the patient's medical record.

3. a. If, after twenty-four (24) hours, a patient still appears to need restraint, the patient shall receive a face-to-face reassessment by a licensed physician.

b. If the physician determines that continued restraint is necessary, the physician shall write a time-limited order according to the time frames set out in subparagraph 2 of this paragraph~~subsection (2) of this section~~;

4. A facility may reinstitute the use of a restraint that has been discontinued if the time frame limited order for the restraint has not expired; ~~and~~

5. A facility found to be in compliance with this section may use

locking mechanical restraints only under the following circumstances:

- a. For the transport of forensic or other impulsively violent patients;
- b. For the crisis situation stabilization of forensic and other impulsively violent patients;
- c. To prevent a patient who has demonstrated the ability to escape from a nonlocking mechanical restraint on one (1) or more occasions; or
- d. For a patient requiring ambulatory restraints as approved by a behavioral health management team.

Section 5. Provision of Services. (1) Psychiatric and general medical services.

(a) Psychiatric services shall be under the supervision of a clinical director, service chief, or equivalent, who is qualified as follows to provide the leadership required for an intensive treatment program:—

1. The clinical director, or equivalent, shall be certified by the American Board of Psychiatry and Neurology, or shall meet the training and experience requirements for examination by the board.

2. If the psychiatrist in charge of the clinical program is not board certified, there shall be evidence that consultation is given to the clinical program on a continuing basis by a psychiatrist certified by the American Board of Psychiatry and Neurology.

(b) General medical services provided in the psychiatric hospital or general acute care hospital or a critical access hospital with a psychiatric unit shall be under the direction of a physician member of the professional staff in accordance with staff privileges granted by the governing authority.

1. a. The attending physician shall assume full responsibility for diagnosis and care of his or her patient.

b. Services provided by a physician assistant or advanced practice registered nurse shall be provided within the practitioner's [Physician assistants and advanced practice registered nurses may provide services in accordance with their] scope of practice and the hospital's protocols and bylaws.

2. a. Incidental medical services necessary for the care and support of patients shall be provided by in-house staff or through agreement with outside resources.

b. If a patient's condition requires services not available in the hospital, the patient, on physician's orders, shall be transferred promptly to an appropriate level of care.

c. A physician's order is not necessary in the case of an emergency.

3. There shall be a written plan delineating the manner in which emergency services are provided by the hospital or through clearly defined arrangements with another facility. The plan shall clearly specify the following:

a. The arrangement [arrangements] the hospital has made to assure that the patient being transferred for emergency services to a nonpsychiatric facility will continue to receive further evaluation or treatment of the psychiatric problem, as needed;

b. The policy for referring a patient in need of [needing] continued psychiatric care after emergency services back to the referring facility; and

c. The policy for notifying a patient's family of an emergency and [of] arrangements that have been made for referring or transferring the patient to another facility for emergency service.

(c) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(d) There shall be sufficient physician staff coverage for all psychiatric and medical services of the hospital, in keeping with their size and scope of activity.

(e) The attending physician shall state the final diagnosis, complete the discharge summary, and sign the records within fifteen (15) days following the patient's discharge.

(2) Nursing services.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice.

(b) The psychiatric nursing service shall be under the direction of a registered nurse who:

1. Has a master's degree in psychiatric or mental health nursing, or its equivalent, from a school of nursing accredited by the National League for Nursing; or

2. Has a baccalaureate degree in nursing with two (2) years' experience in nursing administration or supervision and experience in psychiatric nursing.

(c) There shall be a registered nurse on duty twenty-four (24) hours a day.

(d) There shall be an adequate number of registered nurses, licensed practical nurses, and other nursing personnel to provide the nursing care necessary under each patient's active treatment program.

(e) There shall be continuing in-service and staff development programs to prepare nursing personnel for active participation in interdisciplinary meetings affecting the planning or implementation of nursing care plans for patients.

(3) Psychological services.

(a) The hospital shall provide psychological services to meet the needs of patients.

(b) Psychological services shall be provided under the direction of a licensed psychologist.

(c) There shall be an adequate number of psychologists, consultants, and supporting personnel to:

1. Assist in essential diagnostic formulations;

2. ~~and to~~ Participate in program development;

3. Participate in the ~~and~~ evaluation of program effectiveness; and

4. Participate [—] in training activities and in therapeutic interventions.

(4) Therapeutic activities.

(a) The hospital shall provide a therapeutic activities program that shall:

1. Be appropriate to the needs and interests of the patients; and

2. Directed toward restoring and maintaining optimal levels of physical and psychosocial functioning.

(b) The number of qualified therapists, support personnel, and consultants shall be adequate to provide comprehensive therapeutic activities, including [such as] occupational, recreational, and physical therapy, consistent with each patient's active treatment program.

(5) Pharmaceutical services. The hospital shall comply with requirements of 902 KAR 20:016, Section 4(5), and the following requirements:

(a) Medication shall be administered by one (1) of the following:

1. a Registered nurse;

2. ~~— a~~ Physician;

3. ~~— a~~ Dentist;

4. ~~— a~~ Physician's assistant; ~~—~~ or

5. an Advanced practice registered nurse, except in the case of a licensed practical nurse under the supervision of a registered nurse.

(b) 1. Medication shall be given only by written order signed within seventy-two (72) hours by one (1) of the following:

a. a Physician;

b. ~~—~~ Dentist;

c. ~~—~~ Advanced practice registered nurse;

d. ~~—~~ Therapeutically-certified optometrist; ~~—~~ or

e. Physician assistant.

2. A telephone order for medication shall be given to only a:

a. Licensed practical nurse;

b. ~~or~~ Registered nurse; ~~—~~ or

c. a Pharmacist.

3. ~~The order shall be signed by the ordering physician, dentist, advanced registered nurse practitioner, therapeutically-certified optometrist, or physician assistant within seventy-two (72) hours from the time the order is given.~~ A telephone order may be given to a licensed physical, occupational, speech, or respiratory therapist in accordance with the therapist's scope of practice and the hospital's protocol.

(6) Laboratory services. A hospital shall comply with 902 KAR 20:016, Section 4(4), concerning the provision of laboratory and

pathology services.

(7) Social services.

(a) A hospital shall provide social services to meet the need of the patients.

(b) There shall be a director of social services who has a master's degree from an accredited school of social work.

(c) There shall be an adequate number of social workers, consultants, and other assistants or case aides to perform the following functions:

1. Secure information about a patient's development and current life situation in order to provide psychosocial data for diagnosis and treatment planning and for direct therapeutic services to a patient, patient group, or family;

2. Identify or develop community resources including family or foster care programs;

3. Participate in interdisciplinary conferences and meetings concerning diagnostic formulation, treatment planning and progress reviews; and

4. Participate in discharge planning, arrange for follow-up care, and develop a mechanism for exchange of appropriate information with a source outside the hospital.

(8) Dietary services. A hospital shall comply with 902 KAR 20:016, Section 4(3), pertaining to the provision of dietary services, and requirements contained in this subsection.

(a) Dietary service personnel who have personal contact with the patients shall be made aware that emotional factors may cause patients to change their food habits and shall inform appropriate members of the professional staff of any change.

(b) Meals shall be provided in central dining areas for ambulatory patients.

(9) Radiology services.

(a) If radiology services are provided within the facility, the hospital shall comply with 902 KAR 20:016, Section 4(6), concerning the provision of radiology services.

(b) 1. If radiology services are not provided within the facility, the hospital shall have an arrangement with an outside source.

2. The arrangement shall be outlined in a written plan.

3. The outside radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and relevant administrative regulations.

(10) Other services. If surgery, anesthesia, physical therapy or outpatient services are provided within the facility, the hospital shall comply with the applicable sections of 902 KAR 20:016.

(11) Chemical dependency treatment services. A psychiatric hospital providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Sections 3 and 4, and shall designate the location and number of beds to be used for this purpose.

Section 6. Outpatient behavioral health services. (1) A psychiatric hospital or general acute care or critical access hospital with a psychiatric unit may provide one (1) or more of the following outpatient behavioral health services on the campus of the hospital if provided on a separate floor, in a separate wing, in a separate building on the hospital's campus, or at an off-site extension location:

(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, 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 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 access to acute mental health and substance use services 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;

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. 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:

- Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;
- Behavior management and social skill training;
- Independent living skills that correlate to the age and development stage of the client; and
- 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:

- 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);
- On school days and during scheduled school breaks;
- 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;
- 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
- 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:

- Be provided by a peer support specialist;
- Be structured and scheduled nonclinical therapeutic activity with a client or group of clients;
- Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills; and
- Be identified in the client's plan of care;

(h) Intensive outpatient program services which shall:

- 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;
- Be provided at least three (3) hours per day at least three (3) days per week;
- Include the following:
 - Individual outpatient therapy;
 - Group outpatient therapy;
 - Family outpatient therapy unless contraindicated;
 - Crisis intervention; or
 - Psycho-education during which the client or client's family member shall be:
- 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
- Taught how to cope with the client's diagnosis or condition in a successful manner;
- Include a treatment plan which shall:
 - Be individualized; and
 - Focus on stabilization and transition to a lower level of care;
- Be provided by a behavioral health professional, behavioral health professional under clinical supervision, or a certified alcohol and drug counselor;
- Include access to a board-certified or board-eligible psychiatrist for consultation;
- Include access to a psychiatrist, other physician, or advanced practice registered nurse for medication prescribing and monitoring; and
- 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:

- Be provided to promote the:
 - Health and wellbeing of the client; or
 - Recovery from a substance related disorder;
- Consist of:
 - A face-to-face encounter with the client; and
 - A behavioral health therapeutic intervention provided in accordance with the client's plan of care;
- Be aimed at:
 - Reducing adverse symptoms;
 - Reducing or eliminating the presenting problem of the client;

and

- Improving functioning;
- Not exceed three (3) hours per day; and
- Be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, 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:

- Be provided to promote the:
 - Health and wellbeing of the client; or
 - Recovery from a substance related disorder;
- Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the client's plan of care;
- 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;
- Focus on the psychological needs of the client as evidenced in the client's plan of care;
- Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;
- Not include physical exercise, a recreational activity, an educational activity, or a social activity;
- Not exceed three (3) hours per day per client unless additional time is medically necessary in accordance with 907 KAR 3:130;
- Ensure that the group has a deliberate focus and defined course of treatment;
- Ensure that the subject of group outpatient therapy shall be related to each client participating in the group; and
- Be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, 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:

- Consist of a face-to-face behavioral health therapeutic intervention provided through scheduled therapeutic visits between the therapist, at least one (1) member of the client's family, and the client unless the client's presence is not required in his or her plan of care;
- Address issues interfering with the relational functioning of the family;
- Seek to improve interpersonal relationships within the client's home environment;
- Be provided to promote the health and wellbeing of the client or recovery from a substance use disorder;
- Not exceed three (3) hours per day per client unless additional time is medically necessary in accordance with 907 KAR 3:130; and
- Be provided by a behavioral health professional, 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 on behalf of a client under the

age of twenty-one (21):

1. With a parent, caregiver, person who has custodial control, 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, 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;

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) 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;

(o) 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;

(p) 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;

e. Develop and enhance interpersonal skills; and

f. Be provided by a:

(i) Behavioral health professional;

(ii) Behavioral health professional under clinical supervision;

(iii) Community support associate;

(iv) Licensed behavior analyst; or

(v) Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;

(g) 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;

(r) 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 subsection (2), (3), or (4) of this section; 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, or educational providers or other programs and services which address identified needs and achieve goals specified in the care plan;

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; or

(s) Partial hospitalization which shall:

1. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, professional equivalent, mental health associate, or certified alcohol and drug counselor;

2. Be a short-term (average of four (4) to six (6) weeks), less than twenty-four (24)-hour, intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to substance use disorder, mental health disorder, or co-occurring disorder;

3. Be provided to an adult or a child;

4. Ensure that admission criteria for partial hospitalization is

based on an inability to adequately treat the individual through community-based therapies or intensive outpatient services;

5. Consist of individual outpatient therapy, group outpatient therapy, family outpatient therapy, or medication management;

6. Typically be provided for at least four (4) hours per day and focused on one (1) primary presenting problem, which may include substance use, sexual reactivity, or another problem; and

7. Include the following personnel for the purpose of providing medical care if necessary:

a. An advanced practice registered nurse;

b. A physician assistant or physician available on site; and

c. A board-certified or board-eligible psychiatrist available for consultation.

(2) A case manager who provides targeted case management services pursuant to subsection (1)(r) of this section to clients with a substance use disorder shall:

(a) Be a certified alcohol and drug counselor, meet the grandfather requirements of 907 KAR 15:040, Section 4(1)(a)3, or 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;

8. Behavioral analysis;

9. Public health;

10. Special education;

11. Gerontology;

12. Recreational therapy;

13. Education;

14. Occupational therapy;

15. Physical therapy;

16. Speech-language pathology;

17. Rehabilitation counseling; or

18. Faith-based education;

(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 in accordance with 908 KAR 2:260; and

2. Successfully complete continuing education requirements in accordance with 908 KAR 2:260; and

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

1. Has completed case management training 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.

(3) A case manager who provides targeted case management services pursuant to subsection (1)(r) of this section to clients with a mental health or substance use disorder and chronic or complex physical health issues shall:

(a) Meet the requirements of subsection (2)(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 a human services field as described in subsection (2)(a) of this section, 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 in accordance with 908 KAR 2:260; and

2. Successfully complete continuing education requirements in accordance with 908 KAR 2:260; and

(d) For a bachelor's level case manager, be supervised by a behavioral health professional who:

1. Has completed case management training 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.

(4) A case manager who provides targeted case management services pursuant to subsection (1)(r) of this section to children with a severe emotional disability or clients with a severe mental illness shall:

(a) Meet the requirements of subsection (2)(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 (2)(a) of this section; or

2. Have a master's degree in a human services field as described in subsection (2)(a) of this section;

(c)1. Have successfully completed case management training in accordance with 908 KAR 2:260; and

2. Successfully complete continuing education requirements in accordance with 908 KAR 2:260; and

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

1. Has completed case management training 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.

(5) Plan of care.

(a) Each client receiving outpatient behavioral health services from a psychiatric hospital or general acute care or critical access hospital with a psychiatric unit shall have an individual plan of care signed by a behavioral health professional.

(b) A plan of care shall:

1. Describe the services to be provided to the client, including the frequency of services;

2. Contain measurable goals for the client to achieve, including the expected date of achievement for each goal;

3. 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;

4. Specify each staff member assigned to work with the client;

5. Identify methods of involving the client's family or significant others if indicated;

6. Specify criteria to be met for termination of treatment;

7. Include any referrals necessary for services not provided directly by the chemical dependency treatment program; and

8. State the date scheduled for review of the plan.

(c) 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.

(d)1. The initial plan of care shall be developed through multidisciplinary team conferences at least thirty (30) days following the first ten (10) days of treatment.

2. The plan of care for individuals receiving intensive outpatient program services shall be reviewed every thirty (30) days thereafter and updated every sixty (60) days or earlier if clinically indicated.

3. Except for intensive outpatient program services, the plan of care for individuals receiving any other outpatient behavioral health service described in subsection (1) of this section shall be reviewed and updated every six (6) months or earlier if clinically indicated.

4. The plan of care and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it.

(6) Client Records.

(a) A client record shall be maintained for each individual receiving outpatient behavioral health services.

(b) Each entry shall be current, dated, signed, and indexed according to the service received.

(c) Each client record shall contain:

1. An identification sheet, including the client's name, address,

age, gender, marital status, expected source of payment, and referral source;

2. Information on the purpose for seeking a service;

3. If applicable, consent of appropriate family members or guardians for admission, evaluation, and treatment;

4. Screening information pertaining to the mental health or substance use disorder;

5. If applicable, a psychosocial history;

6. If applicable, staff notes on services provided;

7. If applicable, the client's plan of care;

8. If applicable, disposition;

9. If applicable, assigned status;

10. If applicable, assigned therapists; and

11. If applicable, a termination study recapitulating findings and events during treatment, clinical impressions, and condition on termination.

Section 7. Physical environment of an off-campus extension or separate building on the campus of the hospital where outpatient behavioral health services are provided. (1) Accessibility. The off-campus extension or separate building on the campus of the hospital 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.

(2) Physical location and overall environment.

(a) The program 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.

(3) Prior to occupancy, the facility shall have final approval from appropriate agencies.

MARYELLEN B. MYNEAR, Inspector General

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 9, 2015

FILED WITH LRC: April 10, 2015 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 22, 2015 at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2015, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business June 1, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for licensure as a psychiatric hospital.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum requirements for licensure as a psychiatric hospital.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health 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 the minimum requirements for licensure as a psychiatric hospital.

(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: Under this amendment, a psychiatric hospital or a general acute care or critical access hospital with a psychiatric unit may provide designated outpatient behavioral health services, thereby expanding the scope of services which may be provided under the facility's existing license and increasing access to outpatient behavioral health services.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to expand the scope of services which may be provided under the license of a psychiatric hospital or a general acute care or critical access hospital. This amendment also clarifies the background check requirement for staff in state-owned and operated psychiatric hospitals.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing requirements for the operation of psychiatric hospitals.

(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 expanding the scope of services which may be provided under the license of a psychiatric hospital or a general acute care or critical access hospital.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently thirteen (13) licensed psychiatric hospitals.

(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: Psychiatric hospitals or general acute care or critical access hospitals with a psychiatric unit may provide designated outpatient behavioral health services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The provision of designated outpatient behavioral health services described in Section 6 is optional.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hospitals may receive Medicaid reimbursement for outpatient behavioral health services provided to Medicaid recipients. Additionally, the expansion in the scope of outpatient behavioral health services which may be provided will improve access to patient care for the treatment of substance use disorders, mental health disorders, or co-occurring disorders.

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

(a) Initially: The cost of implementing the amendment of this administrative regulation is expected to be absorbable.

(b) On a continuing basis: The cost of implementing this administrative regulation is expected to be absorbable.

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation will be from agency and state general funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities who elect to be regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation establishes standards for the licensure of psychiatric hospitals.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function.

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

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

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

(c) How much will it cost to administer this program for the first year? The cost of implementing this administrative regulation is expected to be absorbable.

(d) How much will it cost to administer this program for subsequent years? The cost of implementing this administrative regulation is expected to be absorbable.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Amendment)

902 KAR 20:320. Level I and Level II psychiatric residential treatment facility operation and services.

RELATES TO: KRS 17.165, 17.500, 200.503, 216B.105, 216B.450-216B.457, 309.080, 309.130, 311.571, 311.840 – 311.862, 311.858, 314.011, 314.042, 319.050, 319.056, 319.064, 319C.010, 320.240, 335.100, 335.300, 335.080, 335.500, 439.3401, 645.020, 42 C.F.R. 441.156, 42 C.F.R. 483.350-483.376

STATUTORY AUTHORITY: KRS 216B.042, 216B.455, 216B.457

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042, 216B.105 and 216B.450 to 216B.459 mandate that the Kentucky Cabinet for Health and Family Services regulate health facilities and services. KRS 216B.457 requires the cabinet to

promulgate administrative regulations establishing requirements for psychiatric residential treatment facilities. This administrative regulation provides minimum licensure requirements regarding the operation of and services provided in Level I or Level II psychiatric residential treatment facilities, including those facilities which elect to provide outpatient behavioral health services.

Section 1. Definitions. (1) "BAMT" or "Blood Assay for Mycobacterium tuberculosis" means a diagnostic blood test that:

(a) Assesses for the presence of infection with *M. tuberculosis*; and

(b) Reports results as positive, negative, indeterminate, or borderline.

(2) "BAMT conversion" means a change in test result, on serial testing, from negative to positive.

(3) "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).

(4) "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); or

(f) Licensed professional art therapist associate as defined by KRS 309.130(3).

(5) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(6) "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.

(7) "Child with a severe emotional disability" is defined by KRS 200.503(3).

(8) "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.

(9) [(4)] "Direct-care staff" means residential or child-care workers who directly supervise residents.

(10) [(5)] "Directly observed therapy" or "DOT" means an adherence-enhancing strategy:

(a) In which a healthcare worker or other trained person

watches a patient swallow each dose of medication; and

(b) Which is the standard care for all patients with TB disease and is a preferred option for patients treated for latent TB infection (LTBI).

(11)[(6)] "DOPT" means Directly Observed Preventive Therapy, which is the DOT for treatment of LTBI.

(12)[(7)] "Emergency safety intervention" is defined by 42 C.F.R. 483.352 and is the use of restraint or seclusion as an immediate response to an emergency safety situation.

(13)[(8)] "Emergency safety situation" is defined by 42 C.F.R. 483.352 and is an anticipated resident behavior that places the resident or others at serious threat of violence or injury if no intervention occurs and that calls for an emergency safety intervention.

(14)[(9)] "Freestanding" is defined by KRS 216B.450(3).

(15)[(10)] "Governing body" means the individual, agency, partnership, or corporation in which the ultimate responsibility and authority for the conduct of the facility is vested.

(16)[(11)] "Home-like" is defined by KRS 216B.450(4).

(17)[(12)] "Induration" means a firm area in the skin which develops as a reaction to injected tuberculin antigen if a person has tuberculosis infection and which is measured in accordance with Section 18(1)[47(4)] of this administrative regulation.

(18)[(13)] "Latent TB infection" or "LTBI" means infection with M. tuberculosis without symptoms or signs of disease manifested.

(19) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(20) "Licensed behavior analyst" is defined by KRS 319C.010(6).

(21)[(14)] "Licensure agency" means the Cabinet for Health and Family Services, Office of Inspector General.

(22)[(15)] "Living unit" means:

(a) The area within a single building that is supplied by a Level I facility for daily living and therapeutic interaction of no more than nine (9) residents; or

(b) The area within a Level II facility that is designated for daily living and therapeutic interaction of no more than twelve (12) residents.

(23)[(16)] "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.

(24)[(17)] "Mental health associate" means:

(a)1. An individual with a minimum of a bachelor's degree in a mental health related field;

2. A registered nurse; or

3. A licensed practical nurse with at least one (1) year's experience in a psychiatric inpatient or residential treatment setting for children; or

(b) An individual with:

1. A high school diploma or an equivalence certificate; and

2. At least two (2) years work experience in a psychiatric inpatient or residential treatment setting for children.

(25)[(18)] "Mental health professional" is defined by KRS 645.020(7).

(26) "Peer support specialist" means a paraprofessional who meets the application, training, examination, and supervision requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240.

(27)[(19)] "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.

(28)[(20)] "Psychiatric residential treatment facility" or "PRTF" is defined in KRS 216B.450(5) as a Level I facility or a Level II facility.

(29)[(21)] "Qualified mental health personnel" is defined by KRS 215B.450(6).

(30)[(22)] "Qualified mental health professional" is defined by KRS 216B.450(7).

(31)[(23)] "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.

(32)[(24)] "Serious injury" means any significant impairment of the physical condition of the resident as determined by qualified medical personnel and that may:

(a) Include:

1. Burns;

2. Lacerations;

3. Bone fractures;

4. Substantial hematoma; or

5. Injuries to internal organs; and

(b) Be self-inflicted or inflicted by someone else.

(33)[(25)] "Serious occurrence" means a resident's death, a serious injury to the resident, or a resident's suicide attempt.

(34)[(26)] "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.

(35)[(27)] "Tuberculin skin test" or "TST" means a diagnostic aid for finding M. tuberculosis infection that:

(a) Is performed by using the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD); and

(b) Has its results read forty-eight (48) to seventy-two (72) hours after injection and recorded in millimeters of induration.

(36)[(28)] "Tuberculosis (TB) disease" means a condition caused by infection with a member of the M. tuberculosis complex that meets the descriptions established in Section 18(2)[47(2)] of this administrative regulation.

(37)[(29)] "TST conversion" means a change in the result of a test for M. tuberculosis infection in which the condition is interpreted as having progressed from uninfected to infected in accordance with Section 18(3)[47(3)] of this administrative regulation.

(38)[(30)] "Two-step TST" or "two-step testing" means a series of two (2) TSTs administered seven (7) to twenty-one (21) days apart and used for the baseline skin testing of persons who will receive serial TSTs, including healthcare workers and residents of psychiatric residential treatment facilities to reduce the likelihood of mistaking a boosted reaction for a new infection.

(39)[(31)] "Unusual treatment" means any procedure not readily accepted as a standard method of treatment by the relevant profession.

Section 2. Licensure Application and Fee. (1) An applicant for licensure as a Level I or Level II PRTF shall complete and submit to the Office of Inspector General an Application for License to Operate a Health Facility or Service, as required by 902 KAR 20:008, Section 2(1)(f).

(2) If an entity seeks to operate both a Level I and a Level II PRTF and is granted licensure to operate both levels, a separate license shall be issued for each level.

(3) The initial and annual fee for licensure as a Level I PRTF shall be \$270.

(4)(a) The initial and annual fee for licensure as a Level II PRTF that has nine (9) beds or less shall be \$270.

(b)1. The initial and annual fee for licensure as a Level II PRTF that has nine (9) beds to fifty (50) beds shall be \$270; and

2. A fee of ten (10) dollars shall be added to the minimum fee of \$270 for each bed beyond the ninth bed.

(5) If a Level I or Level II PRTF provides outpatient behavioral health services as described in Section 14(1) of this administrative regulation:

(a) The outpatient behavioral health services shall be provided:

1. On a separate floor, in a separate wing, or in a separate building from the PRTF; or

2. At an extension off the campus of the PRTF;

(b) The PRTF shall pay a fee in the amount of \$250 per outpatient behavioral health services extension, submitted to the Office of Inspector General at the time of:

1. Initial licensure, if applicable;

2. The addition of a new outpatient behavioral health services extension to the PRTF's license; and

3. Renewal:

(c) Each off-campus extension or on-campus program of outpatient behavioral health services provided shall:

1. Be listed on the PRTF's license;

2. Have a program director who may serve as the same program director described in Section 6(2) of this administrative regulation; and

3. Employ directly or by contract a sufficient number of personnel to provide outpatient behavioral health services; and

(d) An off-campus extension or a separate building on the campus of the PRTF where outpatient behavioral health services are provided shall comply with the physical environment requirements of Section 14(6) of this administrative regulation and be approved by the State Fire Marshal's office prior to:

1. Initial licensure;

2. The addition of the extension or on-campus program of outpatient behavioral health services in a separate building; or

3. A change of location.

Section 3. Location. (1)(a) A Level I psychiatric residential treatment facility shall be located in a freestanding structure.

(b) A Level II PRTF may be located:

1. In a separate part of a psychiatric hospital;

2. In a separate part of an acute care hospital;

3. In a completely detached building; or

4. On the campus of a Level I PRTF if the Level II beds are located on a separate floor, in a separate wing, or in a separate building from the Level I PRTF.

(c) A licensed Level II PRTF shall not be licensed for more than fifty (50) beds.

(2) In accordance with KRS 216B.455(5), multiple Level I PRTFs may be located on a common campus if each PRTF is freestanding.

(3)(a)1. If a Level I psychiatric residential treatment facility is located on grounds shared by another licensed facility other than a PRTF, the residents of the Level I or PRTF and the licensed facility with which it shares grounds shall not have any joint activities, except for organized education activities, organized recreational activities, or group therapy for children with similar treatment needs.

2. If a Level II PRTF is located on grounds shared by a Level I PRTF or a licensed private child-caring facility, the requirements in this subparagraph shall apply.

a. The residents of the Level II PRTF and the Level I PRTF or private child-caring facility with which it shares grounds shall not have any joint activities, except for organized education activities on campus, organized recreational activities, or group therapy for children with similar treatment needs in which dedicated Level II PRTF unit staff shall be present during the activity to ensure sufficient supervision.

b. Joint activities shall be documented in the resident's comprehensive treatment plan of care.

c. The maximum age range for joint activities shall be no more than five (5) years for residents age six (6) to twenty-one (21), and no more than three (3) years for residents in Level II facilities age four (4) to five (5).

(b) Direct-care staff of the licensed facility with which the Level I or Level II PRTF shares grounds may provide relief, replacement, or substitute staff coverage to the PRTF.

(c) For continuity of care, at least fifty (50) percent of direct care staff of the Level I or Level II PRTF shall be consistently and primarily assigned to the living unit.

Section 4. Licensure. (1) A Level I or Level II psychiatric residential treatment facility shall comply with all the conditions for licensure established in 902 KAR 20:008.

(2) A Level I or Level II psychiatric residential treatment facility shall operate and provide services in compliance with all applicable federal, state, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in a facility.

(3) Pursuant to KRS 216B.455(3) and 216B.457(5) which require compliance with KRS 216B.105, a person shall not operate

a PRTF without first obtaining a license issued by the Office of Inspector General.

(4) Pursuant to KRS 216B.455(4) and 216B.457(6), a PRTF shall be accredited by the Joint Commission, Council on Accreditation of Services for Families and Children, or any other accrediting body with comparable standards.

Section 5. Governing Body for a Level I or Level II PRTF. A PRTF shall have a governing body with overall authority and responsibility for the facility's operation. (1)(a) The governing body shall be a legally constituted entity in the Commonwealth of Kentucky by means of a charter, articles of incorporation, partnership agreement, franchise agreement, or legislative or executive act.

(b) A Level I and a Level II PRTF that are part of the same multifacility system, or a Level II PRTF operated by a psychiatric hospital, may share the same governing body.

(2) A facility that is part of a multifacility system or is operated by a government agency shall have a written description of the system's administrative structure and lines of authority.

(3) The authority and responsibility of any person designated to function as the governing body shall be specified in writing.

(4) If a business relationship exists between a governing body member and the organization, there shall be a conflict-of-interest policy that governs the member's participation in decisions influenced by the business interest.

(5) The responsibilities of the governing body shall be stated in writing and shall describe the process for the following:

(a) Adopting policies and procedures;

(b) Providing sufficient funds, staff, equipment, supplies, and facilities to assure that the facility is capable of providing appropriate and adequate services to residents;

(c) Overseeing the system of financial management and accountability;

(d) Adopting a program to monitor and evaluate the quality of all care provided and to appropriately address identified problems in care; and

(e) Electing, appointing, or employing the clinical and administrative leadership personnel of the facility, and defining the qualifications, authority, responsibility, and function of those positions.

(6) The governing body shall meet as a whole at least quarterly and keep records that demonstrate the ongoing discharge of its responsibilities.

(7) If a facility is a component of a larger organization, the facility staff, subject to the overall authority of the governing body, shall be given the necessary authority to plan, organize, and operate the program.

Section 6. Level I or Level II PRTF Program Director. (1) A program director shall be responsible for the administrative management of the facility.

(2) A program director:

(a) Shall be qualified by training and experience to direct a treatment program for children and adolescents with emotional problems;

(b) Shall have at least minimum qualifications of a master's degree or bachelor's degree in the 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; or

15. Another human service field related to working with families

and children;

(c)1. With a master's degree shall have two (2) years of prior supervisory experience in a human services program; or

2. With a bachelor's degree shall have four (4) years of prior supervisory experience in a human services program; and

(d)1. Shall have three (3) professional references, two (2) personal references, and a criminal record check performed every two (2) years through the Administrative Office of the Courts or the Kentucky State Police;

2. Shall not have a criminal conviction, or plea of guilty, pursuant to KRS 17.165 or a Class A felony; and

3. Shall be subject to the provisions of KRS 216B.457(12), which requires submission to a check of the central registry, and requires an employee to be removed from contact with a child under the conditions described in KRS 216B.457(12).

(3) A program director shall be responsible to the governing body in accordance with the bylaws, rules or policies for the following, unless the PRTF is part of a health care system under common ownership and governance in which the duties are assigned to, or are the responsibility of, the program director's supervisor or other staff:

(a) Overseeing the overall operation of the facility, including the control, utilization, and conservation of its physical and financial assets and the recruitment and direction of staff;

(b) Assuring that sufficient, qualified, and appropriately supervised staff are on duty to meet the needs of the residents at all times;

(c) Approving purchases and payroll;

(d) Assuring that treatment planning, medical supervision, and quality assurance occur as specified in this administrative regulation;

(e) Advising the governing body of all significant matters bearing on the facility's licensure and operations;

(f) Preparing reports or items necessary to assist the governing body in formulating policies and procedures to assure that the facility is capable of providing appropriate and adequate services to residents;

(g) Maintaining a written manual that defines policies and procedures and is revised and updated at the time changes in policies and procedures occur; and

(h) Assuring that all written facility policies, plans, and procedures are followed.

Section 7. Administration and Operation of a Level I or Level II PRTF. (1) A Level I or Level II PRTF shall have written documentation of the following:

(a) An organizational chart that includes position titles and the name of the person occupying the position, and that shows the chain of command;

(b) A service philosophy with clearly defined assumptions and values;

(c) Estimates of the clinical needs of the children and adolescents served by the facility;

(d) The services provided by the facility in response to needs;

(e) The population served, including age groups and other relevant characteristics of the resident population;

(f) The intake or admission process, including how the initial contact is made with the resident and the family or significant others;

(g) The assessment and evaluation procedures provided by the facility;

(h) The methods used to deliver services to meet the identified clinical needs of the residents served;

(i) The methods used to deliver services to meet the basic needs of residents in a manner as consistent with normal daily living as possible;

(j) The methods used to create a home-like environment for all residents, including opportunities for family-style meals in which:

1. Residents dine together;

2. Residents may assist with preparation of certain dishes or help set the table; and

3. Food may be placed in serving dishes on the table;

(k) The methods, means and linkages by which the facility

involves residents in community activities, organizations, and events;

(l) The treatment planning process and the periodic review of therapy;

(m) The discharge and aftercare planning processes;

(n) The facility's therapeutic programs;

(o) How professional services are provided by qualified, experienced personnel;

(p) How mental health professionals in Level I facilities and qualified mental health professionals in Level II facilities and direct-care staff in Level I or Level II facilities who have been assigned specific treatment responsibilities are qualified by training or experience and have demonstrated competence and; or are supervised by a mental health professional or qualified mental health professional who is qualified by experience to supervise the treatment;

(q) How the facility is linked to regional interagency councils, psychiatric hospitals, community mental health centers, Department for Community Based Services offices and facilities, and school systems in the facility's service area;

(r) The means by which the facility provides, or makes arrangements for the provision of:

1. Emergency services and crisis stabilization;

2. Discharge and aftercare planning that promotes continuity of care; and

3. Education and vocational services;[and]

(s) Services the facility provides to improve stability of care and reduce re-hospitalization including:

1. How psychiatric and nursing coverage is provided to assure the continuous ability to manage and administer medications in crisis situations except for those that may only be administered by a physician; and

2. How direct-care staffing with supervision is provided to manage behavior problems in accordance with the residents' treatment plans, including an array of interventions that are alternatives to seclusion and restraint, and the staff training necessary to implement them; and

(t) If provided, a description of each outpatient behavioral health service provided pursuant to Section 14(1) of this administrative regulation.

(2) The documentation shall be:

(a) Made available to each mental health professional in a Level I PRTF or qualified mental health professional in a Level II PRTF and to the program director; and

(b) Reviewed and revised as necessary, in accordance with the changing needs of the residents and the community and with the overall objectives and goals of the facility. Revisions in the documentation shall incorporate, as appropriate, relevant findings from the facility's quality assurance and utilization review programs.

(3) Professional staff for a Level I or Level II PRTF.

(a) A Level I PRTF shall:

1. Employ a sufficient number of mental health professionals to meet the treatment needs of residents and the goals and objectives of the facility; and

2. Meet the requirements of this subparagraph with regard to professional staffing.

a.(i) A board-eligible or board-certified child psychiatrist or board-certified adult psychiatrist shall be employed or contracted to meet the treatment needs of the residents and the functions which shall be performed by a psychiatrist specified within this administrative regulation.

(ii) If a facility has residents ages twelve (12) and under, the licensed psychiatrist shall be board-eligible or board-certified in child psychiatry.

(iii) The psychiatrist shall be present in the facility to provide professional services to the facility's residents at least weekly. The services provided shall include a review of each resident's progress and a meeting with the resident if clinically indicated.

b. A Level I PRTF shall employ at least one (1) full-time mental health professional.

c. A mental health professional in a Level I PRTF shall be available to assist on-site in emergencies on at least an on-call

basis at all times.

d. A psychiatrist shall be available on at least an on-call basis at all times.

(b) A Level II PRTF shall:

1. Employ or contract with a sufficient number of qualified mental health professionals to meet the treatment needs of residents and the goals and objectives of the facility;

2. Ensure that at least one (1) qualified mental health professional shall be available to assist on-site in emergencies on at least an on-call basis at all times; and

3. Meet the requirements established in KRS 216B.457(9) with regard to professional staff.

a. In accordance with KRS 216B.457(9)(c), the professional services provided by the licensed psychiatrist shall include meeting with each resident at least one (1) time each week unless the resident is not at the facility due to a field trip, medical appointment, or other circumstance in which the resident is not at the facility.

b. A licensed psychiatrist shall be available on at least an on-call basis at all times.

(c) Clinical director.

1. The administration of the facility shall designate one (1) full-time:

a. Mental health professional as the clinical director for a Level I PRTF; or

b. Qualified mental health professional as the clinical director for a Level II PRTF.

2. In addition to the requirements related to his or her profession, the clinical director shall have at least two (2) years of clinical experience in a mental health setting that serves children or adolescents with emotional problems.

3. The administration of the facility shall define the authority and duties of the clinical director.

4. An individual may serve as both the clinical director and the program director if the qualifications of both positions are met.

5. The clinical director shall be responsible for:

a. The maintenance of the facility's therapeutic milieu; and

b. Assuring that treatment plans developed in accordance with Section 12(3) of this administrative regulation are implemented.

6.a. A full-time mental health professional may be designated as clinical director for more than one (1) Level I PRTF if the Level I PRTFs are located on a common campus or in the same county.

b. A full-time qualified mental health professional designated as the clinical director of a Level II PRTF may serve as the clinical director of more than one (1) PRTF if the PRTFs are located on a common campus or in the same county.

c. A full-time qualified mental health professional employed by a psychiatric hospital may serve as the clinical director of a Level II PRTF located on the same campus as the hospital or in the same county.

(4) Direct-care staff for a Level I PRTF.

(a) A Level I PRTF shall employ adequate direct-care staff to ensure the adequate provision of regular and emergency supervision of all residents twenty-four (24) hours a day.

(b) Level I Direct-care staff shall:

1. Have at least a high school diploma or equivalency; and

2. Complete a forty (40) hour training curriculum meeting the requirements of subsection (6)(c) of this section within one (1) month of employment.

(c) In order to assure that the residents are adequately supervised and are cared for in a safe and therapeutic manner, the direct-care staffing plan for a Level I PRTF shall meet the requirements established in this paragraph.

1. At least one (1) direct-care staff member who is a mental health associate shall be assigned direct-care responsibilities for a PRTF at all times during normal waking hours when residents are not in school.

2. At least one (1) direct-care staff member shall be assigned to direct-care responsibilities for each three (3) residents during normal waking hours when residents are not in school.

3.a. At least one (1) direct-care staff member shall be assigned direct-care responsibilities, be awake, and be continuously available on each living unit during all hours the residents are

asleep.

b. A minimum of one (1) additional direct-care staff member who is a mental health associate shall be immediately available on the grounds of the PRTF to assist with emergencies or problems which might arise.

4. If a mental health professional is directly involved in an activity with a group of residents, he or she may meet the requirement for a direct-care staff member.

5. The direct-care staff member who is supervising residents shall know the whereabouts of each resident at all times.

(d) Written policies and procedures approved by the Level I PRTF's governing body shall:

1. Provide for the supervision of the direct-care staff; and

2. Describe the responsibilities of direct-care staff in relation to professional staff.

(5) Direct-care staff for a Level II PRTF.

(a) A Level II PRTF shall employ adequate direct-care staff to ensure the adequate provision of regular and emergency supervision of all residents twenty-four (24) hours a day.

(b) Level II direct-care staff shall:

1. Have at least a high school diploma or equivalence certificate; and

2. Complete a forty (40) hour training curriculum meeting the requirements of subsection (6)(c) of this section within one (1) month of employment.

(c) In order to assure that the residents are adequately supervised and are cared for in a safe and therapeutic manner, a Level II PRTF shall prepare a written staffing plan pursuant to KRS 216B.457(10)(a) that is tailored to meet the needs of the specific population of children and youth that will be admitted to the facility based on the facility's admission criteria.

(d) A Level II facility shall submit, follow, and revise a written staffing plan as required by KRS 216B.457(10)(a).

(6) Staff development.

(a) Level I or Level II PRTF staff development programs shall be provided and documented for administrative, professional, direct-care, and support staff.

(b) Level I or Level II PRTF professional and direct-care staff shall meet the continuing education requirements of their profession or, if there is not a continuing education requirement for that profession, be provided with forty (40) hours per year of in-service training

(c) Each Level I or Level II PRTF staff member working directly with residents shall receive annual training in the following areas:

1. Child and adolescent growth and development;

2. Emergency and safety procedures;

3. Behavior management, including de-escalation training;

4. Detection and reporting of child abuse or neglect;

5. Physical management procedures and techniques;

6. Infection control procedures; and

7. Training specific to the specialized nature of the facility.

(d) A Level I or Level II PRTF shall develop and implement a plan for staff to obtain training in first aid and cardiopulmonary resuscitation.

(7) Employment practices in a Level I or Level II PRTF.

(a) A Level I or Level II PRTF shall have employment and personnel policies and procedures designed, established, and maintained to promote the objectives of the facility, to ensure that an adequate number of qualified personnel under appropriate supervision is provided during all hours of operation, and to support quality of care and functions of the facility.

(b) The Level I or Level II PRTF's personnel policies and procedures shall be written, systematically reviewed, and approved on an annual basis by the governing body, and dated to indicate the time of last review.

(c) The Level I or Level II PRTF's personnel policies and procedures shall provide for the recruitment, selection, promotion, and termination of staff.

(d) The Level I or Level II PRTF shall maintain job descriptions that:

1. Specify the qualifications, duties, and supervisory relationship of the position;

2. Accurately reflect the actual job situation; and

3. Are revised if a change is made in the required qualifications, duties, supervision, or any other major job-related factor.

(e) The Level I or Level II PRTF shall provide a personnel orientation to all new employees.

(f) 1. The Level I or Level II PRTF's personnel policies and procedures shall be available and apply to all employees and shall be discussed with all new employees.

2. The Level I or Level II PRTF's facility administration shall establish a mechanism for notifying employees of changes in the personnel policies and procedures.

(g) The Level I or Level II PRTF's personnel policies and procedures shall describe methods and procedures for supervising all personnel, including volunteers.

(h) 1. The Level I or Level II PRTF's personnel policies and procedures shall require a criminal record check through the Administrative Office of the Courts or the Kentucky State Police for all staff and volunteers to assure that only persons whose presence does not jeopardize the health, safety, and welfare of residents are employed and used.

2. A new criminal records check shall be completed at least every two (2) years on each employee or volunteer in a Level I or Level II PRTF.

3. Pursuant to KRS 216B.216.457(12)(a), any employee or volunteer in a Level I or Level II PRTF who has committed or is charged with the commission of a violent offense as specified in KRS 439.3401, a sex crime specified in KRS 17.500, or a criminal offense against a victim who is a minor as specified in KRS 17.500 shall be immediately removed from contact with a child within the residential treatment center until the employee or volunteer is cleared of the charge.

4. Pursuant to KRS 216B.457(12)(b), an employee or volunteer in a Level I or Level II PRTF under indictment, legally charged with felonious conduct, or subject to a cabinet investigation shall be immediately removed from contact with a child.

5. Pursuant to KRS 216B.457(12)(c), the employee or volunteer in a Level I or Level II PRTF shall not be allowed to work with the child until a prevention plan has been written and approved by the cabinet, the person is cleared of the charge, or a cabinet investigation reveals an unsubstantiated finding, if the charge resulted from an allegation of child abuse, neglect, or exploitation.

6. Pursuant to KRS 216B.457(12)(d), each employee or volunteer in a Level I or Level II PRTF shall submit to a check of the central registry established under 922 KAR 1:470.

7. A Level I or Level II PRTF shall not employ or allow any person to volunteer if that individual is listed on the central registry.

8. Pursuant to KRS 216B.457(12)(e), any employee or volunteer removed from contact with a child, may be terminated, reassigned to a position involving no contact with a child, or placed on administrative leave with pay during the pendency of the investigation or proceeding.

(i) The Level I or Level II PRTF's personnel policies and procedures shall provide for reporting and cooperating in the investigation of suspected cases of child abuse and neglect by facility personnel.

(j) A Level I or Level II PRTF's personnel record shall be kept on each staff member and shall contain the following items:

1. Name and address;
2. Verification of all training and experience and of licensure, certification, registration, or renewals;
3. Verification of submission to the background checks required by paragraph (h) of this subsection;
4. Performance appraisals;
5. Employee incident reports; and
6. Record of health exams related to employment, including compliance with the tuberculosis testing requirements of Section 25[24] of this administrative regulation.

(k) The Level I or Level II PRTF's personnel policies and procedures shall assure the confidentiality of personnel records and specify who has access to various types of personnel information.

(l) Performance appraisals shall relate job description and job

performance and shall be written.

Section 8. Resident Rights. (1) A Level I or Level II PRTF shall support and protect the basic human, civil, and constitutional rights of the individual resident.

(2) Written policy and procedure approved by the Level I or Level II PRTF's governing body shall provide a description of the resident's rights and the means by which these rights are protected and exercised.

(3) At the point of admission, a Level or Level II PRTF shall provide the resident and parent, guardian, or custodian with a clearly written and readable statement of rights and responsibilities. The statement shall be read to the resident or parent, guardian, or custodian if either cannot read and shall cover, at a minimum:

(a) Each resident's right to access treatment, regardless of race, religion, or ethnicity;

(b) Each resident's right to recognition and respect of his or her personal dignity in the provision of all treatment and care;

(c) Each resident's right to be provided treatment and care in the least restrictive environment possible;

(d) Each resident's right to an individualized treatment plan;

(e) Each resident's and family's right to participate in planning for treatment;

(f) The nature of care, procedures, and treatment that the resident shall receive;

(g) The right to informed consent related to the risks, side effects, and benefits of all medications and treatment procedures used;

(h) The right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility if the resident refuses treatment, to seek appropriate legal alternatives or orders of involuntary treatment, or, in accordance with professional standards, to terminate the relationship with the resident upon reasonable notice; and

(i) The right to be free from restraint or seclusion, of any form, used as a means of coercion, discipline, convenience, or retaliation.

(4) The rights of residents in a Level I or Level II PRTF shall be written in language which is understandable to the resident, his or her parents, custodians, or guardians and shall be posted in appropriate areas of the facility.

(5) The policy and procedure concerning Level I or Level II PRTF resident rights shall assure and protect the resident's personal privacy within the constraints of his or her treatment plan. These rights to privacy shall at least include:

(a) Visitation by the resident's family or significant others in a suitable private area of the facility;

(b) Sending and receiving mail without hindrance or censorship; and

(c) Telephone communications with the resident's family or significant others at a reasonable frequency.

(6) If any rights to privacy are limited, the resident and his or her parent, guardian, or custodian shall receive a full explanation from the Level I or Level II PRTF. Limitations shall be documented in the resident's record and their therapeutic effectiveness shall be evaluated and documented by professional staff every seven (7) days.

(7) The right to initiate a complaint or grievance procedure and the means for requesting a hearing or review of a complaint shall be specified in a written policy approved by the Level I or Level II PRTF's governing body and made available to residents, parents, guardians, and custodians responsible for the resident. The procedure shall indicate:

(a) To whom the grievance is to be addressed; and

(b) Steps to be followed for filing a complaint, grievance, or appeal.

(8) The resident and his or her parent, guardian, or custodian shall be informed of the current and future use and disposition of products of special observation and audio-visual techniques such as one (1) way vision mirrors, tape recorders, videotapes, monitors, or photographs.

(9) The policy and procedure regarding resident's rights shall

ensure the resident's right to confidentiality of all information recorded in his or her record maintained by the Level I or Level II facility. The facility shall ensure the initial and continuing training of all staff in the principles of confidentiality and privacy.

(10)(a) A Level I or Level II resident shall be allowed to work for the facility only under the following conditions:

1. The work is part of the individual treatment plan;
2. The work is performed voluntarily;
3. The patient receives wages commensurate with the economic value of the work; and
4. The work project complies with applicable law and administrative regulation.

(b) The performance of tasks related to the responsibilities of family-like living, such as laundry and housekeeping, shall not be considered work for the facility and need not be compensated or voluntary.

(11) A Level I or Level II PRTF's written policy developed in consultation with professional and direct care staff and approved by the governing body shall provide for the measures utilized by the facility to discipline residents. These measures shall be fully explained to each resident and the resident's parent, guardian, or custodian.

(12) A Level I or Level II PRTF shall prohibit all cruel and unusual disciplinary measures including the following:

- (a) Corporal punishment;
- (b) Forced physical exercise;
- (c) Forced fixed body positions;
- (d) Group punishment for individual actions;
- (e) Verbal abuse, ridicule, or humiliation;
- (f) Denial of three (3) balanced nutritional meals per day;
- (g) Denial of clothing, shelter, bedding, or personal hygiene needs;
- (h) Denial of access to educational services;
- (i) Denial of visitation, mail, or phone privileges for punishment;
- (j) Exclusion of the resident from entry to his or her assigned living unit; and
- (k) Restraint or seclusion as a punishment or employed for the convenience of staff.

(13) Written policy shall prohibit Level I or Level II PRTF 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.

(14)(a) Written rules of Level I or Level II PRTF resident conduct shall be developed in consultation with the professional and direct-care staff and be approved by the governing body.

(b) Residents shall participate in the development of the rules to a reasonable and appropriate extent.

(c) These rules shall be based on generally acceptable behavior for the resident population served.

(15) The application of disciplinary measures in a Level I or Level II PRTF shall relate to the violation of established rules.

Section 9. Resident Records. (1) A Level I or Level II PRTF shall:

(a) Have written policies concerning resident and, if provided, outpatient client records approved by the governing body; and

(b) Maintain a written[resident] record on each resident or, if applicable, outpatient client[,] to be directly accessible to staff members caring for the resident or outpatient client.

(2) The Level I or Level II PRTF resident record shall contain at a minimum:

- (a) Basic identifying information;
- (b) Appropriate court orders or consent of appropriate family members or guardians for admission, evaluation, and treatment;
- (c) A provisional or admitting diagnosis which includes a physical diagnosis, if applicable, as well as a psychiatric diagnosis;
- (d) The report by the parent, guardian, or custodian of the patient's immunization status;
- (e) A psychosocial assessment of the resident and his or her family, including:
 1. An evaluation of the effect of the family on the resident's condition and the effect of the resident's condition on the family; and

2. A summary of the resident's psychosocial needs;

(f) An evaluation of the resident's growth and development, including physical, emotional, cognitive, educational, and social development; and needs for play and daily activities;

(g) The resident's legal custody status, if applicable;

(h) The family's, guardian's, or custodian's expectations for, and involvement in, the assessment, treatment, and continuing care of the resident;

(i) Physical health assessment, including evaluations of the following:

1. Motor development and functioning;
2. Sensorimotor functioning;
3. Speech, hearing, and language functioning;
4. Visual functioning;
5. Immunization status; and

6. The results of the tuberculosis testing required by Sections 20 and 21[19 and 20] of this administrative regulation; and

(j) In a Level II PRTF that opts to provide bedrooms with sleeping accommodations for two (2) residents, documentation of placement in a single occupancy bedroom if recommended by the multidisciplinary team. The basis for the team's recommendation for a single occupancy bedroom shall be maintained in the record.

(3) The Level I or Level II PRTF resident record shall also include:

(a) Physician's notes which shall include an entry made at least weekly by the staff psychiatrist regarding the condition of the resident;

(b) Professional progress notes, which shall:

1. Be completed following each professional service:
 - a. Daily; or
 - b. If the service is provided daily to groups of residents, through a weekly summary;
2. Be signed and dated by the:
 - a. Mental health professional who provided the service in a Level I PRTF; or
 - b. Qualified mental health professional who provided the service in a Level II PRTF;

(c) Direct-care progress notes which shall:

1. Record implementation of all treatment and any unusual or significant events which occur for the resident;
2. Be completed at least by the end of each direct-care shift and summarized weekly; and
3. Be signed and dated by the direct-care staff making the entry;

(d) Special clinical justifications for the use of unusual treatment procedures, including emergency safety interventions, and reports;

(e) Discharge summary;

(f) If a patient dies, a summation statement in the form of a discharge summary, including events leading to the death, signed by the attending physician; and

(g) Documentation that any serious occurrence involving the resident was reported to the Department for Medicaid Services and to Kentucky Protection and Advocacy, and that any resident death was reported to the Centers for Medicare and Medicaid Services (CMS) regional office, as required by Sections 10(4) and 10(5) of this administrative regulation.

(4) An outpatient client record shall be maintained for each client receiving outpatient behavioral health services under Section 14(1) of this administrative regulation.

(a) Each entry shall be dated, signed, and indexed according to the outpatient service received.

(b) Each outpatient client record shall contain:

1. An identification sheet, including the client's name, address, age, gender, marital status, expected source of payment, and referral source;
2. Name, address, and telephone number of the client and client's parent or guardian;
3. Intake interview;
4. The signed and dated consent for treatment from the client's parent or guardian;
5. The report of the behavioral health assessment and other assessments as appropriate, which may include psychological

testing;

6. The plan of care as described in Section 14(5) of this administrative regulation;

7. Examination, diagnosis, and progress notes by the physician, nurse, or other behavioral health professionals or treatment staff that relate to the implementation of plan of care objectives;

8. A record of all contacts with other providers, family members, community partners, or other contacts;

9. A record of medical treatment and administration of medication, if administered;

10. An original or original copy of all physician medication and treatment orders, if applicable; and

11. Documentation of orientation to the program and program rules.

(5) A Level I or Level II PRTF shall maintain confidentiality of resident and, if applicable, outpatient client records. Resident or outpatient client information shall be released only on written consent of the resident, outpatient client, or his or her parent, guardian, or custodian or as otherwise authorized by law. The written consent shall contain the following information:

(a) The name of the person, agency, or organization to which the information is to be disclosed;

(b) The specific information to be disclosed;

(c) The purpose of disclosure; and

(d) The date the consent was signed and the signature of the individual witnessing the consent.

Section 10. Quality Assurance. (1) A Level I or Level II PRTF shall have an organized quality assurance program designed to enhance resident treatment and care, including outpatient services if provided, through the ongoing objective assessment of important aspects of resident care and the correction of identified problems.

(2) A Level I or Level II PRTF shall prepare a written quality assurance plan designed to ensure that there is an ongoing quality assurance program that includes effective mechanisms for reviewing and evaluating resident care, including outpatient services if provided, and that provides for appropriate response to findings.

(3) A Level I or Level II PRTF shall record all incidents or accidents that present a direct or immediate threat to the health, safety or security of any resident or staff member. Examples of incidents to be recorded include the following: physical violence, fighting, absence without leave, use or possession of drugs or alcohol, or inappropriate sexual behavior. The record shall be kept on file and retained at the facility and shall be made available for inspection by the licensure agency.

(4)(a) A Level I or Level II PRTF shall report any serious occurrence involving a resident to the Department for Medicaid Services and to Kentucky Protection and Advocacy by no later than close of business the next business day after the serious occurrence.

(b) The report shall include:

1. The name of the resident involved in the serious occurrence;

2. A description of the occurrence; and

3. The name, street address, and telephone number of the facility.

(5) A Level I or Level II PRTF shall report the death of any resident to the Centers for Medicare and Medicaid Services (CMS) regional office by no later than close of business the next business day after the resident's death.

Section 11. Admission Criteria. (1) A Level I or Level II PRTF shall have written admission criteria that are:

(a) Approved by the governing body; and

(b) Consistent with the facility's goals and objectives.

(2) Admission criteria shall be made available to referral sources and to parents, guardians, or custodians and shall include:

(a) Types of admission (crisis stabilization, long-term treatment);

(b) Age and sex of accepted residents;

(c) Criteria that preclude admission in a Level I or Level II PRTF;

(d) Clinical needs and problems typically addressed by the facility's programs and services;

(e) Criteria for discharge;

(f) Any preplacement requirements of the resident, his or her parents, guardians, custodians, or the placing agency; and

(g) Residency requirements. In a Level II PRTF that opts to provide bedrooms with sleeping accommodations for two (2) residents, the facility shall:

1. Place each newly admitted resident in a single occupancy bedroom until completion of the comprehensive treatment plan of care, which shall be completed within ten (10) calendar days of admission pursuant to Section 12(4)(c) of this administrative regulation;

2. Maintain a resident in a single occupancy bedroom if recommended in the comprehensive treatment plan of care; and

3. Provide notification and general information to each Level II resident's parent, guardian, or custodian about the installation of the electronic surveillance system required by 902 KAR 20:330, Section 6(3)(d), if the resident is placed in a bedroom shared with another resident.

(3) Pursuant to 42 C.F.R. 483.356, at admission, a facility shall:

(a) Inform both the incoming resident and the resident's parent or legal guardian of the facility's policy regarding the use of restraint or seclusion during an emergency safety situation that may occur while the resident is in the program;

(b) Communicate its restraint and seclusion policy in a language that the resident or his or her parent or legal guardian understands (including American Sign Language, if appropriate) and if necessary, the facility shall provide interpreters or translators;

(c) Obtain an acknowledgment, in writing, from the resident's parent or legal guardian that he or she has been informed of the facility's policy on the use of restraint or seclusion during an emergency safety situation. Staff shall file this acknowledgment in the resident's record; and

(d) Provide a copy of the facility policy to the resident's parent or legal guardian. The facility's policy shall provide contact information, including the phone number and mailing address for Kentucky Protection and Advocacy.

(4) Age limits.

(a) Residents admitted to a Level I PRTF shall have obtained age six (6), but not attained age eighteen (18).

(b) Residents in a Level I PRTF may remain in care until age twenty-one (21) if admitted by their 18th birthday.

(c) Pursuant to KRS 216B.450(5)(b), a Level II PRTF may provide inpatient psychiatric residential treatment and habilitation to persons who are age four (4) to twenty-one (21) years.

(d)1. Admission criteria related to age at admission shall be determined by the age grouping of children currently in residence and shall reflect a range no greater than five (5) years in a living unit for residents six (6) years of age and older.

2. If a Level II PRTF admits residents who are four (4) or five (5) years of age, the age range shall not be more than three (3) years in the living unit.

(5) Children and adolescents who are a danger to self or others for whom the facility is unable to develop a risk-management plan shall not be admitted to a Level I PRTF.

(6)(a) Except for paragraph (b) of this subsection, a Level II PRTF shall not refuse to admit a patient who meets the medical necessity criteria and facility criteria for Level II facility services pursuant to KRS 216B.457(2).

(b) A Level II PRTF shall refuse to admit a patient if the admission exceeds the facility's licensed bed capacity.

Section 12. Resident Management. (1) Intake.

(a) A Level I or Level II PRTF shall have written policies and procedures approved by the facility administration for the intake process which addresses at a minimum the following:

1. Referral, records, and statistical data to be kept regarding applicants for residence;

2. Criteria for determining the eligibility of individuals for admission;

3. Methods used in the intake process which shall be based on the services provided by the facility and the needs of residents; and

4. Procurement of appropriate consent forms. This may include the release of educational and medical records.

(b) The intake process shall be designed to provide at least the following information:

1. Identification of agencies who have been involved in the treatment of the resident in the community and the anticipated extent of involvement of those agencies during and after the resident's stay in the facility;

2. Legal, custody and visitation orders; and

3. Proposed discharge plan and anticipated length of stay.

(c) The intake process shall include an orientation for the parent, guardian, or custodian as appropriate and the resident which includes the following:

1. The rights and responsibilities of residents, including the rules governing resident conduct and the types of infractions that can result in disciplinary action or discharge from the facility;

2. Rights, responsibilities, and expectations of the parent, guardian, or custodian; and

3. Preparation of the staff and residents of the facility for the new resident.

(d) Upon admission each resident of school age shall have been certified or be referred for assessment as a child with a disability pursuant to 20 U.S.C. 1400.

(2) Assessment.

(a) A complete evaluation and assessment shall be performed for each resident which includes at least physical, emotional, behavioral, social, recreational, educational, legal, vocational, and nutritional needs.

(b) An initial health screening for illness, injury, and communicable disease or other immediate needs shall be conducted within twenty-four (24) hours after admission by a nurse.

(c) A physician, nurse practitioner, or physician's assistant shall conduct a physical examination of each resident within fourteen (14) days after admission. Communication to schedule the physical examination of each resident shall be initiated within twenty-four (24) hours after admission. The physical examination shall include at least evaluations of the following:

1. Motor development and functioning;

2. Sensorimotor functioning;

3. Speech, hearing, and language functioning;

4. Visual functioning; and

5. Immunization status. If a resident's immunization is not complete as required by 902 KAR 2:060, the facility shall be responsible for its completion and shall begin to complete any immunizations which are outside of the set periodicity schedule within thirty (30) days of admission or the physical examination, whichever is later.

(d) If the resident has had a complete physical examination by a qualified physician, nurse practitioner, or physician's assistant within the previous three (3) months which includes the requirements of paragraph (c) of this subsection and if the facility obtains complete copies of the record, the physician, nurse practitioner, or physician's assistant may determine after reviewing the records and assessing the resident's physical health that a complete physical examination is not required. If that determination is made, the examination performed in the previous three (3) months shall be used to meet the requirement for a physical examination in paragraph (c) of this subsection.

(e) Facilities shall have all the necessary diagnostic tools and personnel available or have written agreements with another organization to provide physical health assessments, including electroencephalographic equipment, a qualified technician trained in dealing with children and adolescents, and a properly qualified physician to interpret electroencephalographic tracing of children and adolescents.

(f) An emotional and behavioral assessment of each resident that includes an examination by a psychiatrist shall be completed and entered in the resident's record. The emotional and behavioral assessment shall include the following:

1. A history of previous emotional, behavioral, and substance abuse problems and treatment;

2. The resident's current emotional and behavioral functioning, risk factors, protective factors and needs;

3. A direct psychiatric evaluation;

4. If indicated, psychological assessments, including intellectual, projective, and personality testing;

5. If indicated, other functional evaluations of language, self-care, and social-affective and visual-motor functioning; and

6. An evaluation of the developmental age factors of the resident.

(g) The facility shall have an assessment procedure for the early detection of mental health problems that are life threatening, are indicative of severe cognitive[personality] disorganization or deterioration, or may seriously affect the treatment or rehabilitation process.

(h) A social assessment of each resident shall be undertaken and include:

1. Environment and home;

2. Religion;

3. Childhood history;

4. Financial status;

5. The social, peer-group, and environmental setting from which the resident comes; and

6. The resident's family circumstances, including the constellation of the family group; the current living situation; and social, ethnic, cultural, emotional, and health factors, including drug and alcohol use.

(i) The social assessment shall include a determination of the need for participation of family members or significant others in the resident's treatment.

(j) An activities assessment of each resident shall include information relating to the individual's current skills, talents, aptitudes, and interest.

(k) An assessment shall be performed to evaluate the resident's potential for involvement in community activity, organizations, and events.

(l) For adolescents age fourteen (14) and older, a vocational assessment of the resident shall be done which includes the following:

1. Vocational history;

2. Education history, including academic and vocational training; and

3. A preliminary discussion, between the resident and the staff member doing the assessment, concerning the resident's past experiences with an attitude toward work, present motivations or areas of interest, and possibilities for future education, training, and employment.

(m) If appropriate, a legal assessment of the resident shall be undertaken and shall include the following:

1. A legal history; and

2. A preliminary discussion to determine the extent to which the legal situation will influence his or her progress in treatment and the urgency of the legal situation.

(3) Level I treatment plans.

(a)1. Within seventy-two (72) hours following admission, a mental health professional shall develop an initial treatment plan that is based at least on an assessment of the resident's presenting problems, physical health, and emotional and behavioral status.

2. Appropriate therapeutic efforts shall begin before a master treatment plan is finalized.

(b)1. A comprehensive treatment plan of care shall be developed by a multidisciplinary team conference in conformity with 42 C.F.R. 441.156 within ten (10) days of admission for any resident remaining in treatment. It shall:

a. Be based on the comprehensive assessment of the resident's needs completed pursuant to subsection (2) of this section;

b. Include a substantiated diagnosis and the short-term and long-range treatment needs; and

c. Address the specific treatment modalities required to meet the resident's needs.

2. The comprehensive treatment plan of care shall:
 - a. Contain specific and measurable goals for the resident to achieve;
 - b. Describe the services, activities, and programs to be provided to the resident, and shall specify staff members assigned to work with the resident and the time or frequency for each treatment procedure; and
 - c. Specify criteria to be met for termination of treatment; and
 - d. Include any referrals necessary for services not provided directly by the facility.
3. The resident shall participate to the maximum extent feasible in the development of his or her comprehensive treatment plan of care, and the participation shall be documented in the resident's record.
 - 4.a. A specific plan for involving the resident's family or significant others shall be included in the comprehensive treatment plan of care.
 - b. The parent, guardian, or custodian shall be given the opportunity to participate in the multidisciplinary treatment plan conference if feasible and shall be given a copy of the resident's comprehensive treatment plan of care.
 - c. The comprehensive treatment plan of care shall identify the mental health professional who is responsible for coordinating and facilitating the family's involvement throughout treatment.
5. The comprehensive treatment plan of care shall be reviewed and updated through multidisciplinary team conferences as clinically indicated and at least thirty (30) days following the first ten (10) days of treatment. The comprehensive treatment plan of care shall be reviewed every thirty (30) days thereafter and updated every sixty (60) days or earlier if clinically indicated.
6. Following one (1) year of continuous treatment, the review and update may be conducted at three (3) month intervals.
 - (c) The comprehensive treatment plan of care and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it.
- (4) Level II PRTF treatment plans.
 - (a) A Level II PRTF shall develop and implement an initial treatment plan of care for each resident as required by KRS 216B.457(13).
 - (b) Appropriate therapeutic efforts shall begin before a comprehensive treatment plan of care is finalized.
 - (c)1. A comprehensive treatment plan of care shall be developed by a multidisciplinary team conference in conformity with 42 C.F.R. 441.156 and KRS 216B.457(14).
2. In a Level II PRTF that opts to provide bedrooms with sleeping accommodations for two (2) residents, the comprehensive treatment plan of care shall document whether the facility's multidisciplinary team recommends placement of the resident in a private bedroom or in a double occupancy bedroom with another resident.
3. The comprehensive treatment plan of care shall:
 - a. Contain specific and measurable goals for the resident to achieve;
 - b. Describe the services, activities, and programs to be provided to the resident; and
 - c. Specify staff members assigned to work with the resident and the time or frequency for each treatment procedure.
4. The resident shall participate to the maximum extent feasible in the development of his or her comprehensive treatment plan of care, and the participation shall be documented in the resident's record.
 - 5.a. A specific plan for involving the resident's family or significant others shall be included in the comprehensive treatment plan of care.
 - b. The parent, guardian, or custodian shall be given the opportunity to participate in the multidisciplinary treatment plan conference if feasible and shall be given a copy of the resident's comprehensive treatment plan of care.
 - c. The comprehensive treatment plan of care shall identify the mental health professional who is responsible for coordinating and facilitating the family's involvement throughout treatment.
 - (d) The comprehensive treatment plan of care shall be reviewed and documented as required by KRS 216B.457(15).

- (5) Level I and Level II PRTF progress notes.
 - (a) Progress notes shall be entered in the resident's records, be used as a basis for reviewing the treatment plan, signed and dated by the individual making the entry and shall include the following:
 1. Documentation of implementation of the treatment plan;
 2. Chronological documentation of all treatment provided to the resident and documentation of the resident's clinical course; and
 3. Descriptions of each change in each of the resident's conditions.
 - (b) All entries involving subjective interpretation of the resident's progress shall be supplemented with a description of the actual behavior observed.
 - (c) Efforts shall be made to secure written progress reports for residents receiving services from outside sources and, if available, to include them in the resident record.
 - (d) The resident's progress and current status in meeting the goals and objectives of his or her treatment plan shall be regularly recorded in the resident record.
- (6) Discharge planning. A Level I or Level II PRTF shall have written policies and procedures for discharge of residents.
 - (a)1. Discharge planning shall begin at admission and be documented in the resident's record.
 2. At least ninety (90) days prior to the planned discharge of a resident from the facility, or within ten (10) days after admission if the anticipated length of stay is under ninety (90) days, the multidisciplinary team shall formulate a discharge and aftercare plan.
 3. This plan shall be maintained in the resident's record and reviewed and updated with the comprehensive treatment plan of care.
 - (b) All discharge recommendations shall be determined through a conference, including the appropriate facility staff, the resident, the resident's parents, guardian, or custodian and, if indicated, the representative of the agency to whom the resident may be referred for any aftercare service, and the affected local school districts. All aftercare plans shall delineate those parties responsible for the provision of aftercare services.
 - (c) If the aftercare plan involves placement of the resident in another licensed program following discharge, facility staff shall share resident information with representatives of the aftercare program provider if authorized by written consent of the parent, guardian, or custodian.
 - (d) A Level I facility deciding to release a resident on an unplanned basis shall:
 1. Have reached the decision to release at a multidisciplinary team conference chaired by the clinical director that determined, in writing, that services available through the facility cannot meet the needs of the resident;
 2. Provide at least ninety-six (96) hours notice to the resident's parent, guardian, or custodian and the agency which will be providing aftercare services. If authorized by written consent of the parent, guardian, or custodian, the facility shall provide to the receiving agency copies of the resident's records and discharge summary; and
 3. Consult with the receiving agency in situations involving placement for the purpose of ensuring that the placement reasonably meets the needs of the resident.
 - (e) Within fourteen (14) days of a resident's discharge from the facility, the facility shall compile and complete a written discharge summary for inclusion in the resident's record. The discharge summary shall include:
 1. Name, address, phone number, and relationship of the person to whom the resident was released;
 2. Description of circumstances leading to admission of the resident to the facility;
 3. Significant problems of the resident;
 4. Clinical course of the resident's treatment;
 5. Assessment of remaining needs of the resident and alternative services recommended to meet those needs;
 6. Special clinical management requirements including psychotropic drugs;
 7. Brief descriptive overview of the aftercare plan designed for

the resident; and

8. Circumstances leading to the unplanned or emergency discharge of the resident, if applicable.

Section 13. Services. A Level I or Level II PRTF shall provide the following services in a manner which takes into account and addresses the social life; emotional, cognitive, and physical growth and development; and the educational needs of the resident. Services shall include the opportunity for the resident to participate in community activities, organizations and events and shall provide a normalized environment for the resident. (1) Level I or Level II mental health services.

(a) Mental health assessments and evaluations shall be provided as required in Section 12 of this administrative regulation.

(b) The mental health services available through the Level I or Level II PRTF shall include the services listed in this paragraph provided by staff of the Level I or Level II PRTF:

1. Case coordination services to assure the full integration of all services provided to each resident. Case coordination activities shall include monitoring the resident's daily functioning to assure the continuity of service in accordance with the resident's treatment plan and ensuring that all staff responsible for the care and delivery of services actively participate in the development and implementation of the resident's treatment plan;

2. Planned on-site therapies including individual, family, and group therapies as indicated by the comprehensive treatment plan of care.

a. These therapies shall include psychotherapy, interventions, or face-to-face contacts, which may be made verbally or using assistive communication, between staff and the resident to enhance the resident's psychological and social functioning as well as to facilitate the resident's integration into a family unit.

b. Contacts that are incidental to other activities shall be excluded from this service;

3. Task and skill training to enhance a resident's age appropriate skills necessary to facilitate the resident's ability to care for himself or herself, and to function effectively in community settings. Task and skill training activities shall include homemaking, housekeeping, personal hygiene, budgeting, shopping, and the use of community resources.

(2) Level I or Level II physical health services.

(a) The physical health services available through the Level I or Level II PRTF facility shall include the following services provided either directly by the facility or written agreement:

1. Assessments and evaluations as required in Section 12 of this administrative regulation;

2. Diagnosis, treatment, and consultation for acute or chronic illnesses occurring during the resident's stay at the facility or for problems identified during an evaluation;

3. Preventive health care services to include periodic assessments in accordance with the periodicity schedule established by the American Academy of Pediatrics;

4. A dental examination within six (6) months of admission, periodic assessments in accordance with the periodicity schedule established by the American Dental Association, and treatment as needed;

5. Health and sex education; and

6. An ongoing immunization program.

(b) If physical health services are provided by written agreement with a provider of services other than the facility, the written agreement shall, at a minimum, address:

1. Referral of residents;

2. Qualifications of staff providing services;

3. Exchange of clinical information; and

4. Financial arrangements.

(c) A Level I or Level II PRTF shall not admit a resident who has a communicable disease or acute illness requiring treatment in an acute care inpatient setting.

(3) Level I or Level II dietary services.

(a) A Level I or Level II PRTF shall have written policies and procedures approved by the governing body for the provision of dietetic services for staff and residents which may be provided directly by the facility staff or through written contractual

agreement.

(b) Adequate staff, space, equipment, and supplies shall be provided for safe sanitary operation of the dietetic service, the safe and sanitary handling and distribution of food, the care and cleaning of equipment and kitchen area, and the washing of dishes.

(c) The nutritional aspects of resident's care shall be planned, reviewed, and periodically evaluated by a licensed dietician pursuant to KRS 310.021 and employed by the facility as a staff member or consultant.

(d) The food shall be served to residents and staff in a common eating place and:

1. Shall account for the special food needs and tastes of residents;

2. Shall not be withheld as punishment; and

3. Shall provide for special dietary need of residents such as those relating to problems, such as diabetes and allergies.

(e) Residents shall participate in the preparation and serving of food as appropriate.

(f) At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. The facility shall arrange for and make provision for between-meal and unscheduled snacks.

(g) Except for school lunches and meals at restaurants, all members of a living unit shall be provided their meals together as a therapeutic function of the living unit.

(4) Level I or Level II emergency services.

(a) A Level I or Level II PRTF shall provide for the prompt notification of the resident's parents, guardian, or custodian in case of serious illness, injury, surgery, emergency safety intervention, elopement, or death.

(b)1. All staff shall be knowledgeable of a written plan and procedure for meeting potential disasters and emergencies such as fires or severe weather.

2. The plan shall be posted.

3. Staff shall be trained in properly reporting a fire, extinguishing a small fire, and in evacuation from the building.

4. Fire drills shall be practiced monthly, with a written record kept of all practiced fire drills, detailing the date, time, and residents who participated.

(c) The facility shall have written procedures to be followed by staff if a psychiatric, medical, or dental emergency of a resident occurs that specifies:

1. Notification of designated member of the facility's chain of command;

2. Designation of staff person who shall decide to refer resident to outside treatment resources;

3. Notification of resident's parent, guardian, or custodian;

4. Transportation to be used;

5. Staff member to accompany resident;

6. Necessary consent and referral forms to accompany resident; and

7. Name, location, and telephone of designated treatment resources.

(d) The facility shall have designated treatment resources who shall have agreed to accept a resident for emergency treatment. At a minimum the resources shall include:

1. Licensed physician and an alternate designee;

2. Licensed dentist and an alternate designee;

3. Licensed hospital; and

4. Licensed hospital with an accredited psychiatric unit.

(5) Level I or Level II pharmacy services. A Level I or Level II PRTF shall have written policies and procedures approved by the governing body for proper management of pharmaceuticals that are consistent with the requirements established in this subsection.

(a)1. Medications shall be administered by a registered nurse, physician, or dentist, except if administered by a licensed practical nurse, certified medication aide, or direct care staff under the supervision of a registered nurse.

2. Direct care staff who administer medications shall have successfully completed a medicine administration course approved by the Kentucky Board of Nursing.

(b)1. Medications shall not be given without a written order

signed by a physician, dentist, advanced practice registered nurse as authorized in KRS 314.011(8) and 314.042(8), therapeutically-certified optometrist as authorized in KRS 320.240(14), or physician assistant as authorized by KRS 311.858.

2. Telephone orders for medications shall be given only to licensed nurses or a pharmacist and signed by a physician, dentist, advanced practice registered nurse, therapeutically-certified optometrist, or physician assistant within seventy-two (72) hours from the time the order is given.

(c) Medications shall be prescribed only if clinically indicated. The facility shall ensure that medication is not administered solely for the purpose of program management or control, and that medication is not prescribed for the purposes of experimentation or research.

(d) All medications shall require "stop orders".

(e) All prescriptions shall be reevaluated by the prescriber prior to its renewal.

(f) There shall be a systematic method for prescribing, ordering, receipting, storing, dispensing, administering, distributing and accounting for all medications.

(g) The facility shall provide maximum security storage of and accountability for all legend medications, syringes, and needles.

(h) Self-administration of medication shall be permitted only if specifically ordered by the responsible prescriber and supervised by a member of the professional staff or a mental health associate. Drugs to be self-administered shall be stored in a secured area and be made available to the resident at the time of administration.

(i) Residents permitted to self-administer drugs shall be counseled regarding the indications for which the drugs are to be used, the primary side effects, and the physical dosage forms which are to be administered.

(j) Drugs brought into the facility by residents shall not be administered unless they have been identified and unless written orders to administer these specific drugs are given by the responsible physician. Otherwise these drugs shall be packaged, sealed, and stored, and, if approved by the responsible physician, returned to the resident, parent, guardian, or custodian at the time of discharge.

(6) Level I or Level II education and vocational services.

(a) Educational and vocational services available through a PRTF shall include the minimum requirements of Kentucky Revised Statutes and federal laws and regulations regarding regular education, vocational education, and special education as appropriate to meet the needs of the residents.

1. Educational services shall be provided by:

- a. The facility;
- b. The local school district in which the facility is located; or
- c. A nonpublic school program which is specially accredited and approved by the Kentucky Department of Education to provide special education services to students with disabilities.

2. If the educational services are provided by the facility, the school program shall be specially accredited and approved by the Kentucky Department of Education to provide special education services to students with disabilities.

3. Educational services provided by a local school district shall be provided within the facility or within the local school district.

4. The facility's multidisciplinary team shall make a recommendation concerning the delivery site of educational services provided by a local school district that is based on least restrictive environment determinations for individual residents.

5. Education services approved by the Department of Education shall be available either on the same site or in close physical proximity to the PRTF.

(b) If the education services are not provided directly by the facility, there shall be a written plan for the provision of education services. The education provider shall be a state education department-approved program. The written plan shall, at a minimum, address:

1. Qualifications of staff providing educational services;
2. Participation of educational and vocational staff in the plan for the provision of educational services;
3. Access by staff of the facility to educational and vocational programs and records; and

4. Financial and service arrangements.

(c) The facility shall ensure that residents have opportunities to be educated in the least restrictive environment consistent with the treatment needs of the resident as determined by the multidisciplinary team and reflected in the resident's comprehensive treatment plan of care.

(d) The facility shall ensure that education services are developed and implemented with input from the child's education staff in conjunction with the comprehensive treatment plan of care and meet the requirements established in this paragraph.

1. Each resident's comprehensive treatment plan of care shall include formal academic goals for remediation and continuing education.

2.a. Each resident who is eligible for special education services shall have treatment activities developed by the multidisciplinary team, which shall be incorporated, as applicable, into the individualized education plan developed by the local school district.

b. The multidisciplinary team shall develop treatment activities which extend into the classroom as appropriate.

c. The program director or designee shall request an invitation to attend all individualized education plan or Admissions and Release Committee meetings.

d. If allowed, the program director or designee shall attend all individualized education plan or Admissions and Release Committee meetings.

3. To avoid unnecessary duplication and make maximum use of resources, the services provided by the education and treatment components for children with disabilities pursuant to 20 U.S.C. 1400 shall be developed with the opportunity for input from both school personnel and the PRTF.

(f)1. The facility shall provide or arrange for vocational services for residents, as is age appropriate and is in accordance with the comprehensive treatment plan of care.

2. The services shall be planned, implemented and supervised by a vocational counselor or appropriate therapist who shall be a full- or part-time employee of the facility or a consultant.

(g) Residents may be permitted to accumulate earnings in a bank account established with the resident by the facility.

(7) Level I or Level II PRTF activity services.

(a) A daily schedule of planned recreational activities shall be prepared for the approval of the clinical director prior to implementation of the schedule.

1. The schedule shall be for normal waking hours that residents are not in school, or in active treatment.

2. The schedule shall include a full range of activities which may include physical recreation, team sports, art, and music; attendance at recreational and cultural events in the community if appropriate; and individualized, directed activities like reading and crafts.

3. Nondirected leisure time shall be limited to two (2) one-half (1/2) hour periods on school days and three (3) one-half (1/2) hour periods on nonschool days.

4. The activity schedule shall identify the professional or direct-care staff who will lead and support each activity.

5. Changes made to the schedule as the schedule is implemented shall be indicated on a copy of each daily schedule maintained as a permanent record by the clinical director.

(b) Appropriate time, space, and equipment shall be provided by the facility for leisure activity and free play.

(c) The facility shall provide the means of observing holidays and personal milestones in keeping with the cultural and religious background of the residents.

(8) Speech, language, and hearing services. A Level I or Level II PRTF shall provide or arrange for speech, language, and hearing services to meet the identified needs of residents. These services shall be provided by the facility or through written agreement with a qualified speech-language and hearing clinician. The written agreement shall, at a minimum, address:

- (a) Referral of residents;
- (b) Qualifications of staff providing services;
- (c) Exchange of clinical information; and
- (d) Financial arrangements.

Section 14. Provision of Outpatient Behavioral Health Services, Requirements for Case Managers, Plan of Care, and Physical Environment Requirements. (1) A Level I or Level II PRTF may provide one (1) or more of the following outpatient behavioral health services:

(a) Screening which shall be provided to a client age twenty-one (21) or younger 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 to a client age twenty-one (21) or younger by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, 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 for a client age twenty-one (21) or younger; 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 to a client age twenty-one (21) or younger:

a. On-site in the facility where the licensee provides outpatient behavioral health services;

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 provided to a client age twenty-one (21) or younger;

2. Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year;

3. Be provided for a duration of less than twenty-four (24) hours;

4. Not be an overnight service;

5. Be a multi-disciplinary team based intervention that ensures access to acute mental health and substance use services 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;

6. 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;

7. 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

8. Ensure access to a board certified or board-eligible psychiatrist for consultation 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 facility'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 developmental stage of the client; and

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 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:

1. Shall be provided by a peer support specialist;

2. Shall be structured and scheduled nonclinical therapeutic activity with a client or group of clients;

3. Shall promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills;

4. Shall be identified in the client's plan of care; and

5. If provided by a family peer support specialist who meets the requirements of 908 KAR 2:230, may be provided to an individual over the age of twenty-one (21) as follows:

a. The individual shall be a family member of a client age twenty-one (21) or younger who receives outpatient behavioral

health services from the Level I or Level II PRTE; and

b. The family peer support services shall focus on the needs and treatment of the client as 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 to a client age twenty-one (21) or younger and may continue without disruption after the client reaches age twenty-two (22) if the service is continued for therapeutic benefit as identified in the client's plan of care;

3. Be provided at least three (3) hours per day at least three (3) days per week;

4. 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;

5. Include a treatment plan which shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care;

6. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, or a certified alcohol and drug counselor;

7. Include access to a board-certified or board-eligible psychiatrist for consultation;

8. Include access to a psychiatrist, other physician, or advanced practice registered nurse for medication prescribing and monitoring; and

9. 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. Be provided to a client age twenty-one (21) or younger and may continue without disruption after the client reaches age twenty-two (22) if the service is continued for therapeutic benefit as identified in the client's plan of care;

3. 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;

4. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the client; and

c. Improving functioning;

5. Not exceed three (3) hours per day; and

6. Be provided by a behavioral health professional, a behavioral health professional under clinical supervision, licensed behavior analyst, 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. Be provided to a client age twenty-one (21) or younger and may continue without disruption after the client reaches age twenty-two (22) if the service is continued for therapeutic benefit as identified in the client's plan of care;

3. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the client's plan of care;

4. 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;

5. Focus on the psychological needs of the client as evidenced in the client's plan of care;

6. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

7. Not include physical exercise, a recreational activity, an educational activity, or a social activity;

8. Not exceed three (3) hours per day per client unless additional time is medically necessary in accordance with 907 KAR 3:130;

9. Ensure that the group has a deliberate focus and defined course of treatment;

10. Ensure that the subject of group outpatient therapy shall be related to each client participating in the group; and

11. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, 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, at least one (1) member of the client's family, and the client unless the client's presence is not required in his or her plan of care;

2. Focus on the needs and treatment of a client age twenty-one (21) or younger and may continue without disruption after the client reaches age twenty-two (22) if the service is continued for therapeutic benefit as identified in the client's plan of care;

3. Address issues interfering with the relational functioning of the family;

4. Seek to improve interpersonal relationships within the client's home environment;

5. Be provided to promote the health and wellbeing of the client or recovery from a substance use disorder;

6. Not exceed three (3) hours per day per client unless additional time is medically necessary in accordance with 907 KAR 3:130; and

7. Be provided by a behavioral health professional, 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, 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 to a client age twenty-one (21) or younger by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, 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;

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) 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 to a client age twenty-one (21) or younger;
(o) Assertive community treatment for mental health disorders which shall:
1. Be provided to a client age twenty-one (21) or younger and may continue without disruption after the client reaches age twenty-two (22) if the service is continued for therapeutic benefit as identified in the client's plan of care;
2. 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;
3. 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
4. Have adequate staffing to ensure that no caseload size exceeds ten (10) participants per team;
(p) Comprehensive community support services which shall:
1. Be provided to a client age twenty-one (21) or younger and may continue without disruption after the client reaches age twenty-two (22) if the service is continued for therapeutic benefit as identified in the client's plan of care;
2. 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;
3. 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
4. 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;
(q) Therapeutic rehabilitation program for a child with a severe emotional disability which shall be provided to a client under twenty-one (21) years of age and shall:
1. Include services designed to maximize the reduction of the 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-center 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
(r) Targeted case management services which shall:
1. Include services to one (1) or more of the following target groups:
a. A client under age twenty-one (21) with substance use disorder;
b. A client under age twenty-one (21) with co-occurring mental health or substance use disorder and chronic or complex physical health issues; or
c. A child with a severe emotional disability as defined by KRS 200.503(3);
2. Be provided by a case manager as described in subsection (2), (3), or (4) of this section; 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;
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.
(2) A case manager who provides targeted case management services to clients with a substance use disorder shall:
(a) Be a certified alcohol and drug counselor, meet the grandfather requirements of 907 KAR 15:040, Section 4(1)(a)3, or 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;
8. Behavioral analysis;
9. Public health;
10. Special education;
11. Gerontology;
12. Recreational therapy;
13. Education;
14. Occupational therapy;
15. Physical therapy;
16. Speech-language pathology;
17. Rehabilitation counseling; or
18. Faith-based education;
(b)1. Have a minimum of one (1) year of full-time employment working directly with adolescents 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 in accordance with 908 KAR 2:260; and

2. Successfully complete continuing education requirements in accordance with 908 KAR 2:260; and

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

1. Has completed case management training 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.

(3) A case manager who provides targeted case management services to clients with a mental health or substance use disorder and chronic or complex physical health issues shall:

(a) Meet the requirements of subsection (2)(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 a human services field as described in subsection (2)(a) of this section, 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 in accordance with 908 KAR 2:260; and

2. Successfully complete continuing education requirements in accordance with 908 KAR 2:260; and

(d) For a bachelor's level case manager, be supervised by a behavioral health professional who:

1. Has completed case management training 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.

(4) 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) Meet the requirements of subsection (2)(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 (2)(a) of this section; or

2. Have a master's degree in a human services field as described in subsection (2)(a) of this section;

(c)1. Have successfully completed case management training in accordance with 908 KAR 2:260; and

2. Successfully complete continuing education requirements in accordance with 908 KAR 2:260; and

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

1. Has completed case management training 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.

(5) Plan of care.

(a) Each client receiving outpatient behavioral health services from a Level I or Level II PRTF shall have an individual plan of care signed by a behavioral health professional.

(b) A plan of care shall:

1. Describe the services to be provided to the client, including the frequency of services;

2. Contain measurable goals for the client to achieve, including the expected date of achievement for each goal;

3. 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;

4. Specify each staff member assigned to work with the client;

5. Identify methods of involving the client's family or significant

others if indicated;

6. Specify criteria to be met for termination of treatment;

7. Include any referrals necessary for services not provided directly by the chemical dependency treatment program; and

8. State the date scheduled for review of the plan.

(c) 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.

(d)1. The initial plan of care shall be developed through multidisciplinary team conferences at least thirty (30) days following the first ten (10) days of treatment.

2. The plan of care for individuals receiving intensive outpatient program services shall be reviewed every thirty (30) days thereafter and updated every sixty (60) days or earlier if clinically indicated.

3. Except for intensive outpatient program services, the plan of care for individuals receiving any other outpatient behavioral health service described in subsection (1) of this section shall be reviewed and updated every six (6) months or earlier if clinically indicated.

4. The plan of care and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it.

(6) Physical environment of an off-campus extension or separate building on the campus of the Level I or Level II PRTF where outpatient behavioral health services are provided.

(a) Accessibility. The off-campus extension or separate building on the campus of the PRTF 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.

(b) Physical location and overall environment.

1. The program shall:

a. Comply with building codes, ordinances, and administrative regulations which are enforced by city, county, or state jurisdictions;

b. Display a sign that can be viewed by the public that contains the facility name, hours of operation, and a street address;

c. 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;

d. Have a reception and waiting area;

e. Provide a restroom; and

f. Have an administrative area.

2. 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.

(c) Prior to occupancy, the facility shall have final approval from appropriate agencies.

Section 15. Use of Emergency Safety Interventions in a Level I or Level II PRTF. (1) Pursuant to 42 C.F.R. 483.356(a)(3), restraint or seclusion shall not result in harm or injury to the resident and shall be used only:

(a) To ensure the safety of the resident or others during an emergency safety situation; and

(b) Until the emergency safety situation has ceased and the resident's safety and the safety of others can be ensured, even if the restraint or seclusion order has not expired.

(2)(a) The use of mechanical restraint shall be prohibited in a Level I or Level II PRTF.

(b) Residents of a Level I or Level II PRTF shall not be held in a prone position during restraint. A Level I or Level II PRTF may use a supine hold:

1. As a last resort if other less restrictive interventions have proven to be ineffective; and

2. Only by staff who are trained to identify risks associated with positional, compression, or restraint asphyxiation, and who monitor to ensure that the resident's breathing is not impaired.

(3) Emergency safety interventions shall not be used as a means of coercion, punishment, convenience, or retaliation.

(4) Orders for restraint or seclusion shall be:

(a) By a physician or other licensed practitioner acting within

his or her scope of practice who is trained in the use of emergency safety interventions;

(b) Carried out by trained staff;

(c) If the resident's treatment team physician is available, given only by that physician; and

(d) The least restrictive emergency safety intervention that is most likely to be effective in resolving the emergency safety situation based on consultation with staff.

(5) A Level I or Level II PRTF shall have a written plan approved by the governing body for the use of emergency safety interventions which at a minimum shall meet the following requirements:

(a) Any use of an emergency safety intervention shall require clinical justification;

(b) A rationale and the clinical indications for the use of an emergency safety intervention shall be clearly stated in the resident's record for each occurrence. The rationale shall address the inadequacy of less restrictive intervention techniques;

(c) The plan shall specify the length of time for which a specific approval remains effective;

(d) The plan shall specify the length of time the emergency safety intervention may be utilized; and

(e) The plan shall specify when continued or repeated emergency safety interventions shall trigger multidisciplinary team review.

(6) If an emergency safety situation requires restraint or seclusion and a practitioner authorized to order restraint or seclusion is not available in a Level I or Level II PRTF, a verbal order for restraint and seclusion may be obtained and carried out under the following conditions:

(a) The verbal order shall be given by a licensed practitioner, as authorized by the facility, who is acting within his or her scope of practice and is trained in the use of emergency safety interventions;

(b) The verbal order shall be received by a licensed practitioner, as authorized by the facility, who is acting within his or her scope of practice;

(c) The physician or ordering practitioner shall be immediately available, at least by telephone, for consultation during the time that restraint or seclusion is being carried out; and

(d) The verbal order shall be countersigned by the physician or ordering practitioner within seven (7) days of the date that the order was given, and included in the resident's record.

(7) An order for restraint or seclusion shall not exceed the shortest of:

(a) The duration of the emergency safety situation;

(b) Four (4) hours for a resident eighteen (18) to twenty-one (21) years of age;

(c) Two (2) hours for a resident nine (9) to seventeen (17) years of age;

(d) One (1) hour for a resident seven (7) to eight (8) years of age; or

(e) Thirty (30) minutes for a child four (4) to six (6) years of age.

(8) If an emergency safety situation exists beyond the time limit for the use of restraint or seclusion, a new order for restraint or seclusion shall be obtained.

(9) A resident that is placed in restraint or seclusion shall receive a face-to-face evaluation to determine physical and psychological well being. The evaluation shall:

(a) Be conducted by a licensed practitioner who is acting within his or her scope of practice and is trained in the use of emergency safety interventions;

(b) Include the resident's physical and psychological status, resident's behavior, appropriateness of the intervention measures, and any complications resulting from the intervention; and

(c) Be conducted within one (1) hour of restraint or seclusion being initiated.

(10) Each order for restraint or seclusion shall include:

(a) The name of the ordering physician or other licensed practitioner, acting within his or her scope of practice and trained in the use of emergency safety interventions;

(b) The date and time the order was obtained; and

(c) The emergency safety intervention ordered, including the length of time for which the physician or other licensed practitioner authorized its use.

(11)(a) Staff shall document the emergency safety intervention in the resident's record.

(b) The documentation shall be completed by the end of the shift in which the intervention occurs.

(c) If the intervention does not end during the shift in which it began, documentation shall be completed during the shift in which it ends. Documentation shall include:

1. Each order for restraint or seclusion as described in subsection (10) of this section;

2. The time the emergency safety intervention actually began and ended;

3. The time and results of the evaluation required by subsection (9) of this section;

4. The emergency safety situation that required the resident to be restrained or put in seclusion; or

5. The name of staff involved in the emergency safety intervention.

(12) Staff who implement emergency safety interventions shall:

(a) Have documented training in the proper use of the procedure used;

(b) Be certified in physical management by a nationally-recognized training program in which certification is obtained through ~~skills-based~~~~[skilled-out]~~ testing; and

(c) Receive annual training and recertification in crisis intervention and behavior management.

(13) Staff authorized by a Level I or Level II PRTF shall:

(a) Be constantly, physically present with a resident being restrained;

(b) Monitor the physical and psychological well being of a resident being restrained, and monitor the safe use of restraint throughout the duration of the emergency safety intervention; and

(c) Document observations of, and actions taken for, a resident being restrained.

(14) Within one (1) hour of initiation of restraint or seclusion, a physician or licensed practitioner acting within his or her scope of practice and trained in the use of emergency safety interventions shall conduct a face-to-face evaluation of the resident's physical and psychological well-being.

(15) Staff shall provide constant visual attention to a resident who is in seclusion, through physical presence or a window.

(16) Staff authorized by a Level I or Level II PRTF shall:

(a) Monitor the physical and psychological well being of the resident;

(b) Ensure that a resident in seclusion is provided:

1. Regular meals;

2. Hydration;

3. Bathing; and

4. Use of the toilet; and

(c) Document observations of, and actions taken for, a resident in restraint every fifteen (15) minutes.

(17) A resident shall not be used at any time in a manner that causes harm or pain to a resident.

(18)(a) A Level I or Level II PRTF shall notify the parent, guardian, or custodian of the resident who has been restrained or placed in seclusion as soon as possible after the initiation of each emergency safety intervention.

(b) The facility shall document in the resident's record that the parent, guardian, or custodian has been notified of the emergency safety intervention, including the date and time of notification and the name of the staff person providing the notification.

(19)(a) Within twenty-four (24) hours after use of restraint or seclusion, staff involved in an emergency safety intervention and the resident shall have a face-to-face discussion.

(b) The discussion shall include all staff involved in the intervention except if the presence of a particular staff person may jeopardize the well-being of the resident. The discussion may include other staff and the resident's parent, guardian, or custodian.

(20) Within twenty-four (24) hours after the use of restraint or seclusion, all staff involved in the emergency safety intervention,

and appropriate supervisory and administrative staff, shall conduct a debriefing session that includes a review and discussion of:

(a) The emergency safety situation that required the intervention, including a discussion of the precipitating factors that led up to the intervention;

(b) Alternative techniques that might have prevented the use of the restraint or seclusion;

(c) The procedures, if any, that staff are to implement to prevent any recurrence of the use of restraint or seclusion; and

(d) The outcome of the intervention, including any injuries that may have resulted from the use of restraint or seclusion.

(21) Application of time out.

(a) A resident in time out shall not be physically prevented from leaving the time out area.

(b) Time out may take place away from the area of activity or from other residents.

(c) Staff shall monitor the resident while he or she is in time out.

(22) A Level I or Level II PRTF shall not use extraordinary risk procedures, including experimental treatment modalities, psychosurgery, aversive conditioning, electroconvulsive therapies, behavior modification procedures that use painful stimuli, unusual medications, or investigational and experimental drugs.

(23) Unusual treatment shall require the informed consent of the resident and parent, guardian, or custodian prior to the provision of unusual treatment as follows:

(a) The proposed unusual treatment shall be reviewed and interpreted by the child's psychiatrist addressing:

1. The rationale for use;

2. Methods to be used;

3. Specified time to be used;

4. Who will provide the treatment; and

5. The methods that will be used to evaluate the efficacy of the treatment.

(b) The potential risks, side effects, and benefits of the proposed unusual treatment shall be explained, verbally and in writing, to the resident and the parent, guardian, or custodian prior to their granting approval for the unusual treatment. The approval shall be given in writing prior to implementation of the treatment.

(24) The clinical director or designee shall review all uses of unusual treatment procedures, including emergency safety interventions, on a daily basis. The daily review shall include an evaluation for the possibility of unusual or unwarranted patterns of use.

Section 16.[45-] Housekeeping Services. (1) A Level I or Level II PRTF shall have policies and procedures for and services which maintain a clean, safe, and hygienic environment for residents and facility personnel. Policies and procedures shall include guidelines for at least the following:

(a) The use, cleaning, and care of equipment;

(b) Assessing the proper use of housekeeping and cleaning supplies;

(c) Evaluating the effectiveness of cleaning; and

(d) The role of the facility staff in maintaining a clean environment.

(2) A laundry service shall be provided by a Level I or Level II PRTF or through contractual agreement.

(3) Pest control shall be provided by a Level I or Level II PRTF or through contractual agreement.

Section 17.[46-] Infection Control. (1) Because infections acquired in a Level I or Level II PRTF or brought into a Level I or Level II PRTF from the community are potential hazards for all persons having contact with the facility, there shall be an infection control program developed to prevent, identify, and control infections.

(2) Written policies and procedures pertaining to the operation of the infection control program shall be established, reviewed at least annually, and revised as necessary.

(3) A practical system shall be developed for reporting, evaluating, and maintaining records of infections among residents and personnel.

(4) The system shall include assignment of responsibility for the ongoing collection and analysis of data, as well as for the implementation of required follow-up actions.

(5) Corrective actions shall be taken on the basis of records and reports of infections and infection potentials among residents and personnel and shall be documented.

(6) All new employees shall be instructed in the importance of infection control and personal hygiene and in their responsibility in the infection control program.

(7) A Level I or Level II PRTF shall document that in-service education in infection prevention and control is provided for all services and program components.

Section 18.[47-] Tuberculosis Testing Requirements. (1) Induration Measurements. The diameter of the firm area shall be measured transversely to the nearest millimeter to gauge the degree of reaction, and the result shall be recorded in millimeters.

(a) A reaction of ten (10) millimeters or more of induration shall be considered highly indicative of tuberculosis infection in a healthcare setting.

(b) A reaction of five (5) millimeters or more of induration may be significant in certain individuals, including HIV-infected persons, persons with immunosuppression, or recent contacts of persons with active TB disease.

(2) Tuberculosis (TB) disease.

(a) A person shall be diagnosed as having tuberculosis (TB) disease if the infection has progressed to causing clinical (manifesting signs or symptoms) or subclinical (early stage of disease in which signs or symptoms are not present, but other indications of disease activity are present, including radiographic abnormalities) illness.

1. Tuberculosis that is found in the lungs shall be called pulmonary TB and may be infectious.

2. Tuberculosis that occurs at a body site outside the lungs shall be called extra pulmonary disease and may be infectious in rare circumstances.

(b) If the only clinical finding is specific chest radiographic abnormalities, the condition shall be termed "inactive TB" and may be differentiated from active TB disease, which shall be accompanied by symptoms or other indications of disease activity, including the ability to culture reproducing TB organisms from respiratory secretions or specific chest radiographic finding.

(3)(a) A TST conversion shall have occurred if there is a greater than ten (10) millimeters increase in the size of the TST induration during a two (2) year period in:

1. A health care worker with a documented negative (<10 mm) baseline two (2) step TST result; or

2. A person who is not a health care worker with a negative (<10 mm) TST result within two (2) years.

(b) A TST conversion shall be presumptive evidence of new M. tuberculosis infection and poses an increased risk for progression to TB disease.

Section 19.[48-] Admission of Residents under Treatment for Pulmonary Tuberculosis Disease. (1) A Level I or Level II PRTF shall not admit a person under medical treatment for pulmonary tuberculosis disease unless the person is declared noninfectious by a licensed physician in conjunction with the local or state health department.

(2) Documentation of noninfectious status shall include:

(a) Documented TB disease treatment with multi-drug therapy for at least two (2) weeks;

(b) Documentation of clinical improvement on therapy;

(c) Three (3) consecutive sputum smears negative for acid-fast bacilli within the one (1) month period prior to admission; or

(d) Three (3) negative sputum cultures for TB.

Section 20.[49-] Tuberculin Skin Tests or BAMTs of Residents. (1) For residents entering a facility, a TST or BAMT shall not be required if one (1) of the following is documented:

(a) A previously documented TST has shown ten (10) or more millimeters of induration;

(b) A previously documented TST has shown five (5) or more

millimeters of induration for a resident who has medical reasons (HIV-infected persons, immunosuppression, or recent contact with a person with active TB disease) for his or her TST result to be interpreted as positive;

(c) A positive BAMT;

(d) The resident is currently receiving or has completed treatment of LTBI with nine (9) months of isoniazid or four (4) months of rifampin, or has completed a course of multiple-drug therapy for active TB disease; or

(e) The resident can document that he or she has had a TST or BAMT within three (3) months prior to admission and has previously been in a serial testing program at a medical facility.

(2)(a) If a resident does not meet the criteria of subsection (1) of this section, a TST or a BAMT shall be required upon admission to the Level I or Level II facility.

(b)1. A TST shall be required for residents less than five (5) years of age.

2. A TST result of five (5) or more millimeters of induration may be positive for those residents who have medical reasons (HIV-infected persons, immunosuppression, or recent contact with a person with active TB disease) for his or her TST result to be interpreted as positive.

3. For a resident without medical reasons as identified in subparagraph 2. of this paragraph whose initial TST shows less than ten (10) millimeters of induration, two-step TSTs shall be required for:

a. A resident age fourteen (14) years and older; or

b. A resident expected to stay longer than twelve (12) months unless the resident is able to document that he or she has had a TST within one (1) year prior to initial testing upon admission to the facility.

(3)(a) The TST result of each resident shall be documented through recording of the date and millimeters of induration of the most recent skin test in the medical record.

(b) The medical record shall be labeled in a conspicuous manner (e.g. Problem Summary or Care Plan) with the notation "TST Positive" for each resident with a reaction of ten (10) or more millimeters of induration and for each resident with a reaction of five (5) or more millimeters of induration who has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for that TST result to be interpreted as positive.

(4)(a) If performed and the result is positive or negative, only one (1) BAMT result shall be required on admission.

(b) A second BAMT shall be performed if the BAMT result is borderline or indeterminate.

(c) If a resident has a positive BAMT, the medical record shall be labeled in a conspicuous manner (e.g. Problem Summary or Care Plan) with the notation "BAMT Positive."

Section 21.[20.] Medical Evaluations and Chest X-rays of Residents. (1) A resident shall receive a medical evaluation, which may include an HIV test, if the resident is found at the time of admission to have a:

(a) TST of ten (10) or more millimeters of induration;

(b) TST result of five (5) or more millimeters of induration if the resident has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for that TST result to be interpreted as positive; or

(c) Positive BAMT.

(d) A chest x-ray shall be performed unless a chest x-ray done within two (2) months prior to admission showed no evidence of tuberculosis disease.

(2)(a) A resident who meets the criteria listed in subsection (1) of this section and who has no clinical evidence of active TB disease upon evaluation by a licensed physician and a negative chest x-ray shall be offered treatment for LTBI unless there is a medical contraindication.

(b) A resident who refuses treatment for LTBI or who has a medical contraindication shall be monitored according to the requirements established in Section 22[24] of this administrative regulation.

(3) A resident with an abnormal chest x-ray, consistent with TB

disease, shall be:

(a) Evaluated for active tuberculosis disease; and

(b) If the resident is diagnosed with active tuberculosis disease, transferred to a facility with an airborne infection isolation (All) room and started on multi-drug antituberculosis treatment that is administered by DOT.

Section 22.[24.] Monitoring of Residents with a Positive TST, a Positive BAMT, a TST Conversion, or a BAMT Conversion. (1) A resident shall be monitored for development of pulmonary symptoms, including cough, sputum production, or chest pain, if the resident has a:

(a) TST result with ten (10) or more millimeters of induration;

(b) TST result of five (5) or more millimeters of induration if the resident has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for that TST result to be interpreted as positive;

(c) Positive BAMT;

(d) TST conversion; or

(e) BAMT conversion.

(2) If pulmonary symptoms, including cough, sputum production, or chest pain, develop and persist for three (3) weeks or longer:

(a) The resident shall have a medical evaluation;

(b) A chest x-ray shall be taken; and

(c) Three (3) sputum samples shall be submitted to the Division of Laboratory Services, Department for Public Health, Frankfort, Kentucky, for tuberculosis culture and smear.

(3) A resident with suspected or active TB disease shall be transferred to a facility with an All room and started on multi-drug antituberculosis treatment that is administered by DOT.

Section 23.[22.] Monitoring of Residents with a Negative TST or a Negative BAMT who are Residents Longer than One (1) Year.

(1) Annual testing shall be required on or before the anniversary of the resident's last TST or BAMT.

(2) A TST shall be required for residents less than five (5) years of age.

(3) If pulmonary symptoms develop and persist for three (3) weeks or more:

(a) The resident shall have a medical evaluation;

(b) The tuberculin skin test shall be repeated;

(c) Three (3) sputum samples shall be submitted to the Division of Laboratory Services, Department for Health Services, Frankfort, Kentucky for tuberculosis culture and smear; and

(d) A chest x-ray shall be taken.

(4) A resident with suspected or active TB disease shall be transferred to a facility with an All room and started on multi-drug antituberculosis treatment that is administered by DOT.

Section 24.[23.] Tuberculin Skin Tests or BAMTs for Staff. (1) The TST or BAMT status of all PRTF facility staff members who have direct contact with residents shall be documented in the employee's health record.

(2) A TST or BAMT shall be initiated on each new staff member who has direct contact with residents before or during the first week of employment, and the results shall be documented in the employee's health record within the first month of employment.

(3) A TST or BAMT shall not be required at the time of initial employment if the employee documents one of the following:

(a) A prior TST of ten (10) or more millimeters of induration;

(b) A prior TST of five (5) or more millimeters of induration if the employee has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for his or her TST result to be interpreted as positive;

(c) A positive BAMT;

(d) A TST conversion;

(e) A BAMT conversion; or

(f) The employee is currently receiving or has completed treatment for LTBI.

(4)(a) If performed and the result is positive or negative, one

(1) BAMT test result shall be required on initial employment.

(b) A second BAMT shall be performed if the BAMT result is

borderline or indeterminate.

(5) A TST result of five (5) or more millimeters of induration may be positive for a new employee who has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for his or her TST result to be interpreted as positive.

(6) A two-step TST shall be required for a new employee who does not have a medical reason as described in subsection (5) of this section and whose initial TST shows less than ten (10) millimeters of induration, unless the individual documents that he or she has had a TST within one (1) year prior to his or her current employment.

(7) A staff member who has never had a TST of ten (10) or more millimeters induration or a positive BAMT shall have a TST or BAMT annually on or before the anniversary of his or her last TST or BAMT.

Section 25.[24:] Medical Evaluations and Chest X-rays and Monitoring of Staff with a Positive TST, a Positive BAMT, a TST Conversion, or a BAMT Conversion. (1) At the time of initial employment testing or annual testing, a staff member who has direct contact with residents shall have a medical evaluation, which may include an HIV test, if the staff member is found to have a:

(a) TST of ten (10) or more millimeters induration;

(b) TST result of five (5) or more millimeters of induration if the staff member has a medical reason (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for his or her TST result to be interpreted as positive;

(c) Positive BAMT;

(d) TST conversion; or

(e) BAMT conversion.

(2) A chest x-ray shall be performed unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis disease.

(3)(a) A staff member with a negative chest x-ray shall be offered treatment for LTBI unless there is a medical contraindication.

(b) A staff member who refuses treatment for LTBI or who has a medical contraindication shall be monitored according to the requirements established in Section 28[27] of this administrative regulation.

(4)(a) A staff member with an abnormal chest x-ray shall be evaluated for active tuberculosis disease, and three (3) sputum samples shall be submitted to the Division of Laboratory Services, Department for Public Health, Frankfort, Kentucky, for tuberculosis culture and smear.

(b) A staff member shall remain off work until cleared as being noninfectious for TB by a licensed physician.

(c) A staff member whose medical evaluation and laboratory tests are suspect for active tuberculosis disease shall be isolated (e.g. in an All room or in home isolation) and started on four (4) drug antituberculosis treatment that is administered by DOT.

(5)(a) A staff member under treatment for pulmonary tuberculosis disease may return to work in the facility after being declared noninfectious by a licensed physician in conjunction with the local or state health department.

(b) Documentation of noninfectious status shall include:

1. Documented TB disease treatment with multi-drug therapy for at least two (2) weeks;

2. Documentation of clinical improvement on therapy;

3. Three (3) consecutive sputum smears negative for acid-fast bacilli within the month prior to the employee's anticipated return to work; or

4. Three (3) negative sputum cultures for TB.

Section 26.[25:] Responsibility for Screening and Monitoring Requirements. (1) The program director or clinical director of the facility shall be responsible for ensuring that all TSTs, BAMTs, chest x-rays and sputum samples submissions are done in accordance with Sections 18 through 28[17 through 27] of this administrative regulation.

(2) If a facility does not employ licensed professional staff with the technical training to carry out the screening and monitoring

requirements, the program director or clinical director shall arrange for professional assistance from the local health department.

(3)(a) Dates of all TSTs or BAMTs and results, all chest x-ray reports and all sputum sample culture and smear results for residents shall be recorded as a permanent part of the resident's medical record and be summarized on the individual's transfer form if an interfacility transfer occurs.

(b) The TST or BAMT status of all staff members and any TB related chest x-ray reports shall be documented in the employee's health record.

Section 27.[26:] Reporting to Local Health Departments. The following shall be reported to the local health department having jurisdiction by the program director or clinical director of the facility immediately upon becoming known:

(1) All residents and staff who have a TST of ten (10) millimeters or more induration;

(2) A TST result of five (5) or more millimeters of induration for all residents or staff who have medical reasons (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for their TST result to be interpreted as positive;

(3) A positive BAMT at the time of admission of a resident or employment of a staff member who has direct contact with residents;

(4) TST conversions or BAMT conversions on serial testing or identified in a contact investigation;

(5) Chest x-rays which are suspicious for TB disease;

(6) Sputum smears positive for acid-fast bacilli;

(7) Sputum cultures positive for Mycobacterium tuberculosis; or

(8) The initiation of multi-drug antituberculosis treatment.

Section 28.[27:] Treatment for LTBI. (1) A resident or staff member with a TST conversion or a BAMT conversion shall be considered to be recently infected with Mycobacterium tuberculosis.

(2) Recently infected persons shall have a medical evaluation, which may include an HIV test, and shall include a chest x-ray.

(3)(a) Individuals who meet the criteria listed in subsection (1) of this section and have no signs or symptoms of tuberculosis disease by medical evaluation or chest x-ray shall be offered treatment for LTBI with isoniazid for nine (9) months or rifampin for four (4) months, in collaboration with the local health department, unless medically contraindicated as determined by a licensed physician.

(b) Medications shall be administered to residents upon the written order of a physician and shall be given by DOPT.

(4)(a) If a resident or staff member refuses treatment for LTBI or has a medical contraindication, the individual shall be advised of the clinical symptoms of active TB disease, and have an interval medical history for clinical symptoms of active TB disease every six (6) months during the two (2) years following conversion.

(b) A resident less than five (5) years of age who has a status change on admission to the facility or on annual testing shall be seen and monitored by a pediatrician.

(c) A resident or staff member who has a TST result of ten (10) millimeters or more induration or a positive BAMT at the time of admission of the resident or employment of the staff member shall be offered treatment for LTBI.

(d) A resident or staff member who has a TST result of five (5) or more millimeters of induration at the time of admission or employment and who has medical reasons (e.g. HIV-infected persons, immunosuppression, or recent contacts of persons with active TB disease) for his or her TST result to be interpreted as positive shall be offered treatment for LTBI.

(e) If a resident or staff member refuses treatment for LTBI detected on admission or employment or has a medical contraindication, the individual shall be educated about the clinical symptoms of active TB disease, and have an interval medical history for symptoms of active TB disease every six (6) months during the two (2) years following admission or employment. The education shall be documented in either the resident's medical record or the employee's health record.

(5) A resident who stays longer than one (1) year in the facility

or staff member who documents completion of treatment for LTBI shall:

(a) Be exempt from further requirements for TSTs or BAMTs; and

(b) Receive education on the symptoms of active TB disease during his or her annual tuberculosis risk assessment and any other monitoring in accordance with Sections 21 or 26~~[20 or 25]~~, or this section of this administrative regulation.

MARYELLEN B. MYNEAR, Inspector General

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 9, 2015

FILED WITH LRC: April 10, 2015 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 22, 2015 at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2015, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business June 1, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for licensure as a Level I or Level II psychiatric residential treatment facility (PRTF).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum requirements for licensure as a Level I or Level II PRTF.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health 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 the minimum requirements for licensure as a Level I or Level II PRTF.

(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: Under this amendment, a Level I or Level II PRTF may provide designated outpatient behavioral health services, thereby expanding the scope of services which may be provided under the facility's existing license and increasing access to outpatient behavioral health services.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to expand the scope of services which may be provided under the license of a Level I or Level II PRTF.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing requirements for the

operation of Level I and Level II PRTFs.

(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 expanding the scope of services which may be provided under the license of a Level I or Level II PRTF.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently twenty-two (22) licensed PRTFs.

(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: PRTFs may provide designated outpatient behavioral health services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The provision of designated outpatient behavioral health services described in Section 14 of this administrative regulation is optional.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): PRTFs may receive Medicaid reimbursement for outpatient behavioral health services provided to Medicaid recipients. Additionally, the expansion in the scope of outpatient behavioral health services which may be provided will improve access to care for the treatment of substance use disorders, mental health disorders, or co-occurring disorders.

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

(a) Initially: The cost of implementing the amendment of this administrative regulation is expected to be absorbable.

(b) On a continuing basis: The cost of implementing this administrative regulation is expected to be absorbable.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation will be from agency and state general funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities who elect to be regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation establishes standards for the licensure of Level I and Level II PRTFs.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function.

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

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

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

(c) How much will it cost to administer this program for the first year? The cost of implementing this administrative regulation is expected to be absorbable.

(d) How much will it cost to administer this program for subsequent years? The cost of implementing this administrative regulation is expected to be absorbable.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 45:110 Permits and fees for retail food establishments, food manufacturing plants, food storage warehouses, salvage processors and distributors, vending machine companies, and[seasonal] restricted food concessions.

RELATES TO: KRS 217.025, 217.035, 217.037, 217.125, 217.811[; 2000 Ky. Acts ch. 549, part I.A. 41]

STATUTORY AUTHORITY: KRS 217.125(2)[194A.050, 217.125(1), 2000 Ky. Acts ch. 549, part I.A. 41]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125(2) authorizes[; 217.811 and 2000 Ky. Acts ch. 549, part I.A. 41 authorize] the Secretary of the Cabinet for Health and Family Services to provide by administrative regulation a schedule of reasonable fees to be paid by food manufacturing plants, food storage warehouses, retail food establishments, salvage distributors, salvage processing plants, vending machine companies, and [seasonal] restricted food concessions for permits to operate and for inspection activities carried out by the Cabinet for Health and Family Services. This administrative regulation establishes the schedule of fees.

Section 1. Fees. (1) A permit fee shall be required for inspections conducted by the cabinet or the local health department to determine compliance with:

(a) 902 KAR 45:080 for a salvage distributor or a salvage processing plant; or

(b) KRS 217.025, 217.035, and 217.037 for a food manufacturing plant or food storage warehouse.

(2) A fee for the inspection of an establishment identified in subsection (1)(a) or (b) of this section shall be assessed according to the total square footage of the establishment:

(a) Zero - 1,000 square feet - \$120;

(b) 1,001 - 5,000 square feet - \$160;

(c) 5,001 - 20,000 square feet - \$200;

(d) 20,001 - 40,000 square feet - \$300;

(e) 40,001 - 80,000 square feet - \$400;

(f) 80,001 - 150,000 square feet - \$500; or

(g) 150,001 or more square feet - \$600.

(3) A fee shall be assessed for inspection of a retail food store conducted by the cabinet or local health department to determine compliance with the provisions of KRS 217.025, 217.035, 217.037, and 217.125(2) pertaining to:

(a) Adulteration;

(b) Misbranding;

(c) Packaging; or

(d) Labeling of food products.

(4) A fee for the inspection of a retail food store shall be assessed according to the total square footage of the establishment:

(a) Zero - 1,000 square feet - seventy-five (75) dollars;

(b) 1,001 - 10,000 square feet - \$125;

(c) 10,001 - 20,000 square feet - \$175;

(d) 20,001 - 30,000 square feet - \$200; or

(e) 30,001 or more square feet - \$300.

(5) An application for a permit to operate a mobile retail food store shall be accompanied by an annual fee of fifty (50) dollars.

(6) An application for a permit to operate a vending machine company shall be accompanied by an annual fee:

(a) Of ten (10) dollars; and

(b) For the total number of vending machines operated by the applicant:

1. One (1) - twenty-five (25) machines - fifty (50) dollars;

2. Twenty-six (26) - fifty (50) machines - seventy-five (75) dollars;

3. Fifty-one (51) - 100 machines - \$100;

4. 101 - 150 machines - \$125; or

5. 151 and over machines - \$200.

(7) An application for a permit to operate a permanent food service establishment shall be accompanied by an annual fee of \$100, plus the following fee if applicable:

(a) Fee for the number of seats:

1. One (1) to twenty-five (25) seats - sixty (60) dollars;

2. Twenty-six (26) to fifty (50) seats - \$100;

3. Fifty-one (51) to 100 seats - \$125;

4. 101 to 200 seats - \$150; or

5. 201 or more seats - \$175;

(b) Drive-through window - \$125; and

(c) Catering operation - \$110.

(8) An application for a permit to operate a statewide mobile food unit shall be accompanied by an annual fee of \$160.

(9) An application for a permit to operate a temporary food service establishment shall be accompanied by a fee according to the length of the event:

(a) One (1) to three (3) day event - fifty (50) dollars;

(b) Four (4) to seven (7) day event - seventy-five (75) dollars;

or

(c) Eight (8) to fourteen (14) day event - \$100.

(10) An application for a permit to operate a restricted food concession or mobile restricted food concession shall be accompanied by an annual fee of \$100.

(11) A request for a certificate of free sale or export authorizing a Kentucky food manufacturing plant holding a valid permit to operate to export a product outside of the United States shall be accompanied by a service fee of ten (10) dollars for each certificate requested.

Section 2. Payment of Fees. (1) Fees shall be made payable to the local health department having jurisdiction by a:

(a) Retail food store;

(b) Mobile retail food store;

(c) Vending machine company and commissary;

(d) Mobile food unit;

(e) Temporary food establishment;

(f) Salvage distributor;

(g) Restricted food concession; or

(h) Food service establishment.

(2) Fees shall be made payable to the Kentucky State Treasurer and forwarded to the Kentucky Department for Public Health by a:

(a) Food manufacturing plant;

(b) Salvage processing plant;

(c) Food storage warehouse; or

(d) Food manufacturing plants requesting a certificate for free sale or export{(a) A permit fee is required for inspections conducted by the cabinet or its representatives to determine compliance with:

1. Administrative regulations for salvage distributors and salvage processing plants; and

2. KRS 217.025, 217.035, and 217.037 for food manufacturing plants and food storage warehouses.

(b) A fee shall be assessed according to the total square footage of the establishment, as follows:

1. 0 – 1,000 square feet – seventy-five (75) dollars;
2. 1,001 – 5,000 square feet – eighty-five (85) dollars;
3. 5,001 – 30,000 square feet – \$147;
4. 30,001 – 40,000 square feet – \$275; or
5. 40,001 or more square feet – \$290.

(2)(a) A fee shall be assessed for inspections of retail food stores, conducted by the cabinet or its representative to determine compliance with administrative regulations pursuant to KRS 217.025, 217.035, 217.037, and 217.125(2) pertaining to:

1. Adulteration;
2. Misbranding;
3. Packaging; and
4. Labeling of food products.

(b) A fee shall be assessed according to the total square footage of the establishment, as follows:

1. 0 – 1,000 square feet – twenty-seven (27) dollars;
2. 1,001 – 10,000 square feet – fifty-three (53) dollars;
3. 10,001 – 20,000 square feet – ninety (90) dollars;
4. 20,001 – 30,000 square feet – ninety-five (95) dollars; or
5. 30,001 or more square feet – \$100.

(c) An application for a permit to operate a mobile retail food store shall be accompanied by a fee of twenty-seven (27) dollars.

(3) An application for a permit to operate a vending machine company shall be accompanied by a fee of twenty-seven (27) dollars for each vending commissary plus a fee for the total number of vending machines operated by the applicant as follows:

- (a) One (1) – twenty-five (25) machines – \$107;
- (b) Twenty-six (27) – fifty (50) machines – \$160;
- (c) Fifty-one (51) – 100 machines – \$213;
- (d) 101-150 machines – \$253; or
- (e) 151 and over machines – \$414.

(4) An application for a permit to operate a food service establishment shall be accompanied by a fee of sixty (60) dollars plus the following fees, if applicable:

(a) For a permanent food service establishment, according to the number of seats, as follows:

1. Zero to twenty-five (25) seats – sixty (60) dollars annually;
2. Twenty-six (26) to fifty (50) seats – ninety (90) dollars annually;
3. Fifty-one (51) to 100 seats – ninety-five (95) dollars annually;
4. 101 to 200 seats – \$100 annually;
5. 201 or more seats – \$105 annually;
- (b) Drive-through window – \$125 per year;
- (c) Catering operation – \$110 per year; or
- (d) Mobile food unit – \$120 per year.

(5) An application for a permit to operate a temporary food service establishment shall be accompanied by a fee according to the length of the event, as follows:

- (a) One (1) to three (3) day event – twenty-five (25) dollars;
- (b) Four (4) to fourteen (14) day event – thirty (30) dollars.

(6) An application for a permit to operate a seasonal restricted food concession within a local health department jurisdiction shall be accompanied by a fee of thirty-three (33) dollars.

Section 2. Payment of Fees. Payment of fees shall be made to the local health department having jurisdiction. Fees received by a local health department shall be deposited in the Kentucky State Treasury].

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 9, 2015

FILED WITH LRC: April 10, 2015 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on May 22, 2015, at 9:00 a.m., in the Cabinet for Health and Family Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2015, 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 until close of business, June 1, 2015. 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 40602, phone 502-564-7905, fax 502-564-7573, tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: The function of this administrative regulation is to establish fees for retail food establishments, food manufacturing plants, food storage warehouses, salvage processors and distributors, vending machine companies, restricted food concessions, and requests for certificates of free sale.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the fees necessary to help support the department costs for permitting and inspecting food manufacturing plants, food storage warehouses, retail food establishments, salvage distributors, salvage processing plants, vending machine companies, and restricted food concessions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 217.125(2) authorizes the Secretary to establish a fee schedule necessary for the operation of the food permitting and inspection programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation will assist with addressing the cost to administer food permitting and inspection 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 increases the fees associated with a permit to operate and establishes a service fee for issuance of certificates for free sale or export.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to offset the cost of administering this program, which currently operates at \$11 million. The current fees only provide for \$3.6 million of that amount, with the rest being supported by local taxes from local health departments. This fee schedule was last amended in 2001. The Cabinet is also implementing a ten (10) dollar fee for each certificate of free sale requested and issued to cover the administrative costs involved.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 217.125(2) authorizes the Secretary to establish fees to operate the programs covered under Chapter 217. This amendment raises fees in order to cover the cost of operating this permitting and inspection program. These fees have not been increased since 2001 and this program is currently being maintained at a deficit.

(d) How the amendment will assist in the effective administration of the statutes: This amendment increases the fees to pay for the Cabinet's cost to implement the inspection and permitting programs required by statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 21,000 food establishments regulated under this regulation and 1,300 food manufacturing entities will be affected by this amendment. In addition, the Department for Public Health, Food Safety Branch issued 1,433 certificates for free sale or export during FY 2013, for multiple food manufacturing entities wishing to export product out of the country.

(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 permitted entities will be required to pay an increased fee for their permits to operate and food manufacturing plants requesting certificates for free sale or export will pay ten (10) dollars per certificate.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Manufacturing entities will be paying fees based on their establishment square footage. Permit fees will increase for all facilities, with two additional categories added for the largest firms over 80,000 square foot in size. The increases range from \$45 dollar increase for the smallest firms up to \$300 for the largest firms that have been moved to another category. The top fee previously was \$290 dollars and included all establishments ranging from 40,000 square foot or larger. Because the size of the firm is a significant factor in the time required to complete inspection, retail food establishments will be charged based on their square footage and on the number of seats. Small retailers will increase from an annual fee of \$27 to \$75 dollars, an increase of \$48. Large retailers, over 30,000 square feet, will be raised to \$300 (from \$100), because again the size and complexity of the operation increases the inspection time. Food service operations will all be asked to pay an additional \$40 on their annual permit fee taking it from \$60 to \$100 and, depending on the number of seats, the seating fee will result in an additional, generally minimal, increase. The smallest restaurants will pay the added \$40 for the permit; the seating fee will remain the same for those entities. The next group of restaurants will pay an additional \$10 for seating of 26 to 50; and additional \$30 dollars for 51 to 100 seats; and a maximum increase of \$75 dollars for those restaurants having 201 or more seats. The statewide mobile food unit has been raised to be equal to the smallest restaurant sizing for equity. Additional permitting tiers have been added to temporary food permits to allow for better monitoring of lengthy events of eight or more days. Temporary fees were increased \$25 for the smallest operations up to a maximum of \$100 for an eight or more day event. Venues such as the state fair and other high-profile events often require frequent monitoring to control and monitor food quality adding to the cost for delivery of these services. Current rates have not kept pace with the cost of these services. The number of entities impacted by the new fee schedule varies and is hard to calculate, although we have estimated that the proposed increases would generate an additional 1.3 million dollars in revenue.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky entities in (3) currently pay a fee to operate. This fee pays for inspections to monitor their compliance with state and federal laws. This oversight provides regulated entities some measure of liability protection and helps insure that their customers are protected from unsafe food products. The service fee for the certificate for free sale or export is new. This service allows major manufacturing companies wishing to market their products outside of the country to be issued a certificate that confirms their compliance with federal and state manufacturing standards. This certificate is required by foreign countries before they allow entry. This fee merely covers the cost of administering the certificate program. Last year, the state issued 1,433 certificates of free sale which allowed these companies to expand their product sales beyond the USA. This newly added fee will cover the required notary for administration of the certificates as well as the cost of mailing and printing the certificates.

(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 initially.

(b) On a continuing basis: There are no additional costs on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds received from the fees will continue to be used to implement and enforce this administrative regulation and offset the cost for issuance of the certificates for free sale or export.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: The purpose of this administrative regulation is to increase established permit fees. This is an administrative amendment to nominally increase those established fees and establish a service fee for issuance of certificates for free sale or export. The fees generated by this program have historically been used to support the program financially. However, the program is operating at a deficit of over \$7 million, thereby requiring an increase in fees for the program to sustain itself.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. Yes, the purpose of this amended administrative regulation is to nominally increase the permit to operate fees and establish a service fee for the issuance of certificates for free sale or export to help support the cost of administering this program.

(9) TIERING: Is tiering applied? Yes. Smaller entities required to comply with this regulation pay a smaller fee in some instances. Food manufacturing plants and warehouses and retail food stores pay a permit fee based on the total square footage of the establishment. Vending machine companies with fewer vending machines pay a lesser permit fee. Permanent food service establishments pay a fee based on the number of seats in the establishment and temporary food service establishments pay a fee based on the length of the event they are servicing.

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 amended regulation impacts the Department for Public Health, Division of Public Health Protection and Safety, Food Safety Branch and all local health departments.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by this administrative regulation: KRS 217.125(2).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will generate revenue of approximately \$1.3 million statewide 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 revenue of approximately \$1.3 million for each subsequent year.

(c) How much will it cost to administer this program for the first year? The program currently costs approximately \$11 million, while only providing \$3.6 million in fees. There will not be an added expense to operate the program. This amendment will help to decrease the deficit under which the program currently operates.

(d) How much will it cost to administer this program for subsequent years? The program currently costs approximately \$11 million, while only providing \$3.6 million in fees. There will not be an added expense to operate the program. This amendment will help to decrease the deficit under which the program currently operates.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

907 KAR 9:005. Non-outpatient level I and II psychiatric residential treatment facility service and coverage policies.

RELATES TO: KRS 205.520, 216B.450, 216B.455, 216B.459
 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 440.160, 42 U.S.C. 1396a-d

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 Medicaid program coverage policies regarding Level I and Level II psychiatric residential treatment facility services that are not provided on an outpatient basis.

Section 1. Definitions. (1) "Active treatment" means a covered Level I or II psychiatric residential treatment facility service provided:

(a) In accordance with an individual plan of care as specified in 42 C.F.R. 441.154; and

(b) By an individual employed or contracted by a Level I or II PRTF including a:

1. Qualified mental health personnel;
2. Qualified mental health professional;
3. Mental health associate; or
4. Direct care staff person.

(2) "Acute care hospital" is defined by KRS 205.639(1).

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

(4) "Behavioral health professional" means:

(a) A psychiatrist;

(b) A physician licensed in Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties;

(c) A licensed psychologist~~[licensed and practicing in accordance with KRS 319.050];~~

(d) A~~[certified psychologist with autonomous functioning or] licensed psychological practitioner[certified and practicing in accordance with KRS 319.056];~~

(e) A licensed clinical social worker~~[licensed and practicing in accordance with KRS 335.400];~~

(f) An advanced practice registered nurse~~[licensed and practicing in accordance with KRS 314.042];~~

(g) A licensed marriage and family therapist~~[licensed and practicing in accordance with KRS 335.300];~~

(h) A licensed professional clinical counselor~~[licensed and practicing in accordance with KRS 335.500];~~

(i) A licensed professional art therapist certified and practicing in accordance with KRS 309.130;~~[or]~~

(j) A licensed clinical~~[An]~~ alcohol and drug counselor contingent and effective upon approval by the Centers for Medicare and Medicaid Services; or

(k) A certified psychologist with autonomous functioning~~[certified and practicing in accordance with KRS 309.080 to 309.089].~~

(5)~~[(4)]~~ "Behavioral health professional under clinical supervision" means:

(a) A certified psychologist~~[certified and practicing in accordance with KRS 319.056];~~

(b) A licensed psychological associate~~[licensed and practicing in accordance with KRS 319.064];~~

(c) A marriage and family therapy~~[therapist]~~ associate ~~[permitted and practicing in accordance with KRS 335.300];~~

(d) A certified social worker~~[certified and practicing in accordance with KRS 335.080]; [or]~~

(e) A licensed professional counselor associate;

~~(f) A licensed professional art therapist associate; or~~

~~(g) A licensed clinical alcohol and drug counselor associate contingent and effective upon approval by the Centers for Medicare and Medicaid Services[licensed and practicing in accordance with KRS 335.500].~~

~~(6) "Certified alcohol and drug counselor" means an individual who meets the requirements established in KRS 309.083.~~

~~(7) "Certified psychologist" means an individual who is recognized as a certified psychologist in accordance with 201 KAR Chapter 26.~~

~~(8) "Certified psychologist with autonomous functioning" means an individual who is a certified psychologist with autonomous functioning pursuant to KRS 319.056.~~

~~(7) "Certified social worker" means an individual who meets the requirements established in KRS 335.080.~~

~~(8)~~[(5)]~~ "Child with a severe emotional disability" is defined by KRS 200.503(2).~~

~~(9)~~[(6)]~~ "Department" means the Department for Medicaid Services or its designee.~~

~~(10)~~[(7)]~~ "Diagnostic and assessment services" means at least one (1) face-to-face specialty evaluation or specialty evaluation performed via telemedicine of a recipient's medical, social, and psychiatric status provided by a physician or qualified mental health professional that shall:~~

~~(a) Include:~~

- ~~1. Interviewing and evaluating; or~~
- ~~2. Testing;~~

~~(b) Be documented and record all contact with the recipient and other interviewed individuals; and~~

~~(c) Result in a:~~

~~1. Medical data code in accordance with 45 C.F.R. 162.1000; and~~

~~2. Specific treatment recommendation.~~

~~(11) "Enrollee" means a recipient who is enrolled with a managed care organization.~~

~~(12)~~[(8)]~~ "Federal financial participation" is defined by 42 C.F.R. 400.203.~~

~~(13)~~[(9)]~~ "Intensive treatment services" means a program:~~

~~(a) For a child:~~

- ~~1. With a severe emotional disability; and~~
- ~~a. An intellectual disability;~~
- ~~b. A severe and persistent aggressive behavior;~~
- ~~c. Sexually acting out behavior; or~~
- ~~d. A developmental disability;~~

~~2. Who requires a treatment-oriented residential environment; and~~

~~3. Between the ages of four (4) to twenty-one (21) years; and~~

~~(b) That provides psychiatric and behavioral health services two (2) or more times per week to a child referenced in paragraph (a) of this subsection:~~

~~1. As indicated by the child's psychiatric and behavioral health needs; and~~

~~2. In accordance with the child's therapeutic plan of care.~~

~~(14)~~[(40)]~~ "Interdisciplinary team" means:~~

~~(a) For a recipient who is under the age of eighteen (18) years:~~

- ~~1. A parent, legal guardian, or caregiver of the recipient;~~
- ~~2. The recipient;~~
- ~~3. A qualified mental health professional; and~~
- ~~4. A staff person, if available, who worked with the recipient during the recipient's most recent placement if the recipient has previously been in a Level I or II PRTF; or~~

~~(b) For a recipient who is eighteen (18) years of age or older:~~

- ~~1. The recipient;~~
- ~~2. A qualified mental health professional; and~~
- ~~3. A staff person, if available, who worked with the recipient during the recipient's most recent placement if the recipient has previously been in a Level I or II PRTF.~~

~~(15)~~[(44)]~~ "Level I PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(a).~~

~~(16)~~[(42)]~~ "Level II PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(b).~~

(17) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).

(18) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).

(19) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(20) "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(21) "Licensed professional art therapist" is defined by KRS 309.130(2).

(22) "Licensed professional art therapist associate" is defined by KRS 309.130(3).

(23) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(24) "Licensed professional counselor associate" is defined by KRS 335.500(4).

(25) "Licensed psychological associate" means an individual who:

(a) Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychological associate requirements established in 201 KAR Chapter 26.

(26) "Licensed psychological practitioner" means an individual who meets the requirements established in KRS 319.053.

(27) "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.

(28) "Marriage and family therapy associate" is defined by KRS 335.300(3).

(29)[(43)] "Medicaid payment status" means a circumstance in which:

(a) The person:

1. Is eligible for and receiving Medicaid benefits; and

2. Meets patient status criteria for Level I or II psychiatric residential treatment facility services; and

(b) The facility is billing the Medicaid program for services provided to the person.

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

(31)[(45)] "Mental health associate" means:

(a) 1. An individual with a minimum of a bachelor's degree in a mental health related field;

2. A registered nurse; or

3. A licensed practical nurse with at least one (1) year's experience in a psychiatric inpatient or residential treatment setting for children; or

(b) An individual with:

1. A high school diploma or an equivalence certificate; and

2. At least two (2) years work experience in a psychiatric inpatient or residential treatment setting for children.

(32) "Peer support specialist" means an individual who meets the peer specialist qualifications established in:

(a) 908 KAR 2:220;

(b) 908 KAR 2:230; or

(c) 908 KAR 2:240.

(33)[(46)] "Physician" is defined by KRS 311.550(12).

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

(35)[(47)] "Private psychiatric hospital" is defined by KRS 205.639(2).

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

(37) "Provider abuse" is defined by KRS 205.8451(8).

(38)[(48)] "Psychiatric residential treatment facility" or "PRTF" is defined by KRS 216B.450(5).

(39)[(49)] "Psychiatric services" means:

(a) An initial psychiatric evaluation of a recipient which shall include:

1. A review of the recipient's:

a. Personal history;

b. Family history;

c. Physical health;

d. Prior treatment; and

e. Current treatment;

2. A mental status examination appropriate to the age of the recipient;

3. A meeting with the family or any designated significant person in the recipient's life; and

4. Ordering and reviewing:

a. Laboratory data;

b. Psychological testing results; or

c. Any other ancillary health or mental health examinations;

(b) Development of an initial plan of treatment which shall include:

1. Prescribing and monitoring of psychotropic medications; or

2. Providing and directing therapy to the recipient;

(c) Implementing, assessing, monitoring, or revising the treatment as appropriate to the recipient's psychiatric status;

(d) Providing a subsequent psychiatric evaluation as appropriate to the recipient's psychiatric status;

(e) Consulting, if determined to be necessary by the psychiatrist responsible for providing or overseeing the recipient's psychiatric services, with another physician, an attorney, police, regarding the recipient's care and treatment; or

(f) Ensuring that the psychiatrist responsible for providing or overseeing the recipient's psychiatric services has access to the information referenced in paragraph (e) of this subsection.

(40)[(29)] "Qualified mental health personnel" is defined by KRS 216B.450(6).

(41)[(24)] "Qualified mental health professional" is defined by KRS 216B.450(7).

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

(43) "Recipient abuse" is defined by KRS 205.8451(10).

(44)[(22)] "Review agency" means for a review, evaluation, or authorization decision regarding an individual who is:

(a) Not enrolled with a managed care organization:

1. The department; or

2. An entity under contract with the department; or

(b) Enrolled with a managed care organization:

1. The managed care organization with which the enrollee is enrolled; or

2. An entity under contract with the managed care organization with which the enrollee is enrolled.

(45)[(23)] "State mental hospital" is defined by KRS 205.639(3).

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

(47)[(25)] "Treatment plan" means a plan created for the care and treatment of a recipient that:

(a) Is developed in a face-to-face meeting by the recipient's interdisciplinary team;

(b) Describes a comprehensive, coordinated plan of medically necessary behavioral health services that specifies a modality, frequency, intensity, and duration of services sufficient to maintain the recipient in a PRTF setting; and

(c) Identifies:

1. A program of therapies, activities, interventions, or experiences designed to accomplish the plan;

2. A qualified mental health professional, a mental health associate, or qualified mental health personnel who shall manage the continuity of care;

3. Interventions by caregivers in the PRTF and school setting that support the recipient's ability to be maintained in a PRTF setting;

4. Behavioral, social, and physical problems with interventions and objective, measurable goals;

5. Discharge criteria that specifies the:

a. Recipient-specific behavioral indicators for discharge from the service;

- b. Expected service level that would be required upon discharge; and
- c. Identification of the intended provider to deliver services upon discharge;
- 6. A crisis action plan that progresses through a continuum of care that is designed to reduce or eliminate the necessity of inpatient services;
- 7. A plan for:
 - a. Transition to a lower intensity of services; and
 - b. Discharge from PRTF services;
 - 8. An individual behavior management plan;
 - 9. A plan for the involvement and visitation of the recipient with the birth family, guardian, or other significant person, unless prohibited by a court, including therapeutic off-site visits pursuant to the treatment plan; and
 - 10. Services and planning, beginning at admission, to facilitate the discharge of the recipient to an identified plan for home-based services or a lower level of care.

Section 2. Provider Participation. (1)(a) In order to participate, or continue to participate, in the Kentucky Medicaid Program, a Level I PRTF shall:

- 1. Have a utilization review plan for each recipient consisting of, at a minimum, a pre-admission certification review submitted via telephone or electronically to the review agency prior to admission of the recipient;
- 2. Perform and place in each recipient's record:
 - a. A medical evaluation;
 - b. A social evaluation; and
 - c. A psychiatric evaluation;
- 3. Establish a plan of care for each recipient which shall be placed in the recipient's record;
- 4. Appoint a utilization review committee which shall:
 - a. Oversee and implement the utilization review plan; and
 - b. Evaluate each Medicaid admission and continued stay prior to the expiration of the Medicaid certification period to determine if the admission or stay is or remains medically necessary;
- 5. Comply with staffing requirements established in 902 KAR 20:320;
- 6. Be located in the Commonwealth of Kentucky;
- 7. Maintain accreditation by the Joint Commission on Accreditation of Health Care Organizations or the Council on Accreditation of Services for Families and Children or any other accrediting body with comparable standards that is recognized by the state; and
- 8. Comply with all conditions of Medicaid provider participation established in 907 KAR 1:671 and 907 KAR 1:672.
- (b) In order to participate, or continue to participate, in the Kentucky Medicaid Program, a Level II PRTF shall:
 - 1. Have a utilization review plan for each recipient;
 - 2. Establish a utilization review process which shall evaluate each Medicaid admission and continued stay prior to the expiration of the Medicaid certification period to determine if the admission or stay is or remains medically necessary;
 - 3. Comply with staffing requirements established in 902 KAR 20:320;
 - 4. Be located in the Commonwealth of Kentucky;
 - 5. Maintain accreditation by the Joint Commission on Accreditation of Health Care Organizations or the Council on Accreditation of Services for Families and Children or any other accrediting body with comparable standards that is recognized by the state;
 - 6. Comply with all conditions of Medicaid provider participation established in 907 KAR 1:671 and 907 KAR 1:672;
 - 7. Perform and place in each recipient's record a:
 - a. Medical evaluation;
 - b. Social evaluation; and
 - c. Psychiatric evaluation; and
 - 8. Establish a plan of care for each recipient which shall:
 - a. Address in detail the intensive treatment services to be provided to the recipient; and
 - b. Be placed in the recipient's record.
- (2)(a) A pre-admission certification review for a Level I PRTF

shall:

- 1. Contain:
 - a. The recipient's valid Medicaid identification number;
 - b. For a recipient who is not enrolled with a managed care organization, a valid MAP-569, Certification of Need by Independent Team Psychiatric Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21) which satisfies the requirements of 42 C.F.R. 44.152 and 42 C.F.R. 441.153 for patients age twenty-one (21) and under;
 - c. A DMS-IV R diagnosis on all five (5) axes, except that failure to record an axis IV or V diagnosis shall be used as the basis for a denial only if those diagnoses are critical to establish the need for Level I PRTF treatment;
 - d. A description of the initial treatment plan relating to the admitting symptoms;
 - e. Current symptoms requiring inpatient treatment;
 - f. Information to support the medical necessity and clinical appropriateness of the services or benefits of the admission to a Level I PRTF in accordance with 907 KAR 3:130;
 - g. Medication history;
 - h. Prior hospitalization;
 - i. Prior alternative treatment;
 - j. Appropriate medical, social, and family histories; and
 - k. Proposed aftercare placement;
- 2. Remain in effect for the days certified by the review agency; and
- 3. Be completed within thirty (30) days.
- (b) A pre-admission certification review for a Level II PRTF for a non-emergent admission shall:
 - 1. Contain:
 - a. The recipient's valid Medicaid identification number;
 - b. For a recipient who is not enrolled with a managed care organization, a valid MAP-569, Certification of Need by Independent Team Psychiatric Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21) which satisfies the requirements of 42 C.F.R. 44.152 and 42 C.F.R. 441.153 for patients age twenty-one (21) and under;
 - c. A DSM-IV-R diagnosis on all five (5) axes, except that failure to record an axis IV or V diagnosis shall be used as the basis for a denial only if those diagnoses are critical to establish the need for Level II PRTF treatment;
 - d. A description of the initial treatment plan relating to the admitting symptoms;
 - e. Current symptoms requiring inpatient treatment;
 - f. Information to support the medical necessity and clinical appropriateness of the services or benefits of the admission to a Level II PRTF in accordance with 907 KAR 3:130;
 - g. Medication history;
 - h. Prior hospitalization;
 - i. Prior alternative treatment;
 - j. Appropriate medical, social, and family histories; and
 - k. Proposed aftercare placement;
 - 2. Remain in effect for the days certified by the review agency; and
 - 3. Be completed within thirty (30) days.
- (3) Failure to admit a recipient within the recipient's certification period shall require a new pre-admission certification review request.
- (4) A utilization review plan for an emergency admission to a Level II PRTF shall contain:
 - (a) For a recipient who is not enrolled with a managed care organization, a completed MAP-570, Medicaid Certification of Need for Inpatient Psychiatric Services for Individuals Under Age Twenty-One (21):
 - 1. Completed by the facility's interdisciplinary team; and
 - 2. Placed in the recipient's medical record;
 - (b) Documentation, provided by telephone or electronically to the review agency within two (2) days of the recipient's emergency admission, justifying:
 - 1. The recipient's emergency admission;
 - 2. That ambulatory care resources in the recipient's community and placement in a Level I PRTF do not meet the recipient's needs;

3. That proper treatment of the recipient's psychiatric condition requires services provided by a Level II PRTF under the direction of a physician; and

4. That the services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services are no longer needed;

(c) The recipient's valid Medicaid identification number;

(d) For a recipient who is not enrolled with a managed care organization, a valid MAP-569, Certification of Need by Independent Team Psychiatric Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21) which satisfies the requirements of 42 C.F.R. 441.152 and 42 C.F.R. 441.153 for recipients age twenty-one (21) and under;

(e) A DMS-IV-R diagnosis on all five (5) axes, except that failure to record an axis IV or V diagnosis shall be used as the basis for a denial only if those diagnoses are critical to establish the need for Level II PRTF treatment;

(f) 1. A description of the initial treatment plan relating to the admitting symptom; and

2. As part of the initial treatment plan, a full description of the intensive treatment services to be provided to the recipient;

(g) Current symptoms requiring residential treatment;

(h) Medication history;

(i) Prior hospitalization;

(j) Prior alternative treatment;

(k) Appropriate medical, social, and family histories; and

(l) Proposed aftercare placement.

(5) For an individual who becomes Medicaid eligible after admission and who is not enrolled with a managed care organization, a Level I or II PRTF's interdisciplinary team shall complete a MAP-570, Medicaid Certification of Need for Inpatient Psychiatric Services for Individuals Under Age Twenty-One (21), and the form shall be placed in the recipient's medical record.

(6) For a recipient, a Level I or II PRTF shall maintain medical records that shall:

(a) Be:

1. Current;

2. Readily retrievable;

3. Organized;

4. Complete; and

5. Legible;

(b) Reflect sound medical recordkeeping practice in accordance with:

1. 902 KAR 20:320;

2. KRS 194A.060;

3. KRS 434.840 through 860;

4. KRS 422.317; and

5. 42 C.F.R. 431 Subpart F;

(c) Document the need for admission and appropriate utilization of services;

(d) Be maintained, including information regarding payments claimed, for a minimum of six (6) years or until an audit dispute or issue is resolved, whichever is longer; and

(e) Be made available for inspection or copying or provided to the following upon request:

1. A representative of the United States Department for Health and Human Services or its designee;

2. The United States Office of the Attorney General or its designee;

3. The Commonwealth of Kentucky, Office of the Attorney General or its designee;

4. The Commonwealth of Kentucky, Office of the Auditor of Public Accounts or its designee;

5. The Commonwealth of Kentucky, Cabinet for Health and Family Services, Office of the Inspector General or its designee;

6. The department; or

7. A managed care organization with whom the department has contracted if the recipient is enrolled with the managed care organization.

(7)(a) If a Level I or Level II psychiatric residential treatment facility receives any duplicate payment or overpayment from the department or managed care organization, regardless of reason,

the Level I or Level II psychiatric residential treatment facility shall return the payment to the department or managed care organization that issued the duplicate payment or overpayment in accordance with 907 KAR 1:671.

(b) Failure to return a payment to the department or managed care organization 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.

(8)(a) When the department or managed care organization makes payment for a covered service and the Level I or Level II psychiatric residential treatment facility 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 Level I or Level II psychiatric residential treatment facility.

(b) 1. A Level I or Level II psychiatric residential treatment facility 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. Level I or Level II psychiatric residential treatment facility makes the recipient aware in advance of providing the service that the:

(i) Recipient is liable for the payment; and

(ii) Department or managed care organization if the recipient is enrolled with a managed care organization is not covering the service.

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

a. Level I or Level II psychiatric residential treatment facility shall not bill the department or managed care organization, if applicable, for the service; and

b. Department or managed care organization, if applicable, shall not:

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

(ii) Make any payment to the Level I or Level II psychiatric residential treatment facility regarding the service.

(9)(a) A Level I or Level II psychiatric residential treatment facility attests by the Level I or Level II psychiatric residential treatment facility'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;

5. United States General Accounting Office or its designee; or

6. For an enrollee, managed care organization in which the enrollee is enrolled.

(c) 1. If a Level I or Level II psychiatric residential treatment facility receives a request from the:

a. Department to provide a claim, related information, related documentation, or record for auditing purposes, the Level I or Level II psychiatric residential treatment facility shall provide the requested information to the department within the timeframe requested by the department; or

b. Managed care organization in which an enrollee is enrolled to provide a claim, related information, related documentation, or record for auditing purposes, the Level I or Level II psychiatric residential treatment facility shall provide the requested information to the managed care organization within the timeframe requested by the managed care organization.

2.a. The timeframe requested by the department or managed care organization for a Level I or Level II psychiatric residential treatment facility to provide requested information shall be:

(i) A reasonable amount of time given the nature of the request

and the circumstances surrounding the request; and

(ii) A minimum of one (1) business day.

b. A Level I or Level II psychiatric residential treatment facility may request a longer timeframe to provide information to the department or a managed care organization if the Level I or Level II psychiatric residential treatment facility justifies the need for a longer timeframe.

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

2. Willful abuse by a Level I or Level II psychiatric residential treatment facility shall result in the suspension or termination of the Level I or Level II psychiatric residential treatment facility from Medicaid Program participation in accordance with 907 KAR 1:671.

Section 3. Covered Admissions. (1) A covered admission for a Level I PRTF:

(a) Shall be prior authorized by a review agency; and

(b)1. Shall be limited to those for a child age six (6) through twenty (20) years of age who meets Medicaid payment status criteria; or

2. May continue based on medical necessity, for a recipient who is receiving active treatment in a Level I PRTF on the recipient's twenty-first (21st) birthday if the recipient has not reached his or her twenty-second (22nd) birthday.

(2) A covered admission for a Level II PRTF shall be:

(a) Prior authorized;

(b) Limited to those for a child:

1.a. Age four (4) through twenty-one (21) years who meets Medicaid payment status criteria; and

b. Whose coverage may continue, based on medical necessity, if the recipient is receiving active treatment in a Level II PRTF on the recipient's twenty-first (21st) birthday and the recipient has not reached his or her twenty-second (22nd) birthday;

2. With a severe emotional disability in addition to severe and persistent aggressive behaviors, an intellectual disability, sexually acting out behaviors, or a developmental disability; and

3.a. Who does not meet the medical necessity criteria for an acute care hospital, private psychiatric hospital, or state mental hospital; and

b. Whose treatment needs cannot be met in an ambulatory care setting, Level I PRTF, or in any other less restrictive environment; and

(c) Reimbursed pursuant to 907 KAR 9:010.

Section 4. PRTF Covered Services. (1)(a) There shall be a treatment plan developed for each recipient.

(b) A treatment plan shall specify:

1. The amount and frequency of services needed; and

2. The number of therapeutic pass days for a recipient, if the treatment plan includes any therapeutic pass days.

(2) To be covered by the department:

(a) The following services shall be available to a recipient covered under Section 3 of this administrative regulation and shall meet the requirements established in paragraph (b) of this subsection:

1. Diagnostic and assessment services;

2. Treatment plan development, review, or revision;

3. Psychiatric services;

4. Nursing services which shall be provided in compliance with 902 KAR 20:320;

5. Medication which shall be provided in compliance with 907 KAR 1:019;

6. Evidence-based treatment interventions;

7. Individual therapy which shall comply with 902 KAR 20:320;

8. Family therapy or attempted contact with family which shall comply with 902 KAR 20:320;

9. Group therapy which shall comply with 902 KAR 20:320;

10. Individual and group interventions that shall focus on additional and harmful use or abuse issues and relapse prevention if indicated;

11. Substance abuse education;

12. Activities that:

a. Support the development of an age-appropriate daily living

skill including positive behavior management or support; or

b. Support and encourage the parent's ability to re-integrate the child into the home;

13. Crisis intervention which shall comply with:

a. 42 C.F.R. 483.350 through 376; and

b. 902 KAR 20:320;

14. Consultation with other professionals including case managers, primary care professionals, community support workers, school staff, or others;

15. Educational activities; or

16. Non-medical transportation services as needed to accomplish objectives;

(b) A Level I PRTF service listed in paragraph (a) of this subsection shall be:

1. Provided under the direction of a physician;

2. If included in the recipient's treatment plan, described in the recipient's current treatment plan;

3. Medically necessary; and

4. Clinically appropriate pursuant to the criteria established in 907 KAR 3:130;

(c) A Level I PRTF service listed in subparagraph (a)7, 8, 9, 11, or 13 shall be provided by a qualified mental health professional, behavioral health professional, or behavioral health professional under clinical supervision; or

(d) A Level II PRTF service listed in paragraph (a) of this subsection shall be:

1. Provided under the direction of a physician;

2. If included in the recipient's treatment plan, described in the recipient's current treatment plan;

3. Provided at least once a week:

a. Unless the service is necessary twice a week, in which case the service shall be provided at least twice a week; or

b. Except for diagnostic and assessment services which shall have no weekly minimum requirement;

4. Medically necessary; and

5. Clinically appropriate pursuant to the criteria established in 907 KAR 3:130.

(3) A Level II PRTF service listed in subparagraph (a)7, 8, 9, 11, or 13 shall be provided by a qualified mental health professional, behavioral health professional, or behavioral health professional under clinical supervision.

Section 5. Determining Patient Status. (1) The department shall review and evaluate the health status and care needs of a recipient in need of Level I or II PRTF care using the criteria identified in 907 KAR 3:130 to determine if a service or benefit is clinically appropriate.

(2) The care needs of a recipient shall meet the patient status criteria for:

(a) Level I PRTF care if the recipient requires:

1. Long term inpatient psychiatric care or crisis stabilization more suitably provided in a PRTF than in a psychiatric hospital; and

2. Level I PRTF services on a continuous basis as a result of a severe mental or psychiatric illness, including a severe emotional disturbance; or

(b) Level II PRTF care if the recipient:

1. Is a child with a severe emotional disability;

2. Requires long term inpatient psychiatric care or crisis stabilization more suitably provided in a PRTF than a psychiatric hospital;

3. Requires Level II PRTF services on a continuous basis as a result of a severe emotional disability in addition to a severe and persistent aggressive behavior, an intellectual disability, a sexually acting out behavior, or a developmental disability; and

4. Does not meet the medical necessity criteria for an acute care hospital or a psychiatric hospital and has treatment needs which cannot be met in an ambulatory care setting, Level I PRTF, or other less restrictive environment.

Section 6. Durational Limit, Re-evaluation, and Continued Stay. (1) A recipient's stay, including the duration of the stay, in a Level I or II PRTF shall be subject to the department's approval.

(2)(a) A recipient in a Level I PRTF shall be re-evaluated at least once every thirty (30) days to determine if the recipient continues to meet Level I PRTF patient status criteria established in Section 5(2) of this administrative regulation.

(b) A Level I PRTF shall complete a review of each recipient's treatment plan at least once every thirty (30) days.

(c) The review referenced in paragraph (b) of this subsection shall include:

1. Dated signatures of:
 - a. Appropriate staff; and
 - b. If present for the treatment plan meeting, a parent, guardian, legal custodian, or conservator;
2. An assessment of progress toward each treatment plan goal and objective with revisions indicated; and
3. A statement of justification for the level of services needed including:

- a. Suitability for treatment in a less-restrictive environment; and
- b. Continued services.

(d) If a recipient no longer meets Level I PRTF patient status criteria, the department shall only reimburse through the last day of the individual's current approved stay.

(e) The re-evaluation referenced in paragraph (a) of this subsection shall be performed by a review agency.

(3) A Level II PRTF shall complete by no later than the third (3rd) business day following an admission, an initial review of services and treatment provided to a recipient which shall include:

- (a) Dated signatures of appropriate staff, parent, guardian, legal custodian, or conservator;
- (b) An assessment of progress toward each treatment plan goal and objective with revisions indicated; and
- (c) A statement of justification for the level of services needed including:

1. Suitability for treatment in a less-restrictive environment; and
2. Continued services.

(4)(a) For a recipient aged four (4) to five (5) years, a Level II PRTF shall complete a review of the recipient's treatment plan of care at least once every fourteen (14) days after the initial review referenced in subsection (3) of this section.

(b) The review referenced in paragraph (a) of this subsection shall include:

1. Dated signatures of appropriate staff, parent, guardian, legal custodian, or conservator;
2. An assessment of progress toward each treatment plan goal and objective with revisions indicated; and
3. A statement of justification for the level of services needed including:

- a. Suitability for treatment in a less-restrictive environment; and
- b. Continued services.

(5)(a) For a recipient aged six (6) to twenty-two (22) years, a Level II PRTF shall complete a review of the recipient's treatment plan of care at least once every thirty (30) days after the initial review referenced in subsection (3) of this section.

(b) The review referenced in paragraph (a) of this subsection shall include:

1. Dated signatures of appropriate staff, parent, guardian, legal custodian, or conservator;
2. An assessment of progress toward each treatment plan goal and objective with revisions indicated; and
3. A statement of justification for the level of services needed including:
 - a. Suitability for treatment in a less-restrictive environment; and
 - b. Continued services.

Section 7. Exclusions and Limitations in Coverage. (1) The following shall not be covered as Level I or II PRTF services under this administrative regulation:

~~(a)[1. Chemical dependency treatment services if the need for the services is the primary diagnosis of the recipient, except chemical dependency treatment services shall be covered as incidental treatment if minimal chemical dependency treatment is necessary for successful treatment of the primary diagnosis;~~

~~(b)] Outpatient services;~~

~~(b)[(e)] Pharmacy services, which shall be covered in accordance with 907 KAR 1:019;~~

~~(c)[(d)] Durable medical equipment, which shall be covered in accordance with 907 KAR 1:479;~~

~~(d)[(e)] Hospital emergency room services, which shall be covered in accordance with 907 KAR 10:014;~~

~~(e)[(f)] Acute care hospital inpatient services, which shall be covered in accordance with 907 KAR 10:012;~~

~~(f)[(g)] Laboratory and radiology services, which shall be covered in accordance with 907 KAR 10:014 or 907 KAR 1:028;~~

~~(g)[(h)] Dental services, which shall be covered in accordance with 907 KAR 1:026;~~

~~(h)[(i)] Hearing and vision services, which shall be covered in accordance with 907 KAR 1:038; or~~

~~(i)[(j)] Ambulance services, which shall be covered in accordance with 907 KAR 1:060.~~

(2) A Level I or II PRTF shall not charge a recipient or responsible party representing a recipient any difference between private and semiprivate room charges.

(3) The department shall not reimburse for Level I or II PRTF services for a recipient if appropriate alternative services are available for the recipient in the community.

(4) The following shall not qualify as reimbursable in a PRTF setting:

- (a) An admission that is not medically necessary;
- (b) Services for an individual:
 1. With a major medical problem or minor symptoms;
 2. Who might only require a psychiatric consultation rather than an admission to a PRTF; or
 3. Who might need only adequate living accommodations, economic aid, or social support services.

Section 8. Reserved Bed and Therapeutic Pass Days. (1)(a) The department shall cover a bed reserve day for an acute hospital admission, a state mental hospital admission, a private psychiatric hospital admission, or an admission to a psychiatric bed in an acute care hospital for a recipient's absence from a Level I or II PRTF if the recipient:

1. Is in Medicaid payment status in a Level I or II PRTF;
2. Has been in the Level I or II PRTF overnight for at least one (1) night;
3. Is reasonably expected to return requiring Level I or II PRTF care; and
- 4.a. Has not exceeded the bed reserve day limit established in paragraph (b) of this subsection; or
- b. Received an exception to the limit in accordance with paragraph (c) of this subsection.

(b) The annual bed reserve day limit per recipient shall be five (5) days per calendar year in aggregate for any combination of bed reserve days associated with an acute care hospital admission, a state mental hospital admission, a private psychiatric hospital admission, or an admission to a psychiatric bed in an acute care hospital.

(c) The department shall allow a recipient to exceed the limit established in paragraph (b) of this subsection, if the department determines that an additional bed reserve day is in the best interest of the recipient.

(2)(a) The department shall cover a therapeutic pass day for a recipient's absence from a Level I or II PRTF if the recipient:

1. Is in Medicaid payment status in a Level I or II PRTF;
2. Has been in the Level I or II PRTF overnight for at least one (1) night;
3. Is reasonably expected to return requiring Level I or II PRTF care; and
- 4.a. Has not exceeded the therapeutic pass day limit established in paragraph (b) of this subsection; or
- b. Received an exception to the limit in accordance with paragraph (c) of this subsection.

(b) The annual therapeutic pass day limit per recipient shall be fourteen (14) days per calendar year.

(c) The department shall allow a recipient to exceed the limit established in paragraph (b) of this subsection, if the department determines that an additional therapeutic pass day is in the best

interest of the recipient.

(3)(a) The bed reserve day and therapeutic pass day count for each recipient shall be zero (0) upon the effective date of this administrative regulation.

(b) For subsequent calendar years, the bed reserve day and therapeutic pass day count for each recipient shall begin at zero (0) on January 1 of the calendar year.

(4) An authorization decision regarding a bed reserve day or therapeutic pass day in excess of the limits established in this section shall be performed by a review agency.

(5)(a) An acute care hospital bed reserve day shall be a day when a recipient is temporarily absent from a Level I or II PRTF due to an admission to an acute care hospital.

(b) A state mental hospital bed reserve day, private psychiatric hospital bed reserve day, or psychiatric bed in an acute care hospital bed reserve day, respectively, shall be a day when a recipient is temporarily absent from a Level I or II PRTF due to receiving psychiatric treatment in a state mental hospital, private psychiatric hospital, or psychiatric bed in an acute care hospital respectively.

(c) A therapeutic pass day shall be a day when a recipient is temporarily absent from a Level I or II PRTF for a therapeutic purpose that is:

1. Stated in the recipient's treatment plan; and
2. Approved by the recipient's treatment team.

(6)(a) A Level I or II PRTF's occupancy percent shall be based on a midnight census.

(b) An absence from a Level I or II PRTF that is due to a bed reserve day for an acute hospital admission, a state mental hospital admission, a private psychiatric hospital admission, or an admission to a psychiatric bed in an acute care hospital shall count as an absence for census purposes.

(c) An absence from a Level I or II PRTF that is due to a therapeutic pass day shall not count as an absence for census purposes.

Section 9. Outpatient Services Requirements Established in 907 KAR 9:015. The department's coverage provisions and requirements regarding outpatient behavioral health services provided by a Level I or II PRTF shall be as established in 907 KAR 9:015.

Section 10. Third Party Liability. A Level I or Level II PRTF shall comply with KRS 205.622.

Section 11. 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 Level I PRTF or Level II PRTF 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 Level I PRTF's or Level II PRTF'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 Level I PRTF's or Level II PRTF's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 12. Auditing Authority. The department or the managed care organization in which an enrollee is enrolled shall

have the authority to audit any:

(1) Claim;

(2) Medical record; or

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

Section 13. Federal Financial Participation. (1) The department's coverage of services pursuant to this administrative regulation shall be contingent upon [A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services]:

(a) Receipt of [(1) Denies or does not provide] federal financial participation for the coverage [policy]; and [or]

(b) Centers for Medicare and Medicaid Services' approval of the coverage [(2) Disapproves the policy].

(2) The coverage of services provided by a licensed clinical alcohol and drug counselor or licensed clinical alcohol and drug counselor associate shall be contingent and effective upon approval by the Centers for Medicare and Medicaid Services.

Section 14. [40.] Appeal Rights. (1)(a) An appeal of an adverse [a negative] action by the department regarding a service and a recipient who is not enrolled with a managed care organization [Medicaid beneficiary] shall be in accordance with 907 KAR 1:563.

(b) 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.

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

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 15. [44.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP-569, Certification of Need by Independent Team Psychiatric Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21)", revised 5/90; and

(b) "MAP-570, Medicaid Certification of Need for Inpatient Psychiatric Services for Individuals Under Age Twenty-one (21)", revised 5/90.

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

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 9, 2015

FILED WITH LRC: April 9, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 22, 2015 at 9:00 a.m. in the Health Services Auditorium, Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2015 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business June 1, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) coverage provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's coverage provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's coverage provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility 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 establishing DMS's coverage provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility 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 clarifies that this administrative regulation applies to non-outpatient services provided by a Level I or II PRTF; inserts new definitions necessary for clarity; inserts electronic signature provisions; and inserts a provision authorizing DMS or managed care organizations to audit claims and records.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as DMS is expanding its coverage and reimbursement scope for outpatient behavioral health services to include such services provided in a Level I or II PRTF. DMS is doing so via new administrative regulations - 907 KAR 9:015 (Coverage provisions and requirements regarding outpatient behavioral health services provided by a Level I or II psychiatric residential treatment facility) and 907 KAR 9:0200 (Reimbursement provisions and requirements regarding outpatient behavioral health services provided by a Level I or II psychiatric residential treatment facility). Consequently, it is necessary to amend this administrative regulation to clarify that its requirements and provisions do not apply to outpatient behavioral health services provided by a Level I or II PRTF.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying that the requirements and provisions in this administrative regulation do not apply to outpatient behavioral health services provided by a Level I or II PRTF.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by clarifying that the requirements and provisions in this administrative regulation do not apply to outpatient behavioral health services provided by a Level I or II PRTF.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Level I and II PRTFs will be affected by the amendment. Currently, there are twenty-three (23) Level I PRTFs enrolled in the Medicaid Program and zero (0) Level II PRTFs enrolled in the Medicaid Program.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3). No cost is anticipated.

(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 due to clarity regarding which administrative regulation is applicable to non-outpatient behavioral health services provided in a Level I or II PRTF.

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

(a) Initially: No cost will be incurred as a result of the amendment.

(b) On a continuing basis: No cost will be incurred as a result of the amendment.

(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. 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396d(a)(16), 42 U.S.C. 1396d(h), 42 C.F.R. 441.151 and 42 C.F.R. 440.160.

2. State compliance standards. To qualify as a Level I or II PRTF, a facility must meet the criteria established in KRS 216B.450 through 457.

3. Minimum or uniform standards contained in the federal mandate. Per federal Medicaid law, inpatient psychiatric facility services for individuals under twenty-one (21) is not a mandatory Medicaid benefit, but if a state's state plan includes intermediate care facility services for individuals with mental retardation, it must also cover inpatient psychiatric facility services for individuals under twenty –one (21.) Additionally, states may be required to provide inpatient psychiatric care under the early and periodic screening, diagnosis and treatment program (EPSDT).

Pursuant to 42 C.F.R. 440.160, "Inpatient psychiatric services for individuals under age 21" means services that—

(a) Are provided under the direction of a physician;

(b) Are provided by—

(1) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations, or

(2) A psychiatric facility which is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Council on Accreditation of Services for Families and Children, the Commission on Accreditation of Rehabilitation Facilities, or by any other accrediting organization, with comparable standards, that is recognized by the State.

(c) Meet the requirements in §441.151 of this subchapter."

Additionally, 42 C.F.R. 441.151 states,

"(a) Inpatient psychiatric services for individuals under age 21 must be:

(1) Provided under the direction of a physician;

(2) Provided by—

(i) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations; or

(ii) A psychiatric facility that is not a hospital and is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and

Children, or by any other accrediting organization with comparable standards that is recognized by the State.

(3) Provided before the individual reaches age 21, or, if the individual was receiving the services immediately before he or she reached age 21, before the earlier of the following—

(i) The date the individual no longer requires the services; or

(ii) The date the individual reaches 22; and

(4) Certified in writing to be necessary in the setting in which the services will be provided (or are being provided in emergency circumstances) in accordance with §441.152.

(b) Inpatient psychiatric services furnished in a psychiatric residential treatment facility as defined in §483.352 of this chapter, must satisfy all requirements in subpart G of part 483 of this chapter governing the use of restraint and seclusion."

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? No cost will be incurred as a result of the amendment.

(d) How much will it cost to administer this program for subsequent years? No cost will be incurred as a result of the amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amendment)

907 KAR 9:010. Reimbursement for non-outpatient Level I and II psychiatric residential treatment facility services.

RELATES TO: KRS 205.520, 216B.450, 216B.455, 216B.459

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 440.160, 42 U.S.C. 1396a-d

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) empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes Medicaid reimbursement policies for non-outpatient Level I and Level II psychiatric residential treatment facility services provided to a Medicaid recipient who is not enrolled in a managed care organization[and both required and optional reimbursement policies for Level I and Level II psychiatric residential treatment facility services provided to a Medicaid recipient who is enrolled in a managed care organization].

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

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

(3) "Level I PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(a).

(4) "Level II PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(b).

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

(6) "Per diem rate" means a Level I or II PRTF's total daily reimbursement as calculated by the department.

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

Section 2. Reimbursement for Level I PRTF Services and Costs. (1) To be reimbursable under the Medicaid Program, Level I PRTF services and associated costs, respectively, shall be provided to or associated, respectively, with a recipient receiving Level I PRTF services in accordance with 907 KAR 9:005.

(2) The department shall reimburse for Level I PRTF services and costs referenced in subsection (4) of this section for a recipient not enrolled in a managed care organization:

(a) At the lesser of:

1. A per diem rate of \$274.01; or

2. The usual and customary charge; and

(b) An amount not to exceed the prevailing charges, in the locality where the Level I PRTF is located, for comparable services provided under comparable circumstances.

(3) The per diem rate referenced in subsection (2) of this section shall be increased each biennium by 2.22 percent.

(4) The per diem rate referenced in subsection (2) of this section, or the usual and customary charge if less than the per diem rate, shall represent the total Medicaid reimbursement for Level I PRTF services and costs:

(a) Including all care and treatment costs;

(b) Including costs for all ancillary services;

(c) Including capital costs;

(d) Including room and board costs; and

(e) Excluding the costs of drugs as drugs shall be:

1. Covered in accordance with 907 KAR 1:019; and

2. Reimbursed via the department's pharmacy program in accordance with 907 KAR 1:018.

Section 3. Reimbursement for Level II PRTF Services and Costs. (1) To be reimbursable under the Medicaid program, Level II PRTF services and associated costs, respectively, shall be provided to or associated, respectively, with a recipient receiving Level II PRTF services in accordance with 907 KAR 9:005.

(2) The department shall reimburse a per diem rate as follows for Level II PRTF services and costs for a recipient not enrolled in a managed care organization:

(a) \$345 for Level II PRTF services to a recipient who meets the rate group one (1) criteria established in subsection (3)(a) of this section;

(b) \$365 for Level II PRTF services to a recipient who meets the rate group two (2) criteria established in subsection (3)(b) of this section;

(c) \$385 for Level II PRTF services to a recipient who meets

the rate group three (3) criteria established in subsection (3)(c) of this section; or

(d) \$405 for Level II PRTF services to a recipient who meets the rate group four (4) criteria established in subsection (3)(d) or (e) of this section.

(3)(a) Rate group one (1) criteria shall be for a recipient who:

1. Is twelve (12) years of age or younger;

2. Is male or female; and

3.a. Is sexually reactive; or

b.(i) Has a severe and persistent aggressive behavior;

(ii) Does not have an intellectual or a developmental disability;

and

(iii) Has an intelligence quotient higher than seventy (70).

(b) Rate group two (2) criteria shall be for a recipient who:

1. Is twelve (12) years of age or younger;

2. Is male or female; and

3.a. Is sexually reactive; and

b.(i) Has a severe and persistent aggressive behavior;

(ii) Does not have an intellectual or a developmental disability;

and

(iii) Has an intelligence quotient higher than seventy (70).

(c) Rate group three (3) criteria shall be for a recipient who:

1. Is thirteen (13) years of age or older;

2. Is male or female; and

3.a. Is sexually reactive; or

b.(i) Has a severe and persistent aggressive behavior;

(ii) Does not have an intellectual or a developmental disability;

and

(iii) Has an intelligence quotient higher than seventy (70).

(d) Rate group four (4) criteria shall be for a recipient who:

1. Is thirteen (13) years of age or older;

2. Is male or female; and

3.a. Is sexually reactive; and

b.(i) Has a severe and persistent aggressive behavior;

(ii) Does not have an intellectual or a developmental disability;

and

(iii) Has an intelligence quotient higher than seventy (70).

(e) Rate group four (4) criteria shall be for a recipient who:

1. Is under twenty-two (22) years of age;

2. Is male or female; and

3.a. Is sexually reactive; or

b.(i) Has a severe and persistent aggressive behavior;

(ii) Has an intellectual or a developmental disability; and

(iii) Has an intelligence quotient lower than seventy (70).

(4) The per diem rates referenced in subsection (2) of this section, or the usual and customary charge if less than the per diem rate, shall represent the total Medicaid reimbursement for Level II PRTF services and costs:

(a) Including all care and treatment costs;

(b) Including costs for all ancillary services;

(c) Including capital costs;

(d) Including room and board costs; and

(e) Excluding the costs of drugs as drugs shall be:

1. Covered in accordance with 907 KAR 1:019; and

2. Reimbursed via the department's pharmacy program in accordance with 907 KAR 1:018.

(5)(a) The department shall annually evaluate each per diem rate for Level II PRTF services and costs by reviewing the most recent, reliable claims data and cost report data to analyze treatment patterns, technology, and other factors that may alter the cost of efficiently providing Level II PRTF services.

(b) The department shall use the evaluation, review, and analysis referenced in paragraph (a) of this subsection to determine if an adjustment to the Level II PRTF reimbursement would be appropriate.

Section 4. Cost Reports and Audits. (1)(a) A Level I or II PRTF shall annually submit to the department, within ninety (90) days of the closing date of the facility's fiscal year end, a legible and completed Form CMS 2552-96.

(b) The department shall grant a thirty (30) day extension for submitting a legible and completed Form CMS 2552-96 to the department if an extension is requested by a Level I or II PRTF.

(2)(a) A Form CMS 2552-96 shall be subject to review and audit by the department.

(b) The review and audit referenced in paragraph (a) of this subsection shall be to determine if the information provided is accurate.

Section 5. Access to Level I and II PRTF Fiscal and Services Records. A Level I or II PRTF shall provide, upon request, all fiscal and service records relating to services provided to a Kentucky recipient, to the:

(1) Department;

(2) Cabinet for Health and Family Services, Office of Inspector General;

(3) Commonwealth of Kentucky, Office of the Attorney General;

(4) Commonwealth of Kentucky, Auditor of Public Accounts;

(5) Secretary of the United States Department of Health and Human Services; or

(6) United States Office of the Attorney General.

Section 6. Bed Reserve and Therapeutic Pass Reimbursement. (1) The department's reimbursement for a bed reserve day which qualifies as a bed reserve day pursuant to 907 KAR 9:005 for a recipient not enrolled in a managed care organization shall be:

(a) Seventy-five (75) percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is at least eighty-five (85) percent; or

(b) Fifty (50) percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is less than eighty-five (85) percent.

(2) The department's reimbursement for a therapeutic pass day which qualifies as a therapeutic pass day pursuant to 907 KAR 9:005 for a recipient not enrolled in a managed care organization shall be:

(a) 100 percent[%] of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is at least fifty (50) percent; or

(b) Fifty (50) percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is below fifty (50) percent.

(3)(a) A Level I or II PRTF's occupancy percent shall be based on a midnight census.

(b) An absence from a Level I or II PRTF that is due to a bed reserve day for an acute hospital admission, a state mental hospital admission, a private psychiatric hospital admission, or an admission to a psychiatric bed in an acute care hospital shall count as an absence for census purposes.

(c) An absence from a Level I or II PRTF that is due to a therapeutic pass day shall not count as an absence for census purposes.

Section 7. Outpatient Services Reimbursement Established in 907 KAR 9:020. The department's reimbursement provisions and requirements regarding outpatient behavioral health services provided by a Level I or II PRTF shall be as established in 907 KAR 9:020.

Section 8. Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon[A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services]:

(1) Receipt of[Denies or does not provide] federal financial participation for the reimbursement[policy]; and[er]

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement[Disapproves the policy].

Section 9.[8:] Appeals. A provider may appeal a decision by the department regarding the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 10.[9:] Not Applicable to Managed Care Organizations.

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~~[(1)] A managed care organization may elect to reimburse for Level I or II psychiatric residential treatment facility services in accordance with this administrative regulation.~~

~~(2) The reimbursement policies established in this administrative regulation shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:~~

~~(1) This administrative regulation; or~~

~~(2) [apply to a managed care organization, except the requirement that a Level I or II PRTF service shall be in accordance with] 907 KAR 9:005 [in order to be reimbursable under the Medicaid Program].~~

Section 11.140. Incorporation by Reference. (1) "Form CMS 2552-96", August 2010 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m.

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 9, 2015

FILED WITH LRC: April 9, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 22, 2015 at 9:00 a.m. in the Health Services Auditorium, Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2015 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business June 1, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) reimbursement provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's reimbursement provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility 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 establishing DMS's reimbursement provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility 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 clarifies that this administrative regulation applies to non-outpatient services provided by a Level I or II PRTF.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as DMS is expanding its coverage and reimbursement scope for outpatient behavioral health services to include such services provided in a Level I or II PRTF. DMS is doing so via new administrative regulations - 907 KAR 9:015 (Coverage provisions and requirements regarding outpatient behavioral health services provided by a Level I or II psychiatric residential treatment facility) and 907 KAR 9:020 (Reimbursement provisions and requirements regarding outpatient behavioral health services provided by a Level I or II psychiatric residential treatment facility). Consequently, it is necessary to amend this administrative regulation to clarify that its requirements and provisions do not apply to outpatient behavioral health services provided by a Level I or II PRTF.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying that the requirements and provisions in this administrative regulation does not apply to outpatient behavioral health services provided by a Level I or II PRTF.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by clarifying that the requirements and provisions in this administrative regulation do not apply to outpatient behavioral health services provided by a Level I or II PRTF.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Level I and II PRTFs will be affected by the amendment. Currently, there are twenty-three (23) Level I PRTFs enrolled in the Medicaid Program and zero (0) Level II PRTFs enrolled in the Medicaid Program.

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

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

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

(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 due to clarify regarding which administrative regulation is applicable to non-outpatient behavioral health services provided in a Level I or II PRTF.

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

(a) Initially: No cost will be incurred as a result of the amendment.

(b) On a continuing basis: No cost will be incurred as a result of the amendment.

(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. 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. To qualify as a Level I or II PRTF, a facility must meet the criteria established in KRS 216B.450 through 457.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

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? No cost will be incurred as a result of the amendment.

(d) How much will it cost to administer this program for subsequent years? No cost will be incurred as a result of the amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amendment)

907 KAR 10:014. Outpatient hospital service coverage provisions and requirements.

RELATES TO: KRS 205.520, 42 C.F.R. 447.53

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.6310, 205.8453

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 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid Program service and coverage policies for outpatient hospital services.

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

(2) "Approved behavioral health services provider" 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 certified psychologist with autonomous functioning;

(h) A licensed clinical social worker;

(i) A licensed professional clinical counselor;

(j) A licensed marriage and family therapist;

(k) A licensed psychological associate;

(l) A certified psychologist;

(m) A marriage and family therapy associate;

(n) A certified social worker;

(o) A licensed professional counselor associate;

(p) A licensed professional art therapist;

(q) A licensed professional art therapist associate;

(r) A licensed clinical alcohol and drug counselor in accordance with Section 14 of this administrative regulation;

(s) A licensed clinical alcohol and drug counselor associate in accordance with Section 14 of this administrative regulation; or

(t) A certified alcohol and drug counselor.

(3) "Behavioral health practitioner under supervision" means an individual who is:

(a)1. A licensed professional counselor associate;

2. A certified social worker;

3. A marriage and family therapy associate;

4. A licensed professional art therapist associate;

5. A licensed assistant behavior analyst;

6. A physician assistant;

7. A certified alcohol and drug counselor; or

8. A licensed clinical alcohol and drug counselor associate in accordance with Section 14 of this administrative regulation; and

(b) Employed by or under contract with the same billing provider as the billing supervisor.

(4) "Billing provider" means the individual who, 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.

(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 certified psychologist with autonomous functioning;

9. A licensed marriage and family therapist;
10. A licensed professional art therapist; or
11. 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.
(6) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).
(7) "Certified psychologist" means an individual who is recognized as a certified psychologist in accordance with 201 KAR Chapter 26.
(8) "Certified psychologist with autonomous functioning" means an individual who is a certified psychologist with autonomous functioning pursuant to KRS 319.056.
(9)[(3)] "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)[(4)] "Current procedural terminology code" or "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.
(12)[(6)] "Department" means the Department for Medicaid Services or its designee.
(13) "Electronic signature" is defined by KRS 369.102(8).
(14)[(6)] "Emergency" means that a condition or situation requires an emergency service pursuant to 42 C.F.R. 447.53.
(15)[(7)] "Emergency medical condition" is defined by 42 U.S.C. 1395dd(e)(1).
(16)[(8)] "Enrollee" means a recipient who is enrolled with a managed care organization.
(17) "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.
(18)[(9)] "Federal financial participation" is defined by 42 C.F.R. 400.203.
(19)[(40)] "Individualized education program" is defined by 34 C.F.R. 300.320.
(20)[(44)] "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).
(21)[(42)] "Licensed behavior analyst" is defined by KRS 319C.010(6).
(22) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).
(23) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).
(24)[(43)] "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.
(25)[(44)] "Licensed marriage and family therapist" is defined by KRS 335.300(2).
(26)[(45)] "Licensed professional art therapist" is defined by KRS 309.130(2).
(27)[(46)] "Licensed professional art therapist associate" is defined by KRS 309.130(3).
(28)[(47)] "Licensed professional clinical counselor" is defined by KRS 335.500(3).
(29)[(48)] "Licensed professional counselor associate" is defined by KRS 335.500(4).
(30)[(49)] "Licensed psychological associate" means an individual who:
(a)[1-] Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and
(b)[2-] Meets the licensed psychological associate requirements established in 201 KAR Chapter 26[; or
(b) Is a certified psychologist].
(27)[(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)[(24)] "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)[(22)] "Lock-in recipient" means:
(a) A recipient enrolled in the department's lock-in program pursuant to 907 KAR 1:677; or
(b) An enrollee enrolled in a managed care organization's lock-in program pursuant to 907 KAR 17:020, Section 8.
(30) "Marriage and family therapy associate" is defined by KRS 335.300(3).
(31)[(23)] "Medical necessity" or "medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.
(32)[(24)] "Nonemergency" means that a condition or situation does not require an emergency service pursuant to 42 C.F.R. 447.53.
(33) "Peer support specialist" means an individual who meets the peer specialist qualifications established in:
(a) 908 KAR 2:220;
(b) 908 KAR 2:230; or
(c) 908 KAR 2:240.
(34) "Person-centered service plan" means a plan of services for a recipient that meets the requirements established in 42 C.F.R. 441.540.
(35) "Physician" is defined by KRS 205.510(11).
(36) "Physician assistant" is defined by KRS 311.840(3).
(37)[(25)] "Provider" is defined by KRS 205.8451(7).
(38) "Provider abuse" is defined by KRS 205.8451(8).
(39)[(26)] "Recipient" is defined by KRS 205.8451(9).
(40) "Recipient abuse" is defined by KRS 205.8451(10).
(41) "Recipient's representative" means:
(a) For a recipient who is authorized by Kentucky law to provide written consent, an individual acting on behalf of, and with written consent from, the recipient; or
(b) A legal guardian.
(42) "Section 504 plan" means a plan developed under the auspices of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (Section 504), 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.
(43)[(27)] "Unlisted procedure or service" means a procedure or service:
(a) For which there is not a specific CPT code; and
(b) Which is billed using a CPT code designated for reporting unlisted procedures or services.

Section 2. Coverage Criteria. (1)(a) To be covered by the department, the following shall be prior authorized and meet the requirements established in paragraph (b) of this subsection:

1. Magnetic resonance imaging;
 2. Magnetic resonance angiogram;
 3. Magnetic resonance spectroscopy;
 4. Positron emission tomography;
 5. Cineradiography or videoradiography;
 6. Xeroradiography;
 7. Ultrasound subsequent to second obstetric ultrasound;
 8. Myocardial imaging;
 9. Cardiac blood pool imaging;
 10. Radiopharmaceutical procedures;
 11. Gastric restrictive surgery or gastric bypass surgery;
 12. A procedure that is commonly performed for cosmetic purposes;
 13. A surgical procedure that requires completion of a federal consent form; or
 14. An unlisted procedure or service.
- (b) To be covered by the department, an outpatient hospital service, including a service identified in paragraph (a) of this

subsection, shall:

1. Be medically necessary;
2. Except for a behavioral health service established in Section 5 of this administrative regulation, be clinically appropriate pursuant to the criteria established in 907 KAR 3:130; and
3. If provided to a lock-in recipient or enrollee, meet the requirements established in paragraph (c) of this subsection.

(c) If the lock-in recipient is:

1. Not an enrollee, the outpatient hospital service shall be:
 - a. Provided by the lock-in recipient's designated hospital pursuant to 907 KAR 1:677; or
 - b. A screening or emergency service that meets the requirements of subsection (6)(a) of this section; or
2. An enrollee, the outpatient hospital service shall be:
 - a. Provided by the enrollee's designated hospital as established by the managed care organization in which the enrollee is enrolled; or
 - b. A screening or emergency service that meets the requirements of subsection (6)(a) of this section.

(2)(a) The prior authorization requirements established in subsection (1) of this section shall not apply to:

1. ~~[(a)]~~ An emergency service;
2. ~~[(b)]~~ A radiology procedure if the recipient has a cancer or transplant diagnosis code; or
3. ~~[(c)]~~ A service provided to a recipient in an observation bed.

(b) A behavioral health service established in Section 5 of this administrative regulation shall:

1. Be medically necessary; and
2. Not be subject to prior authorization.

(3) A referring physician, a physician who wishes to provide a given service, an advanced practice registered nurse, or a duly-licensed dentist may request prior authorization from the department.

(4) The following covered hospital outpatient services shall be furnished by or under the supervision of a duly licensed physician, or, if applicable, a duly-licensed dentist:

- (a) A diagnostic service ordered by a physician;
- (b) A therapeutic service;
- (c) An emergency room service provided in an emergency situation as determined by a physician; or
- (d) A drug, biological, or injection administered in the outpatient hospital setting.

(5) A covered hospital outpatient service for maternity care may be provided by:

(a) An advanced practice registered nurse who has been designated by the Kentucky Board of Nursing as a nurse midwife; or

(b) A registered nurse who holds a valid and effective permit to practice nurse midwifery issued by the Cabinet for Health and Family Services.

(6) The department shall cover:

- (a) A screening of a lock-in recipient to determine if the lock-in recipient has an emergency medical condition; or
- (b) An emergency service to a lock-in recipient if the department determines that the lock-in recipient had an emergency medical condition when the service was provided.

Section 3. Hospital Outpatient Services Not Covered by the Department. The following services shall not be considered a covered hospital outpatient service:

(1) An item or service that does not meet the requirements established in Section 2(1) of this administrative regulation;

(2) A service for which:

- (a) An individual has no obligation to pay; and
- (b) No other person has a legal obligation to pay;
- (3) A medical supply or appliance, unless it is incidental to the performance of a procedure or service in the hospital outpatient department and included in the rate of payment established by the Medicaid Program for hospital outpatient services;

(4) A drug, biological, or injection purchased by or dispensed to a recipient;

(5) A routine physical examination;

(6) A nonemergency service, other than a screening in

accordance with Section 2(6)(a) of this administrative regulation, provided to a lock-in recipient:

- (a) In an emergency department of a hospital; or
- (b) If provided by a hospital that is not the lock-in recipient's designated hospital:

1. Pursuant to 907 KAR 1:677, if the recipient is not an enrollee; or

2. As established by the managed care organization in which the lock-in recipient is enrolled, if the lock-in recipient is an enrollee.

Section 4. Speech-language Pathology, Physical Therapy, and Occupational Therapy Limits. (1) Speech-language pathology services shall be limited to twenty (20) service visits per calendar year per recipient.

(2) Physical therapy services shall be limited to twenty (20) service visits per calendar year per recipient.

(3) Occupational therapy services shall be limited to twenty (20) service visits per calendar year per recipient.

(4) A service in excess of the limits established in subsection (1), (2), or (3) of this section shall be approved if the service in excess of the limits is determined to be medically necessary by the:

(a) Department, if the recipient is not enrolled with a managed care organization; or

(b) Managed care organization in which the enrollee is enrolled, if the recipient is an enrollee.

(5) Prior authorization by the department shall be required for each service visit that exceeds the limit established in subsection (1), (2), or (3) of this section for a recipient who is not enrolled with a managed care organization.

Section 5. Behavioral Health Services. (1) The following behavioral health services shall be covered under this administrative regulation in accordance with the following requirements:

(a) A screening, crisis intervention, or intensive outpatient program service provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
13. A licensed clinical alcohol and drug counselor in accordance with Section 14 of this administrative regulation; or
14. A behavioral health practitioner under supervision:
 - a. In accordance with Section 14 of this administrative regulation; and
 - b. Except for a licensed assistant behavior analyst;

(b) An assessment provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed behavior analyst;
12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
13. A certified psychologist working under the supervision of a

board-approved licensed psychologist;

14. A licensed clinical alcohol and drug counselor in accordance with Section 14 of this administrative regulation; or

15. A behavioral health practitioner under supervision in accordance with Section 14 of this administrative regulation;

(c) Psychological testing provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A certified psychologist with autonomous functioning;

4. A licensed psychological associate working under the supervision of a board-approved licensed psychologist; or

5. A certified psychologist working under the supervision of a board-approved licensed psychologist;

(d) Day treatment or mobile crisis services provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A certified psychologist with autonomous functioning;

4. A licensed clinical social worker;

5. A licensed professional clinical counselor;

6. A licensed professional art therapist;

7. A licensed marriage and family therapist;

8. A physician;

9. A psychiatrist;

10. An advanced practice registered nurse;

11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

12. A certified psychologist working under the supervision of a board-approved licensed psychologist;

13. A licensed clinical alcohol and drug counselor in accordance with Section 14 of this administrative regulation;

14. A behavioral health practitioner under supervision:

a. Except for a licensed assistant behavior analyst; and

b. In accordance with Section 14 of this administrative regulation; or

15. A peer support specialist working under the supervision of an approved behavioral health services provider in accordance with Section 14 of this administrative regulation;

(e) Peer support provided by a peer support specialist working under the supervision of an approved behavioral health services provider in accordance with Section 14 of this administrative regulation;

(f) Individual outpatient therapy, group outpatient therapy, or collateral outpatient therapy provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A certified psychologist with autonomous functioning;

4. A licensed clinical social worker;

5. A licensed professional clinical counselor;

6. A licensed professional art therapist;

7. A licensed marriage and family therapist;

8. A physician;

9. A psychiatrist;

10. An advanced practice registered nurse;

11. A licensed behavior analyst;

12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

13. A certified psychologist working under the supervision of a board-approved licensed psychologist;

14. A licensed clinical alcohol and drug counselor in accordance with Section 14 of this administrative regulation; or

15. A behavioral health practitioner under supervision in accordance with Section 14 of this administrative regulation;

(g) Family outpatient therapy provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A certified psychologist with autonomous functioning;

4. A licensed clinical social worker;

5. A licensed professional clinical counselor;

6. A licensed professional art therapist;

7. A licensed marriage and family therapist;

8. A physician;

9. A psychiatrist;

10. An advanced practice registered nurse;

11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

12. A certified psychologist working under the supervision of a board-approved licensed psychologist;

13. A licensed clinical alcohol and drug counselor in accordance with Section 14 of this administrative regulation; or

14. A behavioral health practitioner under supervision:

a. Except for a licensed assistant behavior analyst; and

b. In accordance with Section 14 of this administrative regulation;

(h) Service planning provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A certified psychologist with autonomous functioning;

4. A licensed clinical social worker;

5. A licensed professional clinical counselor;

6. A licensed professional art therapist;

7. A licensed marriage and family therapist;

8. A physician;

9. A psychiatrist;

10. An advanced practice registered nurse;

11. A licensed behavior analyst;

12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

13. A certified psychologist working under the supervision of a board-approved licensed psychologist; or

14. A behavioral health practitioner under supervision except for:

a. A certified alcohol and drug counselor; or

b. A licensed clinical alcohol and drug counselor associate;

(i) A screening, brief intervention, and referral to treatment for a substance use disorder or SBIRT provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A certified psychologist with autonomous functioning;

4. A licensed clinical social worker;

5. A licensed professional clinical counselor;

6. A licensed professional art therapist;

7. A licensed marriage and family therapist;

8. A physician;

9. A psychiatrist;

10. An advanced practice registered nurse;

11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

12. A certified psychologist working under the supervision of a board-approved licensed psychologist;

13. A licensed clinical alcohol and drug counselor in accordance with Section 14 of this administrative regulation; or

14. A behavioral health practitioner under supervision:

a. Except for a licensed assistant behavior analyst; and

b. In accordance with Section 14 of this administrative regulation;

(j) Assertive community treatment provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A certified psychologist with autonomous functioning;

4. A licensed clinical social worker;

5. A licensed professional clinical counselor;

6. A licensed professional art therapist;

7. A licensed marriage and family therapist;

8. A physician;

9. A psychiatrist;

10. An advanced practice registered nurse;

11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

12. A certified psychologist working under the supervision of a board-approved licensed psychologist;

13. A behavioral health practitioner under supervision except for a:

a. Licensed assistant behavior analyst;

b. Certified alcohol and drug counselor; or

c. Licensed clinical alcohol and drug counselor associate;

14. A peer support specialist working under the supervision of

an approved behavioral health services provider except for a:

- a. Licensed clinical alcohol and drug counselor;
- b. Licensed clinical alcohol and drug counselor associate; or
- c. Certified alcohol and drug counselor; or

15. A community support associate;

(k) Comprehensive community support services provided by:

- 1. A licensed psychologist;
- 2. A licensed psychological practitioner;
- 3. A certified psychologist with autonomous functioning;
- 4. A licensed clinical social worker;
- 5. A licensed professional clinical counselor;
- 6. A licensed professional art therapist;
- 7. A licensed marriage and family therapist;
- 8. A physician;
- 9. A psychiatrist;
- 10. An advanced practice registered nurse;
- 11. A licensed behavior analyst;

12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

13. A certified psychologist working under the supervision of a board-approved licensed psychologist;

14. A behavioral health practitioner under supervision except for a:

- a. Licensed clinical alcohol and drug counselor associate; or
- b. Certified alcohol and drug counselor; or
- 15. A community support associate;

(l) Therapeutic rehabilitation program services provided by:

- 1. A licensed psychologist;
- 2. A licensed psychological practitioner;
- 3. A certified psychologist with autonomous functioning;
- 4. A licensed clinical social worker;
- 5. A licensed professional clinical counselor;
- 6. A licensed professional art therapist;
- 7. A licensed marriage and family therapist;
- 8. A physician;
- 9. A psychiatrist;
- 10. An advanced practice registered nurse;
- 11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

12. A certified psychologist working under the supervision of a board-approved licensed psychologist;

13. A behavioral health practitioner under supervision except for a:

- a. Licensed assistant behavior analyst;
- b. Licensed clinical alcohol and drug counselor associate; or
- c. Certified alcohol and drug counselor; or
- 14. A peer support specialist working under the supervision of

an approved behavioral health services provider except for a:

- a. Licensed clinical alcohol and drug counselor;
- b. Licensed clinical alcohol and drug counselor associate; or
- c. Certified alcohol and drug counselor; or

(m) [services;

(b)] Partial hospitalization provided by:

- 1. A licensed psychologist;
- 2. A licensed professional clinical counselor;
- 3. A licensed clinical social worker;
- 4. A licensed marriage and family therapist;
- 5. A physician;
- 6. A psychiatrist;
- 7. An advanced practice registered nurse;
- 8. A licensed psychological practitioner;
- 9. A certified psychologist with autonomous functioning;
- 10. A licensed clinical alcohol and drug counselor in accordance with Section 14 of this administrative regulation;

11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

12. A certified psychologist working under the supervision of a board-approved licensed psychologist; or

13. A behavioral health practitioner under supervision:

- a. Except for a licensed assistant behavioral analyst; and
- b. In accordance with Section 14 of this administrative

regulation];

(c) Individual outpatient therapy; or

(d) Group outpatient therapy].

(2)(a) A screening shall:

1. Determine 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 the development of 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 plan of care; and

4. Not include psychological or psychiatric evaluations or assessments.

(c) Psychological testing shall:

1. Include:

a. A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and

b. Interpretation and a written report of testing results; and

2. Be performed by an individual who has met the requirements of KRS Chapter 319 related to the necessary credentials to perform psychological testing.

(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 outpatient hospital;

b. As an immediate relief to the presenting problem or threat; and

c. In a face-to-face, one-on-one 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 that includes:

(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 per day, seven (7) days per week, every day of the year;

2. Ensure access to a board-certified or board-eligible psychiatrist, twenty-four (24) hours per day, seven (7) days per week, every day of the year;

3. Be provided for a duration of less than twenty-four (24) hours;

4. Not be an overnight service;

5. Be a multi-disciplinary team-based intervention in a home or community setting that ensures access to mental health and substance use disorder services 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;

6. 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

7. Be provided face-to-face in a home or community setting.

(f) 1. Day treatment shall be a non-residential, intensive treatment program for an individual 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;

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 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 on non-instructional weekdays during the school year including 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 approved behavioral health services provider in accordance with Section 14 of this administrative regulation or a behavioral health practitioner working under clinical supervision in accordance with Section 14 of this administrative regulation; 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, an outpatient hospital 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 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. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

e. Be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

f. Be identified in each recipient's plan of care; and

g. Be designed to contribute directly to the recipient's individualized goals as specified in the recipient's plan of care.

2. To provide peer support services, an outpatient hospital 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 in accordance with Section 14 of this administrative regulation 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. [(2)(a)] Intensive outpatient program services shall [be provided by a team]:

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, an outpatient hospital shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, physician, or advanced practice 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 well-being 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-on-one encounter between the provider and recipient; and
 - b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified 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.
 - (i) 1. Group outpatient therapy shall:
 - a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;
 - b. Be provided to promote the:
 - (i) Health and well-being 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 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;
 - e. Focus on the psychological needs of the recipients as evidenced in each recipient's 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 of 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 well-being 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, a recipient's representative, school staff person, treating professional, or other person with custodial control or supervision of the recipient; and
 - (ii) That is provided in accordance with the recipient's plan of care; and
 - b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age.

2. Consent given 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;
 - 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) 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 in order 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 to the recipient; 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.
- (o) 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 severe 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) Group outpatient therapy;
 - (viii) Mobile crisis services;
 - (ix) Mental health consultation;
 - (x) Family support and basic living skills; or
 - (xi) Peer support.
 - 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, an outpatient hospital shall:
 - a. Employ at least one (1) team of multidisciplinary professionals:
 - (i) Led by an approved behavioral health services provider except for a licensed clinical alcohol and drug counselor, a licensed clinical alcohol and drug counselor associate, or a certified alcohol and drug counselor; and
 - (ii) Comprised of at least four (4) full-time equivalents including a psychiatrist, a nurse, a case manager, a peer support specialist,

or an approved behavioral health services provider except for a licensed clinical alcohol and drug counselor, a licensed clinical alcohol and drug counselor associate, or a certified alcohol and drug counselor;

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 health records; and

d. Demonstrate experience in serving individuals with persistent and severe mental illness who have difficulty living independently in the community.

(p)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 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, an outpatient hospital 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 (1)(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.

(q)1. Therapeutic rehabilitation program services shall be:

a. A rehabilitative service for an;

(i) Adult with a severe mental illness; or

(ii) Individual under the age of twenty-one (21) years who has a severe emotional disability; and

b. Designed to maximize the reduction of the effects of a mental health disorder 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.

(r)1. [A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;

11. A certified social worker working under the supervision of a

licensed clinical social worker;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;

13. A physician assistant working under the supervision of a physician;

14. A licensed professional art therapist;

15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist; or

16. A certified alcohol and drug counselor.

(b) Intensive outpatient program services shall:

1. Be an alternative to or transition from inpatient hospitalization or partial hospitalization for a mental health or substance use disorder;

2. 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;

3. Be provided at least three (3) hours per day at least three (3) days per week; and

4. Include:

a. Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

b. Crisis intervention; or

c. Psycho-education.

(c) During psycho-education the recipient or recipient's family member shall be:

1. 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

2. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

(d) An intensive outpatient program services treatment plan shall:

1. Be individualized; and

2. Focus on stabilization and transition to a lesser level of care.

(e) To provide intensive outpatient program services, an outpatient hospital shall have:

1. Access to a board-certified or board-eligible psychiatrist for consultation;

2. Access to a psychiatrist, other physician, or advanced practice registered nurse for medication prescribing and monitoring;

3. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) recipients to one (1) staff person;

4. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;

5. 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;

6. The capacity to provide the full range of intensive outpatient program services as stated in this paragraph;

7. Demonstrated experience in serving individuals with behavioral health disorders;

8. The administrative capacity to ensure quality of services;

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

10. The capacity to document and maintain individual case records.

(3)(a) Partial hospitalization shall be provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;

11. A certified social worker working under the supervision of a

licensed clinical social worker;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;

13. A physician assistant working under the supervision of a physician;

14. A licensed professional art therapist;

15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist; or

16. A certified alcohol and drug counselor.

(b) Partial hospitalization shall be a short-term (average of four (4) to six (6) weeks), less than twenty-four (24)-hour, intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to a substance use disorder, a mental health disorder, or co-occurring mental health and substance use disorders.

2.[(e)] Partial hospitalization may be provided to an adult or a child.

3.[(d)] Admission criteria for partial hospitalization shall be based on an inability to adequately treat the recipient through community-based therapies or intensive outpatient services.

4.[(e)] A partial hospitalization program shall consist of individual outpatient therapy, group outpatient therapy, family outpatient therapy, or medication management.

5.a.[(f)1.] The department shall not reimburse for educational, vocational, or job training services provided as part of partial hospitalization.

b.2.] An outpatient hospital's partial hospitalization program shall have an agreement with the local educational authority to come into the program to provide all educational components and instruction which are not Medicaid billable or reimbursable.

c.3.] The department shall not reimburse for services identified in a Medicaid-eligible child's individualized education program.

6.[(g)] Partial hospitalization shall typically be:

a.1.] Provided for at least four (4) hours per day; and

b.2.] Focused on one (1) primary presenting problem (i.e. substance use, sexual reactivity, or another problem).

7.[(h)] An outpatient hospital's partial hospitalization program shall:

a.1.] Include the following personnel for the purpose of providing medical care if necessary:

(i)[a.] An advanced practice registered nurse;

(ii)[b.] A physician assistant or physician available on site; and

(iii)[c.] A board-certified or board-eligible psychiatrist available for consultation; and

b.2.] Have the capacity to:

(i)[a.] Provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;

(ii)[b.] Employ required practitioners and coordinate service provision among rendering practitioners; and

(iii)[c.] Provide the full range of services included in the scope of partial hospitalization established in this subsection.

(3) The extent and type of a screening shall depend upon the nature of the problem of the individual seeking or being referred for services.

(4) 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™.

(5) The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.

(6) A behavioral health service shall be:

(a) Stated in the recipient's plan of care; and

(b) Provided in accordance with the recipient's plan of care.

(7)(a) An outpatient hospital shall establish a plan of care for each recipient receiving behavioral health services from the outpatient hospital.

(b)1. For a recipient receiving intensive outpatient program services, the recipient's plan of care shall be:

a. Reviewed every thirty (30) days; and

b. Updated every sixty (60) days or earlier if clinically indicated.

2. For a recipient receiving behavioral health services other than intensive outpatient program services, the recipient's plan of care shall be reviewed and updated every six (6) months or earlier

if clinically indicated[(4)(a) Individual outpatient therapy shall be provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;

11. A certified social worker working under the supervision of a licensed clinical social worker;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;

13. A physician assistant working under the supervision of a physician;

14. A licensed professional art therapist;

15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;

16. A licensed behavior analyst; or

17. A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst.

(b) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the individual; or

b. Recovery from a substance related disorder;

2. Consist of:

a. A face-to-face, one-on-one encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;

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.

(5)(a) Group outpatient therapy provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;

11. A certified social worker working under the supervision of a licensed clinical social worker;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;

13. A physician assistant working under the supervision of a physician;

14. A licensed professional art therapist;

15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;

16. A licensed behavior analyst; or

17. A licensed assistant behavior analyst.

(b)1. Group 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 disorders;

b. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;

- c. Be provided to a recipient in a group setting:
 - (i) Of nonrelated individuals; and
 - (ii) Not to exceed twelve (12) individuals in size;
- d. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;
- e. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and
- f. Not exceed three (3) hours per day.
- 2. The group shall have a:
 - a. Deliberate focus; and
 - b. Defined course of treatment.
- 3. The subject of a group receiving group outpatient therapy shall be related 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].

Section 6. Additional Behavioral Health Service Limits and Non-covered Behavioral Health 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 health 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 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.

(3) The department shall not reimburse for both a screening and an SBIRT provided to a recipient on the same date of service.

(4) 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 outpatient hospital;

(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" established in Section 1(17) of this administrative regulation;

(e) Travel time;

(f) A field trip;

(g) A recreational activity;

(h) A social activity; or

(i) A physical exercise activity group.

(5)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except as established in Section 5(2)(l)1 of this administrative regulation.

(b) A third party contract shall not be covered under this

administrative regulation.

(6) A billing supervisor arrangement between a billing supervisor and a behavioral health practitioner under supervision shall not:

(a) Violate the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision; or

(b) Substitute for the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision.

(7)(a) Face-to-face contact between a practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a recipient under the age of twenty-one (21) years if the collateral outpatient therapy is in the recipient's plan of care;

2. A family outpatient therapy service in which the corresponding current procedural terminology code establishes that the recipient is not present;

3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or others in which the corresponding current procedural terminology code establishes that the recipient is not present; or

4. A service planning activity in which the corresponding current procedural terminology code establishes that the recipient is not present.

(b) A behavioral health service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

Section 7. 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 speech-language pathology services from a speech-language pathologist enrolled with the Medicaid Program, the department shall not reimburse for speech-language pathology services provided to the same recipient during the same time period via the outpatient hospital services program.

Section 8. General[7-] Records Maintenance, Protection, and Security. (1)(a) A provider shall maintain a current health record for each recipient.

(b)1. 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.

2. The individual who provided the service shall date and sign the health record within forty-eight (48) hours of[on] the date that the individual provided the service.

(2)(a) Except as established in paragraph (b) or (c) of this subsection, an outpatient hospital[a-provider] shall maintain a health record regarding a recipient for at least six (6)[five-(5)] years from the last date of the service or until any audit dispute or issue is resolved beyond six (6)[five-(5)] years.

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

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

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

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

(3)(a) A provider shall comply with 45 C.F.R. Part 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;

b. Federal government; or
c. For an enrollee, managed care organization in which the enrollee is enrolled.

(c)1. Upon request, an outpatient hospital shall provide to an authorized representative of the department, federal government, or managed care organization if applicable, 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 or managed care organization.

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.

(4)(a) If an outpatient hospital'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 outpatient hospital shall:

1. Remain the property of the outpatient hospital; and
2. Be subject to the retention requirements established in this section.

(b) An outpatient hospital shall have a written plan addressing how to maintain health records in the event of death of an owner or deaths of owners.

Section 9. Additional Requirements Regarding Behavioral Health Services Health Records. (1) The requirements established in this section shall apply to a health record regarding a behavioral health service.

(2) A health record regarding a recipient who received a behavioral health service 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 participation information;
f. Referral source's name and address;
g. Primary care physician's name 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's name; and
j. The name of the informant and any other information deemed necessary by the outpatient hospital in order to comply with the requirements of:

(i) This administrative regulation;
(ii) The outpatient hospital'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;
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 upon request:
a. To the Cabinet for Health and Family Services; or
b. For an enrollee, to the managed care organization in which the recipient is enrolled or has been enrolled in the past;

3. Made available for inspection and copying by:
a. Cabinet for Health and Family Services' personnel; or
b. Personnel of the managed care organization in which the recipient is enrolled if applicable;

4. Readily accessible; and
5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.

(3) 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.

(4)(a) An outpatient hospital'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 plan of care if changes are made; and
d. Need for continued treatment if deemed necessary.

(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 behavioral health 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 behavioral health practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervising professional which reflects consultations with the behavioral health practitioner working under supervision concerning the:

a. Case; and
b. Supervising professional's evaluation of the services being provided to the recipient.

(5) 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.

(6) Any change to a recipient's plan of care shall be documented, signed, and dated by the rendering practitioner and by the recipient or recipient's representative.

(7)(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.

(8)(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 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 has been terminated from receiving services shall be fully completed within ten (10) days following termination.

(9) 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.

(10)(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 outpatient hospital shall, within ten (10) business days of awareness 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. 290ee-3; and

b. 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 outpatient hospital 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. 290ee-3; and

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

Section 10.[8-] Medicaid Program Participation Compliance. (1) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a provider receives any duplicate payment or overpayment from the department or managed care organization, regardless of reason, the provider shall return the payment to the department or managed care organization in accordance with 907 KAR 1:671.

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

1. Interpreted to be fraud or abuse; and

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

(3)(a) When the department or a managed care organization makes payment for a covered service and the outpatient hospital 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 outpatient hospital.

(b)1. An outpatient hospital 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. Outpatient hospital makes the recipient aware in writing 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. Outpatient hospital 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 outpatient hospital regarding the service.

(4)(a) An outpatient hospital attests by the outpatient hospital'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;

5. United States General Accounting Office or its designee; or

6. For an enrollee, managed care organization in which the enrollee is enrolled.

(c)1. If an outpatient hospital receives a request from the:

a. Department to provide a claim, related information, related documentation, or record for auditing purposes, the outpatient hospital shall provide the requested information to the department within the timeframe requested by the department; or

b. Managed care organization in which an enrollee is enrolled to provide a claim, related information, related documentation, or record for auditing purposes, the outpatient hospital shall provide the requested information to the managed care organization within the timeframe requested by the managed care organization.

2.a. The timeframe requested by the department or managed care organization for an outpatient hospital to provide requested information shall be:

(i) A reasonable amount of time given the nature of the request and the circumstances surrounding the request; and

(ii) A minimum of one (1) business day.

b. A Level I or Level II psychiatric residential treatment facility may request a longer timeframe to provide information to the department or a managed care organization if the Level I or Level II psychiatric residential treatment facility justifies the need for a longer timeframe.

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

2. Willful abuse by an outpatient hospital shall result in the suspension or termination of the outpatient hospital from Medicaid Program participation.

Section 11.[9-] Third Party Liability. A provider shall comply with KRS 205.622.

Section 12.[40-] 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 provider that chooses to use electronic signatures shall:

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

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

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

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

(b) Develop a consent form that shall:

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

2. Attest to the signature's authenticity; and

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

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

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 13.[44-] Auditing Authority. The department or the managed care organization in which an enrollee is enrolled shall have the authority to audit any:

(1) Claim;

- (2) ~~Health[-Medical]~~ record~~[-]~~ or
(3) Documentation associated with any claim or
~~health[medical]~~ record.

Section 14.[12] Federal Approval and Federal Financial Participation. (1) The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(a)[(4)] Receipt of federal financial participation for the coverage; and

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

(2) The coverage of services provided by a licensed clinical alcohol and drug counselor or licensed clinical alcohol and drug counselor associate shall be contingent and effective upon approval by the Centers for Medicare and Medicaid Services.

Section 15.[13-] Appeal Rights. (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.

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 10, 2015

FILED WITH LRC: April 13, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 22, 2015 at 9:00 a.m. in the Health Services Auditorium, Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2015, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business June 1, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program outpatient hospital services.

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to establish the coverage provisions and requirements regarding Medicaid Program outpatient hospital services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the coverage provisions and requirements regarding Medicaid Program outpatient hospital 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 establishing the coverage provisions and requirements regarding Medicaid Program outpatient hospital 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 expands the scope of Medicaid covered behavioral health services in an outpatient hospital setting to include screenings; an assessments; psychological testing; crisis intervention; mobile crisis services; day treatment; peer support; family outpatient therapy; collateral outpatient therapy; service planning; a screening, brief intervention, and referral to treatment for a substance use disorder (SBIRT); assertive community treatment; comprehensive community support services; and therapeutic rehabilitation program services. Additional amendments include inserting definitions necessary for clarity and inserting various program integrity requirements (such as health records requirements.)

(b) The necessity of the amendment to this administrative regulation: The amendment 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 scope of behavioral health services covered in outpatient hospitals 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 the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by complying with a federal mandate to help ensure Medicaid recipient access to behavioral health services. Additionally, it conforms by enhancing program integrity requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by complying with a federal mandate to help ensure Medicaid recipient access to behavioral health services. Additionally, it will assist by enhancing program integrity requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Outpatient hospitals, behavioral health professionals authorized to provide outpatient behavioral health services in outpatient hospitals, and Medicaid recipients in need of outpatient behavioral health services will be affected by the administrative regulation. Currently, there are 107 hospitals with an outpatient department enrolled in the Medicaid Program. The following behavioral health professionals are authorized to provide outpatient behavioral health services in an outpatient hospital: 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.

(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. Outpatient hospitals who wish to provide outpatient behavioral health services will need to do so within the parameters established in this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Outpatient hospitals will benefit by receiving Medicaid Program reimbursement for more outpatient behavioral health services than currently covered under the Medicaid Program in an outpatient hospital setting. Behavioral health professionals authorized to provide outpatient behavioral health services will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of outpatient 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 further expanding the behavioral health services covered in the outpatient hospital setting due to the variables involved as DMS cannot estimate the utilization of these services in outpatient hospitals 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 further expanding the behavioral health services covered in the outpatient hospital setting due to the variables involved as DMS cannot estimate the utilization of these services in outpatient hospitals 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
(Amendment)

907 KAR 10:016. Coverage provisions and requirements regarding inpatient psychiatric hospital services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 441 Subparts C, D, 456 Subparts G, H, I, 42 U.S.C. 1396a-d[-EO-2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program [of Medical Assistance]. KRS 205.520(3) authorizes[empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes[sets forth] the Medicaid Program coverage provisions and requirements regarding inpatient[relating to] services provided by[in] psychiatric hospitals[for which payment shall be made by the Medicaid Program in behalf of both the categorically needy and the medically needy].

Section 1. Definitions. (1) "Active treatment" means a covered psychiatric hospital service provided:

(a) In accordance with 42 C.F.R. 441.154; and

(b) By professional staff employed or contracted by a psychiatric hospital.

(2) "Chronic" is defined by KRS 210.005(3).

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

(4) "Enrollee" means a recipient who is enrolled with a managed care organization.

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

(6) "Interdisciplinary team" means:

(a) For a recipient who is under the age of eighteen (18) years:

1. A parent, legal guardian, or caregiver of the recipient;

2. The recipient;

3. Professional staff; and

4. A staff person, if available, who worked with the recipient during the recipient's most recent placement if the recipient has previously been in a psychiatric hospital; or

(b) For a recipient who is eighteen (18) years of age or older:

1. The recipient;

2. Professional staff; and

3. A staff person, if available, who worked with the recipient during the recipient's most recent placement if the recipient has previously been in a psychiatric hospital.

(7) "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.

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

(9) "Mental illness" is defined by KRS 210.005(2).

(10) "Professional staff" means psychiatrists and other physicians, psychologists, psychiatric nurses and other nurses, social workers, and other professionals with special education or experience in the care of persons with mental illness and who are involved in the diagnosis and treatment of patients with mental

illness.

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

Section 2. General Provider Participation Requirements. (1) To be eligible to provide services covered under this administrative regulation, a psychiatric hospital 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 psychiatric hospital in accordance with 902 KAR 20:180;

(d) Meet the facility specification requirements established in 902 KAR 20:170;

(e) Have a utilization review plan for each recipient;

(f) Establish a utilization review process which shall evaluate each Medicaid admission and continued stay prior to the expiration of the Medicaid certification period to determine if the admission or stay is or remains medically necessary;

(g) Be located within the Commonwealth of Kentucky;

(h) Perform and place in each recipient's record a:

1. Medical evaluation;

2. Social evaluation; and

3. Psychiatric evaluation;

(i) Establish a plan of care for each recipient which shall:

1. Address in detail the intensive treatment services to be provided to the recipient;

2. Be placed in the recipient's record; and

3. Meet the master treatment plan requirements established in 902 KAR 20:180; and

(j) If providing services to an individual who is at least sixty-five (65) years of age, be currently certified for participation in the Medicare program.

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

(3) A psychiatric hospital 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;

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

(c) Comply with:

1. 907 KAR 1:671;

2. 907 KAR 1:672; and

3. All applicable state and federal laws.

(4)(a) A psychiatric hospital attests by the psychiatric hospital'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;

5. United States General Accounting Office or its designee; or

6. For an enrollee, managed care organization in which the enrollee is enrolled.

(c) If a psychiatric hospital receives a request from the:

1. Department to provide a claim, related information, related documentation, or record for auditing purposes, the psychiatric hospital shall provide the requested information to the department within the timeframe requested by the department; or

2. Managed care organization in which an enrollee is enrolled to provide a claim, related information, related documentation, or record for auditing purposes, the psychiatric hospital shall provide the requested information to the managed care organization within the timeframe requested by the managed care organization.

(d)1. All services provided shall be subject to review for

recipient or provider abuse.

2. Willful abuse by a psychiatric hospital provider shall result in the suspension or termination of the psychiatric hospital from Medicaid Program participation.

Section 3. Coverage Requirements. (1) For the department or managed care organization to reimburse for a service covered under this administrative regulation, the service shall be:

(a) Medically necessary; and

(b) Provided:

1. To a recipient:

a.(i) Who is at least sixty-five (65) years of age and requires inpatient psychiatric services; or

(ii) Who is under twenty-one (21) years of age and requires inpatient psychiatric services; and

b. Whose needs require inpatient psychiatric hospital services:

(i) On a daily basis; and

(ii) Under the direction of a physician; and

2. By professional staff of a psychiatric hospital that meets the requirements established in this administrative regulation.

(2) Inpatient psychiatric hospital services shall involve active treatment that shall be reasonably expected to:

(a) Improve the recipient's condition; or

(b) Prevent further regression.

(3) If a recipient is receiving inpatient psychiatric hospital services on the recipient's twenty-first (21st) birthday, the Medicaid Program shall continue to cover the recipient's admission:

(a) As long as the services continue to be medically necessary for the recipient; and

(b) Through the birth month in which the child becomes twenty-one (21) years of age.

(4)(a) If a recipient is eligible for Medicare coverage of inpatient psychiatric services, the recipient shall exhaust all Medicare coverage of inpatient psychiatric services prior to being eligible for Medicaid coverage of inpatient psychiatric services.

(b) After exhausting Medicare coverage of inpatient psychiatric services, the department, or managed care organization for an enrollee, shall determine if a continued stay in a psychiatric hospital:

1. Is medically necessary for the recipient; and

2. Can be reasonably expected to:

a. Improve the recipient's condition; or

b. Prevent further regression.

(5) The requirements established in 42 C.F.R. 456, Subpart D, shall apply regarding Medicaid program coverage of inpatient psychiatric hospital services.

Section 4. KRS 202A Related Admission. (1)[Provision of Service. Inpatient services provided in an appropriately licensed psychiatric hospital participating in the Medicaid program shall be limited to recipients of medical assistance age sixty-five (65) or over or under age twenty-one (21) meeting patient status criteria. Services shall be provided in accordance with the federal Medicaid requirements and with Medicaid policies shown in the Psychiatric Inpatient Facility Utilization and Placement Review Manual, revised December 28, 1994 which is hereby incorporated by reference and referred to hereafter as "the manual". The manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

Section 2. Durational Limitation. Durational limitation on payment in respect to the aged recipient and children under age twenty-one (21) shall be subject to the utilization review mechanism established by the cabinet and shown in the manual. Notwithstanding a continuing need for psychiatric care, payment for services shall not be continued past the 22nd birthday for patients admitted prior to the 21st birthday.

Section 3. Condition of Eligibility for Participation. An appropriately accredited psychiatric hospital desiring to participate

in the Medicaid program shall be required as a condition of eligibility to participate in the Medicare program when the hospital serves patients eligible for payments under the Medicare program.

Section 4. Determining Patient Status. Professional staff of the cabinet or an agency operating under its lawful authority pursuant to the terms of its agreement with the cabinet shall review and evaluate the health status and care needs of the recipient in need of psychiatric hospital care giving consideration to the medical diagnosis, care needs, services and health personnel required to meet the needs, and ambulatory care services available in the community to meet those needs.

(1) The patient shall not qualify for Medicaid patient status unless:

(a) The person is qualified for admission, and continued stay as appropriate;

(b) Their needs mandate psychiatric hospital care on a daily basis; and

(c) As a practical matter, the necessary care can only be provided on an inpatient basis.

(2) The placement and continued stay criteria shown in Parts II, III and IV of the manual shall be used to:

(a) Determine patient status;

(b) Ensure that proper treatment of the individual's psychiatric conditions requires services on an inpatient basis under the direction of a physician;

(c) Ensure that psychiatric hospital services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services will no longer be needed; or,] For an adult who is at least[chronically mentally ill adults age] sixty-five (65) years of age, has chronic mental illness, and is[and above as described in KRS 210.005, who are] admitted to a psychiatric[the] hospital under a KRS Chapter 202A commitment, the psychiatric hospital shall maintain the recipient at, or restore him to, the greatest possible degree of health and independent functioning.

(2)[:] For a recipient who was at least[individuals age] sixty-five (65) years of age and[or over] residing in a psychiatric hospital on December 28, 1994, the requirement for admission under a commitment pursuant to KRS Chapter 202A shall not apply[be applicable] if:

(a) The recipient[individual] continues to reside in the same psychiatric hospital; and

(b)[(d) Ensure that] Ambulatory care or alternative services available in the community are not sufficient to meet the treatment needs of the recipient.

Section 5. Reevaluation of Need for Services. (1)(a) A psychiatric[All mental] hospital stay[stays] shall be certified for a specific length of time[;] as deemed medically appropriate by the:

1. Department for a recipient who is not an enrollee; or

2. Managed care organization in which an enrollee is enrolled, if applicable.

(b) In determining the appropriate length of time for a stay, the department or a managed care organization shall consider[utilization review organization considering] the health status and care needs of the individual[applicant or recipient].

(2)(a) A recipient's continued eligibility for inpatient psychiatric hospital services[Patient status] shall be reevaluated at least once every thirty (30) days.

(b) Upon the expiration of a[the] certified length of stay, the Medicaid Program shall not be responsible for the cost of care of a continuing stay unless the recipient or the recipient's[his] authorized representative:

1. Requests a continuing stay; and

2. The:

a. Department approves the continued stay; or

b. For an enrollee, managed care organization in which the enrollee is enrolled approves the continued stay[the utilization review organization certifies additional days].

Section 6. Other Limitations and Exclusions. (1) An admission for diagnostic purposes shall only be covered if the diagnostic procedure cannot be performed on an outpatient basis.

(2) The Medicaid Program shall not reimburse for any day in which a recipient is not present in the psychiatric hospital.

(3) The Medicaid Program shall not reimburse for a court-ordered psychiatric hospital admission unless the department determines that the admission meets the criteria established in Section 3(1) of this administrative regulation.

(4) The Medicaid Program shall not reimburse for:

(a) An elective admission; or

(b) An admission for substance use treatment.

Section 7. Records Maintenance. (1)(a) For each recipient, a psychiatric hospital shall maintain a health record that shall:

1. Be:

a. Current;

b. Readily retrievable;

c. Organized;

d. Complete; and

e. Legible;

2. Meet the record requirements established in

a. 902 KAR 20:180;

b. KRS 194A.060;

c. KRS 434.840 through 434.860;

d. KRS 422.317; and

e. 42 C.F.R. 431 Subpart F;

3. Document the need for admission and appropriate utilization of services;

4. Be maintained, including information regarding payments claimed, for a minimum of six (6) years or until an audit dispute or issue is resolved, whichever is longer;

5. Be made available for inspection or copying or provided to the following upon request:

a. A representative of the United States Department of Health and Human Services or its designee;

b. The United States Office of the Attorney General or its designee;

c. The Commonwealth of Kentucky, Office of the Attorney General or its designee;

d. The Commonwealth of Kentucky, Office of the Auditor of Public Accounts or its designee;

e. The Commonwealth of Kentucky, Cabinet for Health and Family Services, Office of the Inspector General or its designee;

f. The department; or

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

6. Contain a:

a. Physician's certification statement documenting the medical necessity of the recipient's:

(i) Admission to the psychiatric hospital; and

(ii) If applicable, continued stay in the psychiatric hospital;

b. Copy of the recipient's most recent plan of care that:

(i) Has been established and approved by the recipient's physician; and

(ii) Shall include the date of the most recent interdisciplinary team review or revision of the plan of care;

c. Copy of the Medicare remittance advice of explanation of Medicare benefits if the recipient has Medicare coverage for inpatient psychiatric services; and

d. Copy of any Medicare denial letters if applicable.

(b) A physician's certification statement shall:

1. Be made no earlier than sixty (60) days prior to the recipient's admission to the psychiatric hospital; or

2. Not be made prior to the individual applying for Medicaid benefits while in an institutional setting.

(c) A licensed staff or consulting physician shall sign and date a certification statement.

(d) Failure to provide information in accordance with paragraph (a) of this subsection shall result in denial of payment for any service associated with the requested information.

(2) For each recipient, a psychiatric hospital shall have a physician's certification statement documenting the necessity of the psychiatric hospital admission.

(3) If a recipient is transferred or referred to a health care facility or other provider for care or treatment, the psychiatric

hospital shall, within ten (10) business days of awareness of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

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

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

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

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

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

(4)(a) Except as established in paragraph (b) or (c) of this subsection, a psychiatric hospital shall maintain a case record regarding a recipient for at least six (6) years from the last 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 psychiatric hospital shall maintain the recipient's record for the longest of the following periods:

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

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

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

(5)(a) A psychiatric hospital shall comply with 45 C.F.R. Part 164.

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

1. Be treated as confidential; and

2. Not be disclosed to an unauthorized individual.

Section 8. Auditing Authority. The department or the managed care organization in which an enrollee is enrolled shall have the authority to audit any:

(1) Claim;

(2) Medical record; or

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

Section 9. Federal Approval and Federal Financial Participation. The Medicaid Program'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 10. [Reconsideration and] 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 [When an adverse determination is appealed by the applicant or recipient, the decision shall be reviewed by the cabinet (or its representative) using time frames specified in the manual to determine whether the decision should be reversed.

Section 7. Implementation Date. The amendments to this administrative regulation shall be effective with regard to services provided on or after December 28, 1994].

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 9, 2015

FILED WITH LRC: April 9, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 22, 2015 at 9:00 a.m. in the Health Services Auditorium, Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by May 15,

2015 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business June 1, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) coverage provisions and requirements regarding inpatient services provided in a psychiatric hospital.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's coverage provisions and requirements regarding inpatient services provided in a psychiatric hospital.

(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 DMS's coverage provisions and requirements regarding inpatient services provided in a psychiatric hospital.

(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 DMS's coverage provisions and requirements regarding inpatient services provided in a psychiatric hospital.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies that this administrative regulation applies to inpatient services provided by a psychiatric hospital; inserts provisions previously stated in material that was incorporated by reference; inserts records maintenance requirements; establishes that DMS's coverage of psychiatric hospital services pursuant to this administrative regulation is contingent upon federal funding and federal approval; eliminates the incorporated material; and contains language and formatting revisions to comply with current KRS Chapter 13A standards.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify that the requirements of the administrative regulation only apply to inpatient psychiatric hospital services as DMS is concurrently promulgating two (2) new administrative regulations that establish Medicaid program coverage of outpatient psychiatric hospital services. Additionally, the amendment is necessary to eliminate old incorporated material that contained archaic language; insert records maintenance requirements; and insert language ensuring that coverage of services is contingent upon federal funding and federal approval.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying the scope of the administrative regulation's applicability as well as ensuring that coverage of the services is contingent upon federal funding and approval.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by clarifying the scope of the administrative regulation's applicability as well as ensuring that coverage of the services is contingent upon federal funding and approval.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Psychiatric hospitals will be affected by the amendment. Currently, there are twelve (12) psychiatric hospitals enrolled in the Medicaid Program.

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

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

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

(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 due to clarify.

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

(a) Initially: DMS will incur no initial costs as a result of the amendment.

(b) On a continuing basis: DMS will incur no continuing cost as a result of the amendment.

(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. 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396d(a)(16), 42 U.S.C. 1396d(h), 42 C.F.R. 441.151 and 42 C.F.R. 440.160.

2. State compliance standards. To qualify as a psychiatric hospital, a facility must meet the licensure requirements established in 902 KAR 20:180.

3. Minimum or uniform standards contained in the federal mandate. Per federal Medicaid law, inpatient psychiatric facility services for individuals under twenty-one (21) is not a mandatory Medicaid benefit, but if a state's state plan includes intermediate care facility services for individuals with mental retardation, it must also cover inpatient psychiatric facility services for individuals under twenty-one (21). Additionally, states may be required to provide inpatient psychiatric care under the early and periodic screening, diagnosis and treatment program (EPSDT). Pursuant to 42 C.F.R. 440.160, "Inpatient psychiatric services for individuals under age 21" means services that—

(a) Are provided under the direction of a physician;

(b) Are provided by—

(1) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations, or

(2) A psychiatric facility which is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Council on Accreditation of Services for Families and Children, the Commission on Accreditation of Rehabilitation Facilities, or by any other accrediting organization, with comparable standards, that is recognized by the State.

(c) Meet the requirements in § 441.151 of this subchapter."

Additionally, 42 C.F.R. 441.151 states, "(a) Inpatient psychiatric services for individuals under age 21 must be:

(1) Provided under the direction of a physician;

(2) Provided by—

(i) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations; or

(ii) A psychiatric facility that is not a hospital and is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards that is recognized by the State.

(3) Provided before the individual reaches age 21, or, if the individual was receiving the services immediately before he or she reached age 21, before the earlier of the following—

(i) The date the individual no longer requires the services; or

(ii) The date the individual reaches 22; and

(4) Certified in writing to be necessary in the setting in which the services will be provided (or are being provided in emergency circumstances) in accordance with §441.152.

(b) Inpatient psychiatric services furnished in a psychiatric residential treatment facility as defined in §483.352 of this chapter, must satisfy all requirements in subpart G of part 483 of this chapter governing the use of restraint and seclusion."

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 will incur no costs for the first year as a result of the amendment.

(d) How much will it cost to administer this program for subsequent years? DMS will incur no costs for subsequent years as a result of the amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

KENTUCKY STATE BOARD OF ELECTIONS
(New Administrative Regulation)

31 KAR 3:040. Electronic Voter Registration System.

RELATES TO: KRS 116.045, 116.0452

STATUTORY AUTHORITY: KRS 116.045(4)(e), 117.015(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) requires the State Board of Elections to supervise the registration of voters within the state. KRS 116.045(4)(e) provides that a person may register to vote or change party affiliation by methods of registration or reregistration approved by the State Board of Elections. KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. This administrative regulation approves and establishes procedures for use of an electronic voter registration system to register or reregister to vote or to update voter registration information.

Section 1. Definition. "Applicant" means a person who uses the electronic voter registration system established by the State Board of Elections to register or reregister to vote or to update voter registration information.

Section 2. Use of Electronic Voter Registration System. (1) The State Board of Elections shall, as funds permit, establish an electronic voter registration system by which persons may register or reregister to vote or update voter registration information.

(2) In addition to the methods set forth in KRS 116.045(4), a person who meets all eligibility requirements may register or reregister to vote or update voter registration information by using the electronic voter registration system established by the State Board of Elections pursuant to this administrative regulation.

Section 3. Contents of Electronic Voter Registration System Application Form. The electronic voter registration system application shall:

(1) Include the electronic equivalent of the registration application form prescribed and furnished by the State Board of Elections under KRS 116.155, including a warning relating to the potential penalties applicable to an applicant knowingly filing an application with untrue information and a voter declaration affirmation as required by KRS 116.065;

(2) If the applicant has a Kentucky driver's license or Kentucky personal identification card:

(a) Require the applicant to agree to the use of his or her Kentucky driver's license signature or Kentucky personal identification card signature for voter registration purposes; and

(b) Require the applicant to provide his or her Kentucky driver's license number or Kentucky personal identification card number.

(3) If the applicant does not have a Kentucky driver's license or Kentucky personal identification card, require the applicant to either:

(a) Provide an electronic signature to be used for voter registration purposes; or

(b) Print the registration application, sign it, and return it to the county clerk for the county in which the applicant resides.

Section 4. Processing Voter Registration Application Submitted Via the Electronic Voter Registration System. (1) The electronic voter registration system shall not allow an applicant to submit an application unless:

(a) The entire application form, including the voter declaration affirmation as required by KRS 116.065, is completed by the applicant; and

(b) The applicant has either:

1. Agreed to the use of his or her Kentucky driver's license signature or Kentucky personal identification card signature for voter registration purposes and provided his or her Kentucky driver's license number or Kentucky personal identification card number pursuant to Section 3(2) of this administrative regulation;

or

2. Provided an electronic signature to be used for voter registration purposes pursuant to Section 3(3)(a) of this administrative regulation.

(2) Immediately upon the applicant's submission of an application that meets the requirements of subsection (1) of this section, the State Board of Elections shall:

(a) If the applicant agreed to the use of his or her Kentucky driver's license signature or

Kentucky personal identification card signature for voter registration purposes and provided his or her Kentucky driver's license number or Kentucky personal identification card number pursuant to Section 3(2) of this administrative regulation:

1. Check the information submitted by the applicant to ensure that the Kentucky driver's license number or Kentucky personal identification card number submitted by the applicant matches the information maintained by the Transportation Cabinet; and

2. If a match is made:

a. Electronically forward the information provided in the application, along with a digital copy of the applicant's signature obtained from the Transportation Cabinet, to the county clerk for the county in which the applicant resides; and

b. Notify the applicant that the application has been electronically forwarded to the county clerk for the county in which the applicant resides, but that the applicant will not be officially registered to vote or that changes to the applicant's existing registration will not be made until the application is received and processed by the county clerk.

3. If a match cannot be made, notify the applicant that the application cannot be processed and instruct the applicant to print the application, sign it, and mail or hand deliver it to the county clerk for the county in which the applicant resides.

(b) If the applicant provided an electronic signature to be used for voter registration purposes pursuant to Section 3(3)(a) of this administrative regulation:

1. Electronically forward the information provided in the application, along with the applicant's electronic signature, to the county clerk for the county in which the applicant resides; and

2. Notify the applicant that the application has been electronically forwarded to the county clerk for the county in which the applicant resides, but that the applicant will not be officially registered to vote or that changes to the applicant's existing registration will not be made until the application is received and processed by the county clerk.

(3) An electronic voter registration application shall be deemed to have been made and received by the appropriate county clerk as of the date the applicant is informed pursuant to subsection (2) of this section that the application has been electronically forwarded to the county clerk for the county in which the applicant resides.

(4) Except as otherwise specifically provided, an electronic voter registration application electronically forwarded by the State Board of Elections shall be considered an application for registration by mail.

ALISON LUNDERGAN GRIMES, Chair

APPROVED BY AGENCY: February 13, 2015

FILED WITH LRC: March 16, 2015 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2015, at 9:30 a.m., Eastern Time, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made available unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written

comments on the proposed administrative regulation. Written comments shall be accepted until close of business, June 1, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Lindsay Hughes Thurston, Assistant Secretary of State, 700 Capital Ave., Ste. 152, Frankfort, Kentucky 40601, phone (502) 564-3490, fax (502) 564-5687.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lindsay Hughes Thurston

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: KRS 117.015(1) requires the State Board of Elections to supervise the registration of voters within the state. KRS 116.045(4)(e) provides that a person may register to vote or change party affiliation by methods of registration or reregistration approved by the State Board of Elections. KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. This administrative regulation approves and establishes procedures for use of an electronic voter registration system as a method of registering to vote, updating registration information, or changing party affiliation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to approve and establish the procedures for use of an electronic voter registration system as a method of registering to vote, updating registration information, or changing party affiliation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1) requires the State Board of Elections to supervise the registration of voters within the state. KRS 116.045(4)(e) provides that a person may register to vote or change party affiliation by methods of registration or reregistration approved by the State Board of Elections. KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. This administrative regulation conforms to the content of the authorizing statutes by approving and establishing procedures for use of an electronic voter registration system as a method of registering to vote, updating registration information, or changing party affiliation.

(d) How this administrative regulation will assist in the effective administration of the statutes: KRS 117.015(1) requires the State Board of Elections to supervise the registration of voters within the state. KRS 116.045(4)(e) provides that a person may register to vote or change party affiliation by methods of registration or reregistration approved by the State Board of Elections. KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. This administrative regulation assists in the effective administration of the statutes by approving and establishing procedures for use of an electronic voter registration system as a method of registering to vote, updating registration information, or changing party affiliation.

(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 is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect an unknown number of applicants to register to vote or update their registration information, the State Board of Elections, the Transportation Cabinet, the Commonwealth Office of Technology, and county clerks.

(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 to register or reregister to vote or update their registration information will not be required to take any action to comply with this administrative regulation but will be able to apply to register to vote in Kentucky or update their registration information using an electronic voter registration system. The State Board of Elections will be required to establish, maintain, and implement an electronic voter registration system through which a person may register or reregister to vote. The Transportation Cabinet and Commonwealth Office of Technology will be required to share data with the State Board of Elections. County clerks will need to familiarize themselves with this administrative regulation and participate in training regarding use of the electronic voter registration system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to applicants to register to vote or update their registration information or to county clerks to comply with this administrative regulation. It is anticipated that the cost to the State Board of Elections to implement the electronic voter registration system established by this administrative regulation, including any payments to the Transportation Cabinet and Commonwealth Office of Technology for any costs outside their normal operating budgets, will be approximately \$45,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): 27 states have or are in the process of implementing electronic voter registration systems. Electronic voter registration saves taxpayers money, increases accuracy of voter registration records, and is convenient for voters. By complying with this administrative regulation, applicants to register to vote or update their registration information using the electronic voter registration system will save time and avoid inconvenience associated with in-person or mail-in voter registration procedures. The State Board of Elections and county clerks have an interest in increasing efficiency and accuracy in registering voters, and compliance with this administrative regulation furthers that interest by reducing staff time and printing and mailing costs associated with processing voter registration applications and improving accuracy in voter registration records. The Transportation Cabinet and Commonwealth Office of Technology have an interest in maintaining accurate records, and compliance with this administrative regulation furthers that goal by facilitating data-sharing among agencies.

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

(a) Initially: It is anticipated that the cost to the State Board of Elections to implement the electronic voter registration system established by this administrative regulation, including any payments to the Transportation Cabinet and Commonwealth Office of Technology for any costs outside their normal operating budgets, will be approximately \$45,000.

(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: It is anticipated that funding for the implementation of this administrative regulation will come from Kentucky's Help America Vote Act Funds.

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

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all individuals affected.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the State Board of Elections, Transportation Cabinet, Commonwealth Office of Technology, and county clerks.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: This administrative regulation is authorized by KRS 117.015(1)(a).

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

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

(c) How much will it cost to administer this program for the first year? It will cost the State Board of Elections, a state agency, an estimated \$45,000 to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to state and local governments 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(+/-)

**GENERAL GOVERNMENT CABINET
Board of Medical Imaging and Radiation Therapy
(New Administrative Regulation)**

201 KAR 46:045. Temporary license application for medical imaging technologists, advanced imaging professionals, and radiation therapists.

RELATES TO: KRS 311B.050, 311B.100(2), 311B.120, 311B.180, 311B.190

STATUTORY AUTHORITY: KRS 311B.010, 311B.050, 311B.100(2), 311B.120, 311B.180, 311B.190

NECESSITY, FUNCTION, AND CONFORMITY: The Board of Medical Imaging and Radiation Therapy is authorized by KRS Chapter 311B to regulate the licensure of medical imaging technologists, advanced imaging professionals, and radiation therapists other than a licensed practitioner of the healing arts. This administrative regulation establishes procedures for the temporary licensure of medical imaging technologists, advanced imaging professionals, and radiation therapists who are eligible to apply for the appropriate national board exam.

Section 1. Application for Temporary License. An applicant shall submit:

(1) Completed and signed application Form KBMIRT 3;

(2) Non-refundable temporary application and license fee as established by 201 KAR 46:020, Section 3;

(3) Results of criminal background check completed within the past six (6) months in state of residence and employment and any other state of residence and employment within the past five (5) years;

(4) Copy of a government issued photo ID; and

(5) Verification of successful completion of appropriate

educational program.

Section 2. Upon certification by ARRT or NMTCB, a temporary license shall be converted to a regular license upon submission of:

(1) Completed and signed updated application Form KBMIRT 3; and

(2) Documentation of ARRT or NMTCB certification.

Section 3. If a temporary licensee has not submitted documentation of ARRT or NMTCB certification during the twelve (12) month period, the license shall not be renewed; and individuals shall follow the procedure for initial license application and pay the initial application and license fee mandated in 201 KAR 46:020.

Section 4. Incorporation by Reference. (1) Form KBMIRT 3, Temporary License Application, Medical Imaging or Radiation Therapy, is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

SHERYL L. ABERCROMBIE, Chair

APPROVED BY AGENCY: April 14, 2015

FILED WITH LRC: April 15, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2015, at 9:00 a.m., in the office of the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, (502) 782-5687. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on June 1, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Vanessa Breeding, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502) 782-6495.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Vanessa Breeding

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process and requirements for a temporary license.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to allow those who have completed an accredited course of study but are waiting to complete an accepted accreditation process to be employed under the process is complete.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes guidelines used in the requirements for teaching institutions for the education and training of medical imaging, radiation therapy and related occupations professionals.

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

(a) How the amendment will change this existing administrative regulation: n/a.

(b) The necessity of the amendment to this administrative regulation: n/a.

(c) How the amendment conforms to the content of the authorizing statutes: n/a.

(d) How the amendment will assist in the effective administration of the statutes: n/a.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 state health care organizations and approximately 8,100 licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals who seek to be licensed or have an issued license to be renewed must submit an application setting forth the individual's qualifications.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An individual will be charged a \$100 fee for issuance of a license.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Qualified individuals will be able to obtain a temporary license pending certification by ARRT or NMTCB and be able to work.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional cost will be incurred as a result of amending this administrative regulation.

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are 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, if new, or by the change if it is an amendment: No.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(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? Kentucky Board of Medical Imaging and Radiation Therapy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 311B.010 to 311B.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) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

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

(c) How much will it cost to administer this program for the first year? The amendment revises 201 KAR 46:030, regulations and establishes new regulations used in the requirements for teaching

institutions for the education and training of medical imaging, radiation therapy and related occupations professionals. There is no cost associated with administering this regulation.

(d) How much will it cost to administer this program for subsequent years? This regulation merely amends and establishes new regulations used in the requirements for teaching institutions for the education and training of medical imaging, radiation therapy and related occupations professionals.. There is no cost associated with administering this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Medical Imaging and Radiation Therapy (New Administrative Regulation)

201 KAR 46:050. Provisional training license for medical imaging technologists and radiation therapists.

RELATES TO: KRS 311B.050, 311B.100(2), 311B.120, 311B.180, 311B.190

STATUTORY AUTHORITY: KRS 311B.010, 311B.050, 311B.100(2), 311B.120, 311B.180, 311B.190

NECESSITY, FUNCTION, AND CONFORMITY: The Board of Medical Imaging and Radiation Therapy is authorized by KRS Chapter 311B to regulate the licensure of medical imaging technologists, advanced imaging professionals, and radiation therapists other than a licensed practitioner of the healing arts. This administrative regulation establishes procedures for the provisional licensure of nuclear medicine technologists and radiation therapists who are seeking post-primary certification in computed tomography (CT) and radiographers or radiation therapists who are seeking post-primary certification in positron emission tomography (PET) to gain clinical competency.

Section 1. Eligibility for Provisional CT Training License. An individual who is licensed in a primary discipline of nuclear medicine or radiation therapy, certified by the ARRT or NMTCB, and is seeking post-primary CT certification may work under the direct supervision of a licensed and certified CT technologist to gain clinical competency. An individual who wishes to complete clinical training in CT shall submit an application for a provisional license which shall expire twenty-four (24) months from the date of issuance.

Section 2. Eligibility for Provisional PET Training License. An individual who is licensed in a primary discipline of radiography or radiation therapy, certified by the ARRT, and is seeking post-primary PET certification may work under the direct supervision of a licensed and certified PET technologist with the permission of an authorized user to gain clinical competency. An individual who wishes to complete clinical training in PET shall submit an application for a provisional license which shall expire twenty-four (24) months from the date of issuance.

Section 3. Application for Provisional Training License. A licensee shall submit:

(1) Completed and signed provisional training KBMIRT form 7; and

(2) Non-refundable provisional training application and license fee as mandated in 201 KAR 46:020.

Section 4. Upon completion of post-primary ARRT (CT) or NMTCB (PET) certification, a provisional licensee shall submit documentation of registry or certification and shall receive an updated license.

Section 5. If a provisional training licensee has not submitted

documentation of appropriate registry or certification prior to expiration of the provisional license, the licensee shall reapply for a new provisional license pursuant to the process established in this administrative regulation and pay the non-refundable provisional license fee. A provisional license may be renewed once.

Section 6. Incorporation by Reference. (1) KBMIRT Form 7, Provisional License Application, April 2015, is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

SHERYL L. ABERCROMBIE, Chair

APPROVED BY AGENCY: April 13, 2015

FILED WITH LRC: April 15, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2015, at 9:00 a.m., in the office of the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, (502) 782-5687. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on June 1, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Vanessa Breeding, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502) 782-6495.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Vanessa Breeding

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the initial and renewal application process.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the standards and process for application and renewal of license issued by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311B.050(3) authorizes the board to issue and renew the licenses of duly qualified applicants, following procedures established by the board through the promulgation of administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures for the board to issue and renew the licenses of duly qualified applicants.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A.

(d) How the amendment will assist in the effective administration of the statutes: N/A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 state health care organizations and approximately 8,100 licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals who seek to be licensed or have an issued license to be renewed must submit an application setting forth the individual's qualifications.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An individual will be charged a fifty (50) dollar fee for a two (2)-year provisional training license.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Qualified individuals will be able to be licensed and post-primary certification in computed tomography (CT) to gain clinical competency.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional cost will be incurred as a result of amending this administrative regulation.

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are 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, if new, or by the change if it is an amendment: No.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(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? Kentucky Board of Medical Imaging and Radiation Therapy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 311B.100 to 311B.110.

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

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

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

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this regulation.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Board of Medical Imaging and Radiation Therapy
(New Administrative Regulation)**

201 KAR 46:060. Continuing education requirements.

RELATES TO: KRS 311B.050

STATUTORY AUTHORITY: KRS 311B.050(4)

NECESSITY, FUNCTION, AND CONFORMITY: The Board of Medical Imaging and Radiation Therapy is authorized by KRS 311B.110 to require that all licensees obtain continuing education for ongoing knowledge of current practices in radiation safety and clinical procedures prior to licensure renewal. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the approval of continuing education courses.

Section 1. Mandatory Continuing Education Units. (1) Medical imaging, advanced imaging professionals, and radiation therapists shall obtain a minimum of twenty-four (24) continuing education units per biennium.

(2) Limited X-Ray machine operators shall obtain a minimum of twelve (12) continuing education units per biennium.

(3) A continuing education unit shall be earned by participating in fifty (50) contact minutes in an approved continuing education program.

Section 2. Methods of Acquiring Continuing Education Units. Continuing education units applicable to the renewal of a license shall be directly relevant to the professional growth and development of the medical imaging, radiation therapy, advanced imaging professional, or limited x-ray machine operator. Units may be earned by completing any of the following educational activities:

(1)(a) Academic courses relevant to the radiologic sciences and/or patient care and is offered by a post-secondary educational institution accredited by a mechanism recognized by the ARRT or the NMTCB. Relevant courses in the biologic sciences, physical sciences, radiologic sciences, health and medical sciences, social sciences, communication (verbal and written), mathematics, computers, management, or education methodology shall be accepted. Some subject areas that shall not be applicable include courses in astronomy, fine arts, geology, geography, history, music, philosophy, and religion;

(b) Academic course credit equivalency for continuing education units shall be based on one (1) credit hour is equal to fifteen (15) continuing education units;

(2) Continuing education units approved by a Recognized Continuing Education Evaluation Mechanism (RCEEM); or

(3) Continuing education units offered by other individuals, organizations, or institutions that have been approved by the board.

(4) A presenter may earn a maximum of twice the continuing education units for the development of the initial presentation and earn credit for presenting.

(5) Credit shall not be issued for repeated instruction of the same course within the biennium.

Section 3. Procedure for Preapproval of Continuing Education Programs. A continuing education program may be approved by two (2) mechanisms:

(1) By applying and receiving approval from a RCEEM; or

(2) By applying and receiving approval from the board.

(3) For board approval of continuing education programs:

(a) Submit KBMIRT Form 10 at least twenty (20) business days in advance of the date of the offering; and

(b) Submit the continuing education approval fee as established by 201 KAR 46:020.

(c) A continuing education activity shall be approved if the board determines that the activity is appropriate.

Section 4. Responsibilities and Reporting Requirements of Licensee. A licensee shall be responsible for obtaining required continuing education units and submit documents only if requested

by the board. Each licensee shall maintain all documentation verifying successful completion of continuing education units for the current and prior biennium. Documentation shall include:

(1) Official transcripts for completed academic courses;

(2) A copy of the program showing an individual as a presenter of an approved continuing education program; or

(3) Completion certificates or cards for continuing education programs.

Section 5. Audit Procedures. (1) The board shall audit a random selection of licensees per year and notify the randomly-selected licensees.

(2) Each licensee selected for audit shall furnish documentation of completed continuing education units for the identified time frame.

Section 6. Temporary Licensees. Continuing education requirements shall not apply to the holders of a temporary license.

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

(a) KBMIRT Form 9, CEU Program Request/Approval Form, April 2015; and

(b) KBMIRT Form 8, CEU Documentation Form, April 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHERYL L. ABERCROMBIE, Chair

APPROVED BY AGENCY: April 13, 2015

FILED WITH LRC: April 15, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2015, at 9:00 a.m., in the office of the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, (502) 782-5687. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on June 1, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Vanessa Breeding, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502) 782-6495.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Vanessa Breeding

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for continuing education to maintain a license.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the standards and process for application and approval of continuing education courses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311B.050(4) authorizes the board to determine and enforce continuing education requirements and establish guidelines for approval of continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the standards for application

and approval of continuing education courses which are required for license renewal, activation and reinstatement.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A.

(d) How the amendment will assist in the effective administration of the statutes: N/A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 state health care organizations and approximately 8,100 licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals who are licensed will have to take continuing education courses approved by the board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The additional cost will be the specific continuing education courses that the licensee will complete.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals will maintain their competency and ethical standards.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional cost will be incurred as a result of amending this administrative regulation.

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are 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, if new, or by the change if it is an amendment: No.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(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? Kentucky Board of Medical Imaging and Radiation Therapy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 311B.050(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) 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 is no cost associated with administering this regulation.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TRANSPORTATION CABINET Department of Highways Division of Maintenance (New Administrative Regulation)

603 KAR 5:155. Removal and pruning of vegetation.

RELATES TO: KRS 176.050(1), 177.106, 177.830(5), 177.990(2)

STATUTORY AUTHORITY: KRS 176.050(1)(i)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 176.050(1)(i) requires the department to promulgate administrative regulations concerning the care and maintenance of roads in the Commonwealth. This administrative regulation establishes a permitting process by which a noncommercial or a commercial entity may apply to the department for the removal of vegetation near state roads and highways.

Section 1. Definitions. (1) "Advertising device" is defined by KRS 177.830(5).

(2) "Certified arborist" means an arborist prequalified within the landscaping classification of the Transportation Cabinet's Prequalification Committee and certified by the International Society of Arboriculture.

(3) "Commercial entity" means a business or company, including the owner of an outdoor advertising device, whose activities generate or are intended to generate revenue.

(4) "Illegal outdoor advertising device" means an outdoor advertising device that was erected or is maintained in violation of federal, state, or local law or ordinance. (5) "Noncommercial entity" means a private landowner including a farm or single family residence.

(6) "REDA" means a roadside environmental district administrator located in each of the district offices of the Transportation Cabinet.

Section 2. Vegetation Removal Permit Eligibility. (1) A permit to remove or prune vegetation in order to remove vegetative obstructions to the visibility of a noncommercial or commercial entity, including an outdoor advertising device, that are located in a public right-of-way under the jurisdiction of the Kentucky Transportation Cabinet, shall be obtained from the department, in accordance with the terms of this administrative regulation, prior to entry or disturbance of the right-of-way.

(2) A permit to remove or prune vegetation by a noncommercial entity or a commercial entity shall be approved by the department:

(a) In order to improve the safety of the traveling public;

(b) If necessary to eliminate hazards to personal property;

(c) To enhance visibility for the travelling public;

(d) To eliminate an unsightly condition and improve roadway aesthetics as determined by the department during application review; or

(e) To remove the undesirable vegetation listed on the department's Web site at www.transportation.ky.gov/permits/.

(3) A permit to prune or remove vegetation shall not be issued:

(a) For an illegal outdoor advertising device or if the legal status of an outdoor advertising device is in dispute; or

(b) If an applicant is required to enter through state right-of-way

in order to access property for vegetation pruning or removal unless authorized by the department as part of the permit to remove vegetation.

(4) A noncommercial entity or a commercial entity shall apply to the department for a permit to remove or prune vegetation by using Application for Encroachment, TC 99-1(A). The form shall be submitted to the Transportation Cabinet district office that is responsible for the area of the proposed vegetation management plan.

Section 3. General Requirements for Vegetation Removal. (1) A noncommercial entity and a commercial entity shall:

(a) Submit a mitigation plan to replant the area where trees were removed if requested by the department;

(b) Remove tree stumps and roots on a slope of 3:1 or less flush with the ground surface;

(c) Remove tree stumps and roots on a slope greater than 3:1 to a height of three (3) inches or less above the surrounding ground surface. The height shall be measured from the top of the stump or root to its base on the lowest side of the slope;

(d) Remove and dispose of cut material and debris from the state right-of-way as specified in the permit issued by the department;

(e) If necessary, treat a tree stump with an herbicide specific to the type of work and vegetation proposed for removal;

(f) Fill, grade, and compact a hole or void created by the performed work with top soil;

(g) Use a seeding and erosion control plan;

(h) Not remove or prune a redbud tree, dogwood tree, or designated state tree without approval of the department based on the health and condition of the trees at the time of permitting;

(i) Remove or prune vegetation with the supervision of a certified arborist or district REDA;

(j) Perform work within 180 consecutive calendar days of the work start date.

(2) A permit to remove vegetation shall be granted by the department in areas designated as a beautification project if the areas have become so unsightly and overgrown that they no longer meet the criteria for a beautification project.

(3) Work shall not be performed until a completed permit application is received and approved by the department pursuant to Sections 4 or 5 of this administrative regulation.

Section 4. Noncommercial Assistance of a REDA. (1) A detailed explanation of the proposed vegetation management plan shall be included by the noncommercial entity with the submission of a TC Form 99-1(A) to the department.

(2) A non-commercial entity may use either a certified arborist or a department REDA to submit a vegetation management plan to the department. A certified arborist used by a noncommercial entity shall comply with Section 5 of this administrative regulation.

(3) The REDA shall review the submitted application to remove or prune vegetation and coordinate the process of removal with the permittee.

Section 5. Commercial Use of Arborist. (1) A commercial entity shall be required to use a certified arborist for vegetation management.

(2) A commercial applicant with three (3) active permits for vegetation removal shall not be eligible for another permit until the work on at least one (1) active permit is completed.

(3) The completed application for a permit to remove or prune vegetation shall include:

(a) A general description of work to be performed;

(b) The address and telephone number of the party applying for a permit;

(c) A photograph, location map, and a detailed and scaled drawing showing the location of the vegetation proposed to be trimmed or removed;

(d) A vegetation management plan submitted by a certified arborist that shall include:

1. A general description of vegetation proposed to be removed and the work to be performed;

2. An inventory of trees larger than six (6) inches in diameter as measured twelve (12) inches from ground level within the area proposed for vegetation removal or pruning; and

3. Documentation that the applicant consulted with the United States Fish and Wildlife Service regarding a potential for the proposed work to affect federally listed, threatened, or endangered species;

(e) Proof that the applicant has obtained local, state, or federal approval as required;

(f) The name and address of the contractor that will be performing the work;

(g) A signed release from property owners whose property lines front the right-of-way where vegetation management is proposed;

(h) A signed consent from a private property owner that gives the permittee access from the private property to the work site;

(i) A seeding and erosion control plan pursuant to the department's manual, Standard Specifications for Road and Bridge Construction;

(j) The proposed work schedule including the beginning and ending date of work;

(k) A payment bond and a performance bond until the project is released by the department;

(l) Proof of liability insurance equal to or in excess of \$3 million. The department shall be listed as the "Certificate Holder."

(4) No permit shall be granted if the vegetation removal will adversely affect federally listed, threatened, or endangered species unless the United States Department of Fish and Wildlife Service approves the permittee's proposal to minimize the impact.

(5) The certified arborist shall notify the department that the work is complete and certify that the work has been performed according to the permit.

(6) Two (2) years after the date the work is completed, a permittee shall submit to the department a report completed by a certified arborist that includes current color photographs of the area where the work was performed.

(7) If there are expenses related to the use of a certified arborist, or a review by the department, the applicant shall submit a completed Agreement for Services to be Performed, TC 99-22, to the department and reimburse the department for administrative expenses incurred as a result of the vegetation management plan.

Section 6. Notice of Violation; Appeals. (1) The department shall notify the permittee by certified letter if a violation of this administrative regulation has occurred.

(2) If the permittee fails to respond to the certified notice or fails to remedy the violations within thirty (30) days, the department shall proceed to take legal action against the permittee.

(3)(a) A vegetative permit holder aggrieved by the findings of the department may request an administrative hearing pursuant to KRS Chapter 13B. The request shall be in writing and within twenty (20) days of the notice.

(b) A request for a hearing shall thoroughly describe the grounds on which the hearing is requested.

(c) The hearing request shall be addressed to the Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622.

Section 7. Penalties. (1) A vegetative permit holder who violates this administrative regulation shall be fined a civil penalty of \$500 as established in KRS 177.990(2). A corrective plan by a certified arborist or REDA shall be submitted within thirty (30) days of the notice of violation.

(2) The department shall deny a permit that contains intentionally false or misleading information.

(3) If a tree dies within two (2) years of being pruned or planted, the permittee shall remove the dead tree and:

(a) Repay the department for the loss of the state-owned tree; or

(b) Replant the area.

(4) If damage occurs to vegetation not included in the vegetation permit, the permit holder shall be fined in accordance with subsection (1) of this section and shall be required to replant

the area.

(5) The permittee shall be solely responsible for damage or destruction to private property that occurs in the course of executing the vegetation management plan.

(6) The permittee shall indemnify the department and the cabinet pursuant to the Application for Encroachment, TC Form 99-1(A) in the event that claims are brought against the department or cabinet by third parties for damages sustained in the course of executing a vegetation management plan.

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

(a) "Agreement for Services to be Performed," TC 99-22, December, 2014;

(b) "Application for Encroachment", TC 99-1(A), December, 2014; and

(c) "Standard Specifications for Road and Bridge Construction", June 15, 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the cabinet's Web site at <http://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx>

NANCY ALBRIGHT, Deputy State Highway Engineer

MICHAEL W. HANCOCK, P.E., Secretary

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: April 13, 2015

FILED WITH LRC: April 13, 2015 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2015 at 11:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C117, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. 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 wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business June 1, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes a permitting process by which a noncommercial or a commercial entity may apply to the department for a permit to prune or remove vegetation near state roads and highways.

(b) The necessity of this administrative regulation: This regulation is necessary to control the removal of vegetation in and around Kentucky's interstates, parkways, NHS and FAP highways.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 176.050(1)(i) requires the Department of Highways to promulgate administrative regulations

concerning the care and maintenance of roads in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will specify the requirements for obtaining a permit to remove or prune vegetation beside Commonwealth highways.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects commercial businesses and private landowners wishing to prune or remove existing vegetation 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: Commercial or noncommercial entities will be required to obtain a permit from the cabinet in order to prune or remove vegetation. A commercial entity will be required to use a certified arborist and present a vegetation pruning or removal plan to the cabinet. A noncommercial entity may either use a certified arborist or a cabinet REDA to formulate a plan to remove or prune vegetation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no fees involved with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The requirements of this administrative regulation will allow commercial or noncommercial entities to prune or remove vegetation.

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

(a) Initially: No additional costs are expected to implement this administrative regulation.

(b) On a continuing basis: No additional costs are expected.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established by this regulation either directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not applied. Both businesses and private landowners who wish to remove or prune vegetation will be required to obtain a permit from the cabinet.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet's Department of Highways, Division of Maintenance.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS176.050(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. There will not be any effect on the expenditures of a state or local agency.

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

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

(c) How much will it cost to administer this program for the first year? No additional costs are expected for the administration of this program.

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

**TRANSPORTATION CABINET
Department of Highways
Division of Maintenance
(New Administrative Regulation)**

603 KAR 10:002. Definitions for 603 KAR Chapter 10.

RELATES TO: KRS 177.572-177.576, 177.830-177.890, 23 C.F.R. Part 750, 23 U.S.C. 103, 131

STATUTORY AUTHORITY: KRS 177.860, 23 U.S.C. 131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.860 requires the Commissioner of the Department of Highways to promulgate administrative regulations establishing standards for advertising devices. KRS 177.890 authorizes the Commissioner of the Department of Highways to enter into agreements with the United States Secretary of Transportation in order to carry out national policy relating to interstate, defense, and federal-aid primary highways within the state. 23 U.S.C. 131, the Highway Beautification Act, authorizes retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices. This administrative regulation defines the terms used in 603 KAR Chapter 10.

Section 1. Definitions. (1) "Abandoned" or "discontinued" means that for a period of one (1) year or more an advertising device has:

- (a) Not displayed advertising matter;
- (b) Displayed obsolete advertising matter;
- (c) Needed substantial repairs due to lack of maintenance; or
- (d) Only advertised for the sale, rent, or lease of the advertising device.

(2) "Activity boundary line" means the delineation on a property of those regularly used buildings, parking lots, storage, and process areas that are integral and essential to the primary business activity that takes place on the property.

(3) "Advertising device" is defined by KRS 177.830(5).

(4) "Centerline of the highway" means a line:

(a) Equidistant from the edges of the median separating the main-traveled ways of a divided:

- 1. Interstate;
- 2. Parkway;
- 3. National highway system; or
- 4. Federal-aid primary highway; or

(b) That is the centerline of the main-traveled way of a

nondivided:

- 1. Interstate;
- 2. Parkway;
- 3. National highway system; or
- 4. Federal-aid primary highway.

(5) "Commercial or industrial activities" in an unzoned area is defined by KRS 177.830(9).

(6) "Commercial or industrial land use" means an activity in a zoned area within 660 feet of the interstate or parkway right of way carried on for financial gain but not including:

(a) The leasing of property for residential purposes;

(b) An activity conducted in a building principally used as a residence;

(c) An agricultural, forestry, ranching, grazing, farming, or related enterprise, including a wayside fresh produce stand;

(d) Operation, maintenance, or storage of an advertising device;

(e) A railroad track or minor siding; or

(f) A facility generally recognized as a utility such as a cell tower.

(7) "Commercial or industrial zone" means an area adjacent to a highway zoned to permit business, commerce, or trade as established in local ordinance or regulation.

(8) "Conditional permit" means a permit issued by the department that requires the removal of one (1) or more existing advertising devices prior to construction activity at the permitted location.

(9) "Department" means the Department of Highways within the Kentucky Transportation Cabinet.

(10) "Destroyed" means an advertising device requiring repair due to weather related events, vandalism, or other criminal or tortious acts.

(11) "Electronic advertising device":

(a) Means an advertising device with a message that is changed by an electronic or mechanical process or remote control, including rotating cubes, rotating vertical triangular slats, turning lights on and off, glow cubes, light emitting diodes, cathode ray tubes, and florescent discharge or other similar technology; and

(b) Does not mean a numerical display changed by an electronic or mechanical process not exceeding one-half of the message face.

(12) "Enlargement" means an addition to the permitted area of the facing of an advertising device.

(13) "Erect":

(a) Means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or bring into being or establish; and

(b) Does not mean the change of a message or routine maintenance.

(14) "Extension" means an addition to an advertising device that is temporary, subject to specific size requirements, and removed with the message.

(15) "Face" means the part of the advertising device including trim and background that contains the message and informative content.

(16) "Facing" means the faces displayed on the same advertising device and oriented in the same direction of travel.

(17) "Federal-aid primary highway" is defined by KRS 177.830(3) and pursuant to 23 U.S.C. 131 refers to the existence of the highway on June 1, 1991.

(18) "Highway" means:

(a) An interstate, parkway, national highway system, or federal-aid primary highway depicted by the Transportation Cabinet on <http://maps.kytc.ky.gov/PAFOA/>; and

(b) A public road maintained by the department.

(19) "Interstate" is defined by KRS 177.830(2).

(20) "Main traveled way":

(a) Means the traveled way of a highway on which through traffic is carried; and

(b) Does not mean frontage roads, turning roadways, or parking areas.

(21) "Nit" means a unit of measurement of luminance used to specify the brightness or the intensity of visible light in an electronic billboard display.

(22) "Non-billboard" means an off-premise advertising device located on a federal-aid primary highway or a national highway system highway that is not located on the property it is advertising and is limited to advertising for a city, church, or civic club located within the community in which the advertising device is erected.

(23) "Nonconforming advertising device" means an off-premise advertising device that at one (1) time was lawfully erected but does not comply with a:

- (a) Current state law or administrative regulation; or
- (b) Changed condition such as:
 - 1. A change in zoning;
 - 2. The relocation or reclassification of a highway;
 - 3. A change in restriction on size, space, or distance; or
 - 4. The abandonment of required business or businesses.

(24) "Official sign" means a sign located within the highway right-of-way that has been installed by or on behalf of the department or another public agency having jurisdiction.

(25) "Off-premise advertising device" means an advertising device that contains a message relating to an activity or product that is foreign to the site on which the advertising device and message are located or an advertising device erected by a company or individual for the purpose of selling advertising messages for rental income.

(26) "On-premise advertising device":

(a) Means an advertising device that consists solely of the name of the establishment or that identifies the establishment's principal or accessory products or services offered on the property; and

(b) Does not mean an advertising device that brings rental income to the property owner.

(27) "Protected area" means an area:

(a) Within 660 feet of the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway both in and outside of an urban area; and

(b) Outside of an urban area and beyond 660 feet of the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway.

(28) "Scenic byway" is defined by KRS 177.572.

(29) "Scenic highway" is defined by KRS 177.572.

(30) "Static advertising device" means an advertising device that does not use electric or mechanical technology to change the message but can include a numerical display changed by an electronic or mechanical process that does not exceed one-half of the message face.

(31) "Turning roadway" means a connecting roadway for traffic turning between two (2) intersecting lanes of an interchange.

(32) "Unzoned commercial or industrial area" is defined by KRS 177.830(8).

(33) "Urban area" is defined by KRS 177.830(10).

(34) "Urbanized protected area" means an area within 660 feet of the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway with a population of 50,000 or more as demonstrated by the United States Department of Commerce, United States Census Bureau.

(35) "Visible" means a message:

(a) Or a part of the static advertising device structure capable of being seen, whether or not legible, without visual aid by a person of normal visual acuity on a scenic highway; or

(b) Capable of being seen, whether or not legible, without visual aid by a person of normal visual acuity in a protected area not on a scenic highway.

NANCY ALBRIGHT, Deputy State Highway Engineer

MICHAEL W. HANCOCK, P.E., Secretary

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: April 13, 2015

FILED WITH LRC: April 13, 2015 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2015 at 12:00 p.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C117, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five

(5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. 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 wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business June 1, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation contains the definitions for 603 KAR Chapter 10 relating to advertising devices in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to explain and define the terms used in the billboard regulations of 603 KAR Chapter 10.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 177.860 requires the cabinet to promulgate administrative regulations prescribing standards for the erection, maintenance and operation of advertising devices and 23 U.S.C. 131 conditions retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will clarify and provide the definitions related to billboard permitting in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects persons and corporations wishing to erect, operate, and maintain billboards.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This new regulation contains definitions applicable to the permitting, erection, operation, and maintenance of advertising devices 603 KAR Chapter 10.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This new regulation contains definitions applicable to the permitting, erection, operation, and maintenance of advertising devices 603 KAR Chapter 10.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): This administrative regulation contains definitions applicable to the erection, operation, and maintenance of advertising devices.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: There are no known costs associated with this administrative regulation.

(a) Initially: None

(b) On a continuing basis: None

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established by this regulation either directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation addresses only definitions.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet's Department of Highways and Division of Maintenance.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 176.860, 23 U.S.C. 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. There will not be any effect on the expenditures of a state or local agency.

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

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

(c) How much will it cost to administer this program for the first year? No administrative costs are required or expected.

(d) How much will it cost to administer this program for subsequent years? No subsequent administrative costs are anticipated.

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:

TRANSPORTATION CABINET

Department of Highways

Division of Maintenance

(New Administrative Regulation)

603 KAR 10:021. Electronic advertising devices.

RELATES TO: KRS 177.572-177.576, 177.830-177.890, 177.990(2)

STATUTORY AUTHORITY: KRS 177.860, 23 U.S.C. 131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.860 requires the Commissioner of the Department of Highways to promulgate administrative regulations establishing standards for

advertising devices. KRS 177.890 authorizes the Commissioner of the Department of Highways to enter into agreements with the United States Secretary of Transportation in order to carry out national policy relating to interstate, defense, and federal-aid primary highways within the state. 23 U.S.C. 131, the Highway Beautification Act, authorizes retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices. This administrative regulation establishes the standards for on-premise and off-premise electronic advertising devices.

Section 1. General Conditions Relating to Off-Premise Electronic Advertising Devices. (1) An electronic advertising device visible from the main travelled way on an interstate, parkway, national highway system, or federal-aid primary highway shall be prohibited in a protected area unless the device is located in an urban area or urbanized area.

(2) An advertising device in a protected urban area shall be:

(a) A legal static advertising device in existence on the effective date of this administrative regulation that is proposed for conversion to an electronic advertising device;

(b) Within 660 feet of right-of-way; and

(c) Compliant with the ordinances or regulations of a local governing body that specifically regulates the erection and maintenance of electronic advertising devices.

(3) An electronic advertising device in an urbanized protected area shall be:

(a) Within 660 feet of right-of-way;

(b) Compliant with the ordinances or regulations of a local governing body that specifically regulates the erection and maintenance of electronic advertising devices; or

(c) Compliant with a variance that has been granted by a local governing body such as a planning and zoning commission.

(4) An off-premise electronic advertising device shall not be converted to an off-premise static advertising device prior to receiving a permit pursuant to 603 KAR 10:010.

(5) An electronic advertising device that is visible from more than one (1) interstate, parkway, national highway system, or federal-aid primary highway shall meet the requirements for each highway independently.

(6) The erection or existence of an electronic advertising device shall be prohibited in a protected area if the device:

(a) Advertises an activity that is prohibited by law;

(b) Is abandoned or discontinued;

(c) Is not clean and in good repair;

(d) Is not securely affixed to a substantial structure permanently attached to the ground;

(e) Directs the movement of traffic;

(f) Interferes with, imitates, or resembles an official traffic sign, signal, or traffic control device;

(g) Prevents the driver of a vehicle from having a clear and unobstructed view of an official sign or approaching or merging traffic;

(h) Is erected or maintained upon a tree;

(i) Is erected upon or overhanging the right-of-way;

(j) Has a facing larger than 672 square feet;

(k) Has more than one (1) face per facing;

(l) Is a non-billboard electronic advertising device; or

(m) Is mobile, temporary, or vehicular.

(7) An on-premise advertising device shall not affect spacing requirements for an off-premise electronic advertising device.

(8) An electronic advertising device shall not contain extensions to the face.

(9) Interior angles between two (2) facings of an electronic advertising device shall not exceed forty-five (45) degrees.

(10) The name of the owner of an electronic advertising device shall be legible from the main traveled way and shall not be larger than twenty (20) square feet. The owner's name shall be shown without other owner information and shall not be considered a message.

(11) The message on an electronic advertising device shall:

(a) Be static for at least eight (8) seconds;

(b) Change from one (1) message to another in less than two

(2) seconds;

(c) Not blink, scroll, or contain animation or video; and

(d) Be programmed to freeze in a static display if a malfunction occurs.

(12) An electronic advertising device shall be equipped with a sensor or other device that automatically determines the ambient illumination and shall be programmed to automatically dim to a luminance of 300 nits or less if the ambient light is 1.5 foot candles or less.

(13) Spacing between off-premise advertising devices per visible direction of travel on interstates, parkways, national highway systems, or federal-aid primary highways shall be at least:

(a) 2,500 feet between off-premise electronic advertising devices; or

(b) 500 feet between an off-premise electronic advertising device and an off-premise static advertising device.

Section 2. Exchange of Billboards for Permit. (1) An exchange of four (4) existing off-premise advertising devices shall be required for one (1) new off-premise electronic advertising device permit located within the protected area of an interstate, parkway, national highway system, or federal aid primary highway.

(2) An exchange of three (3) existing off-premise advertising devices shall be required for the conversion of an existing legal static advertising device in an urban area or an urbanized protected area.

(3) An off-premise advertising device to be exchanged shall be:

(a) Situated in an unpermissible location in a protected area;

(b) Visible from a scenic highway;

(c) Currently nonconforming as established in Section 5 of this administrative regulation or pursuant to local regulations; or

(d) Illegal.

(4) An advertising device proposed for an exchange for a permit shall be no less than fifty (50) square feet per facing.

(5) An advertising device proposed for exchange that meets the requirements of subsections (3) and (4) of this section shall be approved by the department prior to exchange.

(6) The owner of an exchanged advertising device shall receive credit by the department for each advertising device removed after the effective date of this administrative regulation.

(7) If an advertising device is removed by an owner in order to obtain a permit under this administrative regulation, but the permit is denied by the department, the department shall credit the owner for the removed device pending the outcome of the appeal or until a permit is filed for another advertising device.

(8) Where the permittee voluntarily removes an advertising device and receives credit toward a permit for an electronic advertising device, the permittee waives any right or claim to any additional compensation from the department for that device.

Section 3. Off-premise Electronic Advertising Devices on Interstates and Parkways. (1) Electronic advertising devices shall only be erected or maintained in a protected area of an interstate or parkway that:

(a) Is zoned industrial or commercial and was an incorporated municipality on September 21, 1959; or

(b) Was zoned commercial or industrial and included a commercial industrial land use on September 21, 1959.

(2) An electronic advertising device shall be no closer than fifty (50) feet to the edge of the main traveled way or turning roadway of the interstate or parkway.

Section 4. Off-Premise Electronic Advertising Devices on National Highway System and Federal-Aid Primary Highways. An electronic advertising device visible from a national highway system or federal-aid primary highway shall be erected and maintained in:

(1) A commercial or industrial zone; or

(2) An unzoned commercial or industrial area with a commercial or industrial activity that is located on the same side of the highway and within 700 feet of the activity boundary line measured along or parallel to the pavement of the highway.

Section 5. Nonconforming Electronic Advertising Devices. (1) A nonconforming electronic advertising device in a protected area shall not require a permit and shall continue to exist if the device:

(a) Has not been abandoned or discontinued;

(b) Has been subjected to only routine maintenance as established in subsection (7) of this section;

(c) Is in compliance with state law and administrative regulations as well as local zoning, sign, or building restrictions at permitting; and

(d) Remains substantially the same including the structure as it was on the effective date of the state law or administrative regulation that made the device nonconforming.

(2) The owner of a nonconforming advertising device shall submit biennial updates on a completed Advertising Device Biennial Certification Form, TC Form 99-206.

(3) An incomplete or inaccurate submission shall not be considered an update submittal.

(4) The update submittal for a nonconforming electronic advertising device shall be submitted electronically to the department pursuant to the following table:

Dept. of Highways' District #	Submittal Year	Submittal Period*
1 & 7	Odd	January 1- April 30th
2 & 4	Even	January 1- April 30th
3 & 9	Odd	May 1st- August 31st
6 & 8	Even	May 1st- August 31st
5 & 11	Odd	September 1st – December 31st
10 & 12	Even	September 1st – December 31st

*A submittal shall be received during the submittal period to be considered.

(5) Failure to submit an update within thirty (30) days of the deadline established in subsection (4) of this section shall subject the owner of the nonconforming electronic advertising device to a fine of \$250 per permit pursuant to KRS 177.990(2).

(6) A nonconforming advertising device may be sold, leased, or transferred without affecting its status, but its location shall not be changed. A transfer of ownership for a nonconforming advertising device shall be submitted on a completed Advertising Device Ownership Transfer, TC Form 99-205.

(7) An owner may conduct routine maintenance of a nonconforming electronic advertising device. The following shall be considered routine maintenance:

(a) In kind replacement of material components with a like material component;

(b) Painting of supports and frames;

(c) Changing existing nonstructural light fixtures for energy efficiency;

(d) Replacement of nuts, bolts, or nails;

(e) A safety related addition such as a catwalk that does not prolong the life of the advertising device but provides protection for workers; and

(f) Rebuilding a destroyed advertising device.

(8) The following shall be considered non routine maintenance:

(a) Enlargement of the device;

(b) A change in the structural support including material diameters, dimensions, or type that would result in increased economic life such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;

(c) The addition of bracing, guy wires, or other reinforcement;

(d) A change in the location of the structure; or

(e) A change in the direction of the face.

(9) Non routine maintenance on a nonconforming electronic advertising device shall constitute a violation of this administrative regulation and action shall be taken pursuant to Section 9 of this administrative regulation.

Section 6. On-Premise Advertising Devices. (1) An on-premise advertising device shall only advertise or promote the activities or products offered on the property where the advertising device is located.

(2) An on-premise electronic advertising device shall be erected:

(a) On the property where the business is located and inside the activity boundary line; or

(b) On the property where the business is located and no farther than 400 feet from the activity boundary line.

(3) An on-premise advertising device placed within fifty (50) feet of the activity boundary line shall not exceed the maximum size established in KRS 177.863(3)(a). An entrance or exit on the property shall be considered within the activity boundary line.

(4) An on-premise electronic advertising device that complies with this administrative regulation shall only be erected:

(a) 1. Within 660 feet of the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway both in and outside of an urban area; or

2. Outside of an urban area and beyond 660 feet of the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway; and

(b) If the device complies with this administrative regulation, and county or city zoning ordinances pursuant to KRS 177.860(4).

(5) If further than fifty (50) feet outside of the activity boundary line, an on-premise electronic advertising device shall not exceed:

(a) Twenty (20) feet in length, width, or height; and

(b) 150 square feet in area, including border and trim and excluding supports.

(6) No more than one (1) on-premise electronic advertising device shall be located at a distance greater than fifty (50) feet outside of the activity boundary line.

(7) If taking measurements for the placement of an on-premise electronic advertising device for an industrial park, the service road shall be considered within the activity boundary line of the industrial park.

(8) An on-premise electronic advertising device erected to advertise one (1) of the businesses in a shopping center, mall, or other combined business location shall not be located more than fifty (50) feet outside of the activity boundary line of the business being advertised.

(9) If taking measurements for the placement of an on-premise electronic advertising device for a shopping center, mall, or other combined business location, the combined parking area shall be considered within the activity boundary line.

(10) An on-premise static advertising device erected for a shopping center, mall, or other combined business location shall either:

(a) Identify a business or businesses conducted at the location; or

or

(b) Include a display area used to advertise on-premise activities.

(11) An on-premise electronic advertising device erected for a shopping center, mall, or other combined business location may either:

(a) Identify each of the individual businesses conducted at the location; or

(b) Include a display area used to advertise on-premise activities.

(12) An on-premise advertising device shall not:

(a) Move, or have moving or animated parts;

(b) Be erected or maintained on a tree; or

(c) Be erected upon or overhanging the right-of-way.

(13) An on-premise electronic advertising device shall be equipped with a sensor or other device that automatically determines the ambient illumination and shall be programmed to automatically dim to a luminance of 300 nits or less if the ambient light is 1.5 foot candles or less.

(14) An on-premise electronic advertising device shall not affect the spacing requirements of a device as established in KRS 177.863(2)(d).

(15) Extensions of a facing up to fifteen (15) percent shall be allowed on an electronic advertising device:

(a) Within fifty (50) feet of the activity boundary line but shall not exceed the maximum size of the facing of the advertising device as established in KRS 177.863(3)(a); or

(b) Outside of fifty (50) feet of the activity boundary line but shall not exceed the maximum size of the advertising device in subsection (4)(b) of this section.

(16) An on-premise electronic advertising device shall be in compliance with the provisions of this administrative regulation but shall not require a permit.

Section 7. Scenic Highways and Byways. (1) After designation of a scenic highway by the Transportation Cabinet, no additional off-premise electronic advertising devices shall be erected, allowed, or permitted that are visible from the scenic highway.

(2) The sponsor of a scenic byway application may petition the Transportation Cabinet to impose the same administrative regulations for an electronic advertising device located on a scenic byway as an electronic advertising device located on a scenic highway.

(3) Only routine maintenance shall be performed on an off-premise electronic advertising device legally in existence on the date of the scenic highway designation.

Section 8. Permits, Renewals, and Transfers. (1) The requirements of this section shall apply to off-premise electronic advertising devices on an interstate, parkway, national highway system, or federal-aid primary highway.

(2) With the exception of nonconforming electronic advertising devices, a permit shall be required from the department for a device located in a protected area.

(3) The initial permit shall be valid until the expiration of the applicable renewal period. If the renewal period falls within six (6) months of the initial permit issuance, the initial permit shall be valid until the next renewal period.

(4) An application for an electronic advertising device permit shall be made on a completed Application for Advertising Device, TC Form 99-31.

(5) The issuance of an advertising device permit shall be determined based on the order in which a completed application is made to the department.

(6) A permittee shall submit biennial renewals on a completed Advertising Device Biennial Certification Form, TC Form 99-206. An incomplete or inaccurate submission shall not be considered.

(7)(a) If submitting a biennial renewal, the permittee shall certify that the electronic advertising device meets the permit requirements of this administrative regulation.

(b) If the electronic advertising device no longer meets the permit requirements of this administrative regulation, the permittee may request a conditional renewal to allow the permittee to become compliant with the permit requirements.

(c) If the permittee fails to become compliant within thirty (30) days, the permit shall not be renewed.

(8) A renewal submittal for an electronic advertising device shall be submitted electronically to the department pursuant to the following schedule:

Dept. of Highways' District #	Submittal Year	Submittal Period*
1 & 7	Odd	January 1- April 30th
2 & 4	Even	January 1- April 30th
3 & 9	Odd	May 1st- August 31st
6 & 8	Even	May 1st- August 31st
5 & 11	Odd	September 1st – December 31st
10 & 12	Even	September 1st – December 31st

*A submittal shall be received during the submittal period to be considered.

(9) Failure to submit a renewal within thirty (30) days of the deadline established in subsection (8) of this section shall subject the owner of the nonconforming electronic advertising device to a fine of \$250 per permit pursuant to KRS 177.990(2).

(10) An electronic advertising device may be sold, leased, or otherwise transferred without affecting its status, but its location shall not be changed. A transfer of ownership for an electronic advertising device shall be submitted on a completed Advertising Device Ownership Transfer, TC Form 99-205.

(11) An application amendment for substantial change to an approved electronic advertising device permit shall be submitted and approved by the department prior to work being performed. Substantial change to an advertising device shall include:

- (a) Enlargement of the device;
 - (b) Replacement, rebuilding, or re-erection of a device that has not been destroyed;
 - (c) A change in the structural support including material diameters, dimensions, or type that would result in increased economic life such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;
 - (d) A change or upgrade in the technology related to the electronic advertising device;
 - (e) The addition of bracing, guy wires, or other reinforcement;
 - (f) A change in the location of the structure; or
 - (g) A change in the direction of the face.
- (12) The permit for an off-premise electronic advertising device that has not been constructed prior to the renewal date shall be cancelled.

Section 9. Notice of Violations; Appeals. (1) The department shall notify the owner of an electronic advertising device by certified letter that the device is in violation of KRS Chapter 177 or this administrative regulation.

(2)(a) An owner aggrieved by the findings of the department may request an administrative hearing pursuant to KRS Chapter 13B. The request shall be in writing and within twenty (20) days of the certified letter.

(b) A request for a hearing shall thoroughly detail the grounds upon which the hearing is requested.

(c) The hearing request shall be addressed to the Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622.

(3) If the owner fails to request an administrative hearing or fails to remedy the violations within thirty (30) days, the department shall proceed to take legal action pursuant to Section 10 of this administrative regulation.

Section 10. Penalties. (1) The owner of an electronic advertising device who violates a provision of this administrative regulation shall be assessed a penalty of \$500 per violation pursuant to KRS 177.990(2).

(2) The department shall deny or revoke a permit if the permit application contains false or materially misleading information.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Advertising Device", TC Form 99-31, May 2013;

(b) "Advertising Device Ownership Transfer", TC Form 99-205, December 2013;

(c) "Advertising Device Biennial Certification Form", TC Form 99-206, December 2013;

(d) "Agreement for Carrying Out National Policy Relative to Control of Outdoor Advertising in Areas Adjacent to the National System of Interstate and Defense Highways and the Federal-Aid Primary System", December 23, 1971; and

(e) The formal designation of interstates, parkways, national highway system, and federal-aid primary highways by the Transportation Cabinet on the cabinet's Web site at: <http://maps.kytc.ky.gov/PAFOA/>.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the cabinet's Web site at <http://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx>.

NANCY ALBRIGHT, Deputy State Highway Engineer

MICHAEL W. HANCOCK, P.E., Secretary

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: April 13, 2015

FILED WITH LRC: April 13, 2015 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2015 at 10:00 a.m. local time at the Transportation

Cabinet, Transportation Cabinet Building, Hearing Room C117, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. 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 wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business June 1, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes standards for the erection of outdoor electronic advertising devices.

(b) The necessity of this administrative regulation: This regulation is necessary to ensure conformity in the erection of electronic advertising devices.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 177.860 requires the cabinet to promulgate administrative regulations to set reasonable standards for advertising devices. 23 U.S.C. 131 ("The Highway Beautification Act") requires the state to maintain effective control over outdoor advertising devices or risk losing its apportionment of federal aid highway funds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the procedures involved in permitting and maintenance of electronic advertising devices.

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

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

(b) The necessity of the amendment to this administrative regulation: 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 new administrative regulation affects persons wishing to erect outdoor electronic advertising devices.

(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: Persons wishing to erect an outdoor electronic advertising device will have to: File an application for a permit; exchange four (4) existing off-premise advertising devices to erect one (1) new electronic billboard; or exchange three (3) existing off-premise advertising devices to convert one (1) static advertising device to an electronic advertising device.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3): There are no fees involved with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These requirements insure conformity in the erection of electronic advertising devices.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: There are no known costs associated with the amendments to this administrative regulation.

(a) Initially: None

(b) On a continuing basis: None

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established by this regulation either directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not specifically applied. All persons wishing to erect an electronic advertising device will have to apply for a permit.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet's Department of Highways and Division of Maintenance.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 176.860 and 23 U.S.C. 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. There will not be any effect on the expenditures of a state or local agency.

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

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

(c) How much will it cost to administer this program for the first year? No funding increase to implement the administrative regulation will be required.

(d) How much will it cost to administer this program for subsequent years? No subsequent administrative costs are anticipated.

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 containing the federal mandate. 23 U.S.C. 131 and the Bonus Agreement entered into by the Federal Highway Administration (FHWA) and the Kentucky Department of Highways.

2. State compliance standards. Outdoor advertising devices are controlled on interstates, parkways, national highway system, and federal-aid primary highways. Erection of new outdoor advertising devices adjacent to or visible from a scenic highway

are prohibited.

3. Minimum or uniform standards contained in the federal mandate. Outdoor advertising devices are to be controlled on interstates, parkways, national highway system, and federal-aid primary highways. No new outdoor advertising devices are allowed on scenic highways.

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. In 1961, Kentucky entered into a Bonus Agreement with FHWA. Per the agreement, Kentucky placed stricter controls on outdoor advertising devices in exchange for approximately \$2.5 million in federal bonus payments. Violation of the agreement could cause those funds to be repaid to the federal government.

PUBLIC PROTECTION CABINET Department of Financial Institutions Division of Non-Depository Institutions (New Administrative Regulation)

808 KAR 6:015. Licensure application; annual report.

RELATES TO: KRS Chapter 286.4

STATUTORY AUTHORITY: KRS 286.4-420, 286.4-430, 286.4-440, 286.4-450(1)(b), 286.4-480, 286.4-590, and 286.4-610(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.4-610(1) authorizes the commissioner to promulgate administrative regulations for the proper conduct of the business licensed under KRS Chapter 286.4. KRS 286.4-430(1) authorizes the commissioner to prescribe the form of the application for a license under KRS Chapter 286.4. KRS 286.4-590 requires licensees to file an annual report and authorizes the commissioner to prescribe the form of the annual report. This administrative regulation prescribes the procedures and forms for submitting an application for licensure pursuant to KRS 286.4-430 and for filing an annual report pursuant to KRS 286.4-590.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 286.4-410(1)(a).

(2) "Consumer loan company" means a finance company licensed by the commissioner to engage in the business of making loans in the amount or the value of \$15,000 or less at a greater rate of interest, or consideration therefore, than otherwise permitted by law.

(3) "Licensee" is defined by KRS 286.4-410(1)(b).

(4) "Person" is defined by KRS 286.4-410(1)(c).

Section 2. Licensure as a Consumer Loan Company. A person applying for licensure as a consumer loan company shall complete and submit the following:

(1) Form CL-1, Application for a Consumer Loan License with all required attachments;

(2) If the person applying for licensure as a consumer loan company is licensed or registered in any other state or jurisdiction to operate a business making loans of \$15,000 or less at the time of application, a Form CL-4, State License Confirmation Form, completed by each state or jurisdiction in which the person is licensed or registered;

(3) The non-refundable application investigation fee established in KRS 286.4-440(1); and

(4) The annual license fee established in KRS 286.4-440(1).

Section 3. Annual Report by Consumer Loan Licensees. A person filing an annual report with the commissioner pursuant to KRS 286.4-590 shall complete and submit the following on or before January 30 of each year:

(1) Form CL-2, Annual Report to the Department of Financial Institutions; and

(2) If the person has more than one (1) licensed location and chooses to complete Form CL-2 as a composite report for all

locations, a Form CL-3, Supplement to the Annual Report to the Department of Financial Institutions for each licensed location.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form CL-1 "Application for Kentucky Consumer Loan Company License", March 2015 edition;

(b) Form CL-2, "Annual Report to the Department of Financial Institutions", March 2015 edition;

(c) Form CL-3, "Supplement to the Annual Report to the Department of Financial Institutions", March 2015 edition; and

(d) Form CL-4, "State License Confirmation Form", March 2015 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m. This material may also be obtained from the department's Web site at <http://www.kfi.ky.gov>.

This is to certify that the persons signing below have reviewed or approved this administrative regulation, prior to its filing by the Department of Financial Institutions with the Legislative Research Commission as required by KRS 13A.220(6)(b).

CHARLES A. VICE, Commissioner

AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: April 10, 2015

FILED WITH LRC: April 13, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2015, at 2 p.m., EDT, in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on June 1, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Jessica R. Sharpe, General Counsel, or John C. Allender, Staff Attorney, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica R. Sharpe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for licensing consumer loan companies pursuant to KRS Chapter 286.4. This regulation also formalizes the annual reporting process for licensees as required by KRS 286.4-590.

(b) The necessity of this administrative regulation: This regulation clarifies how interested applicants can obtain a consumer loan company license from the commissioner, and establishes the form and full scope of information required to apply for a license pursuant to the commissioner's authority in KRS 286.4-430.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.4-420 requires persons to obtain a license from the commissioner prior to making loans of \$15,000 or less at a greater rate of interest than otherwise permitted by law; KRS 286.4-430(1) and (2)(d) authorize the commissioner to prescribe the form of the application and the full

scope of information required to be submitted to the commissioner on the application; KRS 286.4-440 sets the application, investigation, and license fees adopted in this regulation; KRS 286.4-590 establishes the annual reporting requirement further clarified by this regulation; and KRS 286.4-610(1) authorizes the commissioner to promulgate regulations for the proper conduct of business under KRS Chapter 286.4.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide clarity for applicants as to the procedure to apply for a license, and for filing the annual report required by KRS 286.4-590.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Consumer loan licensees (358 as of February 2015) and consumer loan license applicants (approximately twenty six per year based on a five year average).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This regulation establishes the specific procedure to apply for a consumer loan license, and to maintain it by paying the required license fees and making the required annual reports. The procedure set forth in this regulation formalizes the existing procedure followed by the Department, applicants, and licensees to meet the requirements of KRS Chapter 286.4.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No change in cost will occur. The fees set forth in this regulation are identical to those already charged by the Department pursuant to KRS 286.4-440 and 286.4-480.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation will result in increased clarity as to procedures and requirements for application submission and license maintenance.

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

(a) Initially: No net change anticipated.

(b) On a continuing basis: No net change anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees generated from licensing are anticipated to cover the cost of enforcement of this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary

to implement this administrative regulation, if new, or by the change if it is an amendment: None.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fee, or directly or indirectly increase any fee. The fees referenced in this regulation are already established in KRS 286.4-440.

(9) TIERING: Is tiering applied? No tiering was applied as there is only one class of regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Financial Institutions 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. The statutory authority for this administrative regulation is found in KRS 286.4-420 through 286.4-450, 286.4-480, 286.4-590, and 286.4-610.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will have a nominal impact on expenditures (estimated decrease of less than \$1,000 per year) and no impact on revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Department currently receives approximately \$167,300 in licensing fees from consumer loan companies annually. This amount will not be impacted by this regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Licensing revenues for consumer loan companies are expected to remain consistent with prior years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost beyond what the Department already expends on licensing administration and enforcement.

(d) How much will it cost to administer this program for subsequent years? There will also be no additional cost to administer this program in subsequent years.

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

Revenues (+/-): Unchanged (approximately \$167,300 annually)

Expenditures (+/-): Unchanged (licensing for consumer loan companies is accomplished with the same personnel and resources that manage licensing for the entire Division of Non-Depository Institutions)

Other Explanation: This regulation has no impact on the fees charged by the Department. The current licensing and application investigation fees are specified in KRS 286.4-440.

CABINET FOR HEALTH AND FAMILY SERVICES

Kentucky Office of the Health Benefit and Health Information Exchange (New Administrative Regulation)

900 KAR 10:040. KHBE Consumer Assistance Program and kynector Certification.

RELATES TO: KRS 194A.050(1), 42 U.S.C. 18031, 45 C.F.R. Part 155.

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Kentucky Office of the Health Benefit and Health Information Exchange, has responsibility to administer the state-based American Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the consumer assistance program of the Kentucky Office of the Health Benefit and Health Information Exchange and the policies and procedures relating to the certification of kynector, including a certified application counselor, in-person assistor, or navigator in accordance with 42 U.S.C. 18031 and 45 C.F.R. Part 155.

Section 1. Definitions. (1) "Agent" is defined by KRS 304.9-

020(1).

(2) "Certified application counselor" or "CAC" means an individual employed by, or volunteer of, an entity designated by the office to perform the functions described in 45 C.F.R. 155.225.

(3) "Department" or "DOI" is defined by KRS 304.1-050(2).

(4) "Enrollee" means an eligible individual enrolled in a qualified health plan.

(5) "Individual exchange" means the Kentucky Health Benefit Exchange that serves the individual health insurance market.

(6) "Individual market" is defined by KRS 304.17A-005(26).

(7) "In-person assistor" or "IPA" means an entity or individual selected by the office to perform the functions described in 45 C.F.R. 155.205 and 45 C.F.R. 155.215.

(8) "Insurance affordability program" means one (1) of the following:

(a) A state Medicaid program under title XIX of the Social Security Act;

(b) A state children's health insurance program (CHIP) under title XXI of the Social Security Act;

(c) A program that makes coverage in a qualified health plan through the exchange with advance payments of the premium tax credit established under section 36B of the Internal Revenue Code available to qualified individuals; or

(d) A program that makes available coverage in a qualified health plan through the exchange with cost-sharing reductions established under section 1402 of the Affordable Care Act.

(9) "Issuer" is defined by 45 C.F.R. 144.103.

(10) "Issuer application assister" means an employee, contractor, or agent of a QHP issuer who is not licensed as an agent, broker, or producer under state law and who assists individuals in the individual market with applying for a determination or redetermination of eligibility for coverage through the exchange or for insurance affordability programs.

(11) "Kentucky Health Benefit Exchange" or "KHBE" or "exchange" means the Kentucky state-based exchange conditionally approved by the Department of Health and Human Services pursuant to 45 C.F.R. 155.105 to offer a QHP beginning January 1, 2014.

(12) "Kentucky Insurance Code" means KRS Chapter 304 and associated administrative regulations.

(13) "Kentucky online gateway" means the system for identity authentication services for users requesting access to the KHBE portal.

(14) "kynector" means a CAC, in-person assistor, or navigator.

(15) "Navigator" means an entity as described in 45 C.F.R. 155.210 selected by the Office of KHBE.

(16) "Office" means the office created to administer the Kentucky Health Benefit Exchange.

(17) "Organization" means an entity as follows:

(a) Community health center;

(b) Hospital;

(c) Health care provider;

(d) Indian health service provider;

(e) Ryan White HIV/AIDS provider;

(f) Behavioral or mental health provider; or

(g) An agency with experience providing social services, energy assistance, or tax assistance which is a:

1. Non-federal government entity;

2. 501(c) organization; or

3. Local government agency.

(18) "Participating agent" means an agent as defined by KRS 304.9-020(1) who has been registered by the office to participate on the KHBE.

(19) "Qualified health plan" or "QHP" means a health plan that meets the standards described in 45 C.F.R. 156 Subpart C and that has in effect a certification issued by the office.

(20) "Qualified individual" means an individual who has been determined eligible to enroll through the KHBE in a QHP in the individual market.

(19) "SHOP" means a Small Business Health Options Program operated by the KHBE through which a qualified employer can provide a qualified employee and their dependents with access to one (1) or more QHPs.

(21) "Training" means the training established by the office for agents and kynector.

Section 2. KHBE Consumer Assistance Programs. (1) The Kentucky kynector Program, in accordance with the accessibility standards of 42 C.F.R. 155.205(c) and (d), shall include the following programs:

- (a) The certified application counselor program described in Section 3 of this administrative regulation;
- (b) The in-person assistor program described in Section 4 of this administrative regulation; and
- (c) The navigator program described in Section 5 of this administrative regulation.

(2)(a) A kynector shall receive initial training in accordance with 45 C.F.R. 155.215(b)(2).

(b) The kynector training shall be provided by the office or an approved vendor.

(c) All kynector shall participate in annual continuing education training established by the office.

(3) The office and kynector program shall refer consumers to other consumer assistance programs in Kentucky when available and appropriate.

(4) The kynector shall be prepared to serve both the individual exchange and SHOP.

Section 3. Certified Application Counselor Program. (1) The certified application counselor program shall comply with the provisions of 45 C.F.R. 155.225.

(2) Organizations seeking designation to participate in the certified application counselor program shall:

(a) Enter into an agreement with the office to comply with the applicable standards of 45 C.F.R. 155.210, 155.225, and this administrative regulation;

(b) Maintain a registration process for staff and volunteers of the organization who wish to serve as a certified application counselor;

(c) Track the performance of CAC staff and volunteers of the organization in accordance with any tracking tools provided by the office;

(d) Comply with the office privacy and security standards in accordance with 45 C.F.R. 155.260;

(e) Act in the best interest of an applicant; and

(f) Provide information in a manner that is accessible to individuals with disabilities directly or through a referral to a kynector or the office contact center.

(3) The office shall certify staff and volunteers of office-designated organizations to act as certified application counselors to:

(a) Provide information about insurance affordability programs and coverage options;

(b) Assist individuals and employees to apply for coverage in a QHP or insurance affordability programs through the KHBE; and

(c) Help to facilitate enrollment of qualified individuals in QHPs and insurance affordability programs.

(4) The office shall certify an individual as an application counselor if the individual:

(a) Is identified by a designated organization described in subsection (1) of this section as an employee or a volunteer;

(b) Registers with the KHBE through the Kentucky online gateway;

(c) Receives KHBE training in accordance with Section 2(2) of this administrative regulation, prior to acting as a certified application counselor;

(d) Discloses to the office and potential applicants any relationships the application counselor or CAC's sponsoring organization has with QHPs or insurance affordability programs, or other potential conflicts of interest identified by the office;

(e) Complies with the privacy and security standards adopted by the office and consistent with 45 C.F.R. 155.260, and applicable authentication and data security standards;

(f) Agrees to act in the best interest of the applicants;

(g) Provides information with reasonable accommodation for an individual with a disability, as defined by the Americans with

Disabilities Act, if providing in-person assistance; and

(h) Enters into an agreement with the office regarding compliance with the standards specified in this section.

(5) A certified application counselor shall:

(a) Inform an applicant of the functions and responsibilities of certified application counselors, other kynector, and participating agents; and

(b) Obtain authorization for the disclosure of applicant information prior to assisting the applicant with submitting an application.

(6) Certified application counselors shall not:

(a) Impose any charge or fee on applicants for application assistance;

(b) Receive compensation or a referral fee from an agent; or

(c) Enter into an exclusive referral agreement with an agent.

(7) In accordance with the procedures established in Section 6 of this administrative regulation, the office shall withdraw certification from an individual application counselor or from all application counselors associated with a particular organization if it finds noncompliance with the terms and conditions of the application counselor agreement or an administrative regulation of the office.

Section 4. In-Person Assistor Program. (1) In accordance with 45 C.F.R. 155.205(d) and (e), the office shall establish an IPA program to authorize eligible public or private entities described in subsection (4) of this section to carry out consumer assistance functions as described in this section.

(2) An entity wishing to participate as an IPA kynector with the KHBE shall:

(a) Be awarded a contract by the office pursuant to policies and procedures established by the Finance and Administration Cabinet and KRS Chapter 45A;

(b) Designate an individual as the participating entity representative who shall:

1. Register with KHBE through the Kentucky online gateway as the individual authorized by the agency;

2. Serve as a primary contact for the office;

3. Sign an IPA kynector entity participation agreement with the office;

4. Be responsible for ensuring that only office certified kynector employees of the entity are provided access to the KHBE through the Kentucky online gateway;

5. Comply with 45 C.F.R. 155.210(d) regarding a conflict of interest; and

6. As an individual IPA employee, comply with this subsection;

(c) Designate the individual employees who shall participate on the KHBE through the IPA kynector entity and who shall:

1. Complete the KHBE kynector training provided by the office or an approved vendor;

2. Sign a kynector participation agreement;

3. Comply with the privacy and security standards of 45 C.F.R. 155.260; and

4. Register with the KHBE through the Kentucky online gateway;

(d) Submit to the office a written plan to remain free of conflicts of interest while carrying out consumer assistance functions under 45 C.F.R. 155.205(d) and (e); and

(e) Provide monthly reports of activities to the office.

(3) An employee designated as an IPA by the kynector entity shall:

(a) Be eighteen (18) years of age or older;

(b) Provide an authorization to the IPA entity to conduct a state background check for evidence of good character; and

(c) Travel, when necessary, to assist applicants with enrollment.

(4) An IPA kynector entity and its employees shall:

(a) Inform applicants of the functions and responsibilities of all kynector and participating agents;

(b) Obtain authorization for the disclosure of applicant information prior to assisting the applicant with prescreening for participation with the KHBE and completion of the application process; and

(c) Provide technical support to other kynector, kynector entities, or the office upon request.

(5) Upon authorization by the office, an IPA kynector employee may assist:

(a) A qualified individual with enrollment in any QHP offered through the KHBE in the individual market;

(b) A qualified employer with selecting a QHP and enroll a qualified employee in a QHP offered through the KHBE in the small group market;

(c) An individual with applying for advance payments of the premium tax credit and cost-sharing reductions; and

(d) An individual with applying for insurance affordability programs, including Medicaid or KCHIP.

(6) An IPA entity and its employees shall:

(a) Maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about the office and KHBE; and

(b) Provide information and services in a fair, accurate, and impartial manner and provide information regarding other health programs.

(7) An issuer shall not be responsible for the activities and conduct of an IPA kynector entity or its IPA kynector employees.

(8) An IPA kynector entity and its employee shall not:

(a) Impose any charge or fee on an applicant for their assistance;

(b) Receive compensation or a referral fee from an agent; or

(c) Enter into an exclusive referral agreement with an agent.

(9) An IPA entity and its employees shall provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the exchange, including individuals with limited English proficiency, and ensure accessibility and usability of navigator tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act, 42 U.S.C. 12101, section 504 of the Rehabilitation Act, and 29 U.S.C. 794.

(10) An IPA entity or its employees shall provide referrals to the DOI, the CHFS ombudsman, or any other appropriate state agency or agencies for any enrollee or qualified individual with a grievance, complaint, or question regarding a health plan, coverage, or a determination under the plan or coverage.

(11) An IPA entity or its employees shall demonstrate to the office that the entity has existing relationships, or could readily establish relationships, with employers and employees, consumers, including uninsured and underinsured consumers, or self-employed individuals eligible for a QHP or other insurance affordability programs.

(12)(a) In accordance with Section 6 of this administrative regulation, the office shall withdraw certification from individual in-person assistors or from all in-person assistors associated with a particular entity if it finds noncompliance with the terms and conditions of the participation agreement or an administrative regulation of the office; and

(b) In addition to withdrawal of certification, the office may enforce any penalty as specified in the contract.

Section 5. Navigator Program. (1) In accordance with 45 C.F.R. 155.210(d) and 45 C.F.R. 210, the office shall establish a navigator program to authorize an eligible public or private entity to carry out consumer assistance functions described in 45 C.F.R. 205 and 45 C.F.R. 210.

(2) An entity wishing to participate as a navigator shall:

(a) Be awarded a contract by the office pursuant to policies and procedures established by the Finance and Administration Cabinet and KRS Chapter 45A;

(b) Sign an agreement with the office that includes the following requirements:

1. Assurance that an employee designated as a navigator by the entity shall:

a. Be eighteen (18) years of age or older;

b. Provide an authorization to the entity to conduct a state background check for evidence of good character; and

c. Travel, when necessary, to assist applicants with enrollment;

2. A navigator entity and its employees shall:

a. Maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about the office and KHBE;

b. Provide information and services in a fair, accurate, and impartial manner and provide information regarding other health programs;

c. Disclose to an applicant the functions and responsibilities of all kynector and participating agents;

d. Obtain authorization for the disclosure of applicant information prior to assisting the applicant with prescreening for participation with the KHBE and completion of the application process; and

e. Provide technical support to other kynector, kynector entities, or the office upon request;

3. Upon authorization by the office, a navigator employee may assist:

a. A qualified individual with enrollment in any QHP offered through the KHBE in the individual market;

b. A qualified employer and a qualified employee with selecting a QHP;

c. An individual with applying for advance payments of the premium tax credit and cost-sharing reductions; and

d. An individual with applying for insurance affordability programs, including Medicaid or KCHIP; and

4. A navigator entity and its navigator employee shall not:

a. Impose any charge or fee on an applicant for assistance;

b. Receive compensation or a referral fee from an agent; or

c. Enter into an exclusive referral agreement with an agent;

(c) Submit to the office a written plan to remain free of conflicts of interest while carrying out consumer assistance functions under 45 C.F.R. 155.205(d) and (e);

(d) Register with KHBE through the Kentucky online gateway;

(e) Designate an individual as the participating entity representative who shall:

1. Serve as a primary contact for the office; and

2. Be responsible for ensuring that only office certified employees of the entity are provided access to the KHBE through the Kentucky online gateway and ensure that the certified employee:

a. Completes the KHBE kynector training provided by the office or an approved vendor;

b. Signs a participation agreement;

c. Complies with the privacy and security standards of 45 C.F.R. 155.260; and

d. Registers with the KHBE through the Kentucky online gateway;

(f) Comply with 45 C.F.R. 155.210(d) regarding a conflict of interest; and

(g) Provide monthly reports of activities to the office.

(3) An issuer shall not be responsible for the activities and conduct of a navigator entity or its navigator entity employees.

(4) A navigator entity shall provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the exchange, including individuals with limited English proficiency, and ensure accessibility and usability of navigator tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act, 42 U.S.C. 12101, section 504 of the Rehabilitation Act, and 29 U.S.C. 794.

(5) A navigator entity shall provide referrals to the DOI, the CHFS ombudsman, or any other appropriate state agency or agencies for any enrollee or qualified individual with a grievance, complaint, or question regarding a health plan, coverage, or a determination under the plan or coverage.

(6) A navigator entity shall demonstrate to the office that the entity has existing relationships, or could readily establish relationships, with employers and employees, consumers, including uninsured and underinsured consumers, or self-employed individuals eligible for a QHP or other insurance affordability programs.

(7) Funding for any contract awarded under the navigator program shall not be from federal funds received by the Commonwealth to establish its exchange.

(8)(a) In accordance with Section 6 of this administrative

regulation, the office shall withdraw certification from a navigator or from all navigators associated with a particular entity if it finds noncompliance with the terms and conditions of the participation agreement or an administrative regulation of the office; and

(b) In addition to withdrawal of certification, the office may enforce any penalty as specified in the contract.

Section 6. Withdrawal of Certification and Appeals. (1) If the office finds noncompliance with the terms and conditions of a participating agreement or an administrative regulation of the office, the office shall:

(a) Provide the kynector entity or kynector employee with notice that the applicable certification shall be withdrawn as of the date on the notice;

(b) Allow the kynector entity or kynector employee an opportunity to submit evidence of compliance or additional information within ten (10) business days;

(c) Review any information submitted by the kynector entity or kynector employee; and

(d) Based on a review of the information provided, issue a final decision to withdraw or reinstate the applicable certification of the kynector entity or individual employee.

(2) A kynector entity or kynector employee may appeal a final decision to withdraw the applicable certification by submitting a written request to the office within ten (10) business days of the final decision.

(3) After one (1) year following a decision to withdraw certification of a kynector entity or kynector employee, the individual or entity may reapply in accordance with this administrative regulation.

CARRIE BANAHAN, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 9, 2015

FILED WITH LRC: April 10, 2015 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 22, 2015, at 9:00 a.m. in the Public Health Auditorium located on the First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2015, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business June 1, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the consumer assistance program of the Office of the Kentucky Health Benefit Exchange and the policies and procedures relating to the certification of kynector including a Certified Application Counselor, In-Person Assister, or Navigator in accordance with 42 U.S.C. 18031 and 45 C.F.R. Part 155.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to certify application counselors, in-person assisters, or navigators so they may provide information about insurance affordability programs and coverage options, assist individual and employees to apply for coverage, and

help facilitate enrollment of eligible individuals in QHPs offered on the Health Benefit Exchange.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary so that individuals or entities seeking to become certified application counselors, in-person assisters, or navigators are aware of the requirements for certification so they may provide information about insurance affordability programs and coverage options, assist individual and employees to apply for coverage, and help facilitate enrollment of eligible individuals in QHPs offered on the Health Benefit Exchange.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed requirements for individuals or entities seeking to become a certified application counselor, in-person assister, or navigator so they may provide information about insurance affordability programs and coverage options, assist individual and employees to apply for coverage, and help facilitate enrollment of eligible individuals in QHPs offered on the Health Benefit Exchange to comply with the statute.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect approximately 1,200 individuals who may request to become certified application counselors, in-person assisters, or navigators.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each individual will complete training, register through the Kentucky Online Gateway, respond to a request for proposal (if appropriate), and help to facilitate enrollment of eligible individuals in QHPs and insurance programs.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit each individual that may request to participate in the consumer assistance program by providing detailed instructions regarding certification.

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

(a) Initially: No additional costs will be incurred to implement this administrative regulation.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Kentucky Office of Health Benefit Exchange existing budget. No new funding will be needed to implement the provisions of this regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This administrative regulation does not establish any fees and does not increase any fees either directly or indirectly.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of the Kentucky Health Benefit Exchange within the Cabinet for Health and Family Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 42 U.S.C. 18031, and 45 C.F.R. Part 155.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. Section 18031 and 45 C.F.R. Parts 155 and 156.

2. State compliance standards. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet, and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the consumer assistance program of the Office of the Kentucky Health Benefit Exchange and the policies and procedures relating to the certification of kynector, including a Certified Application Counselor, In-Person Assistor, or Navigator in accordance with 42 U.S.C. 18031 and 45 C.F.R. Part 155.

3. Minimum or uniform standards contained in the federal mandate. The Affordable Care Act establishes the creation of the American Health Benefit Exchange as identified in Section 1311(a) of the Affordable Care Act. The "Kentucky Health Benefit Exchange" (KHBE) is the Kentucky state-based exchange conditionally approved by HHS established by 45 C.F.R. 155.105 to offer a QHP in Kentucky beginning January 1, 2014. An Exchange must make qualified health plans available to qualified individuals and qualified employers. The Exchange must establish a Consumer Assistance Program. The Consumer Assistance Program will include the Certified Application Counselors Program, the In-Person Assistor Program, and the Navigator Program.

These programs allow individuals and entities to provide information about insurance affordability programs and coverage options, assist individual and employees to apply for coverage, and help facilitate enrollment of eligible individuals in QHPs offered on the Health Benefit Exchange pursuant to 26 U.S.C. 45R.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Repealer)

902 KAR 10:022. Repeal of 902 KAR 10:020 and 902 KAR 10:021.

RELATES TO: KRS Chapter 221

STATUTORY AUTHORITY: KRS 194A.050(1), 221.030(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) and 221.030(2) authorize the cabinet to promulgate administrative regulations for regulatory oversight of frozen food lockers. In accordance with KRS 13A.310(3)(c), this administrative regulation repeals 902 KAR 10:020, Frozen food locker plants, and 10:021, License fees for frozen food locker plants. These administrative regulations are no longer needed because Kentucky has not had any frozen food locker plants in operation within the last ten (10) years and future ones would now be regulated as a different entity.

Section 1. The following administrative regulations are hereby repealed:

(1) 902 KAR 10:020, Frozen food locker plants; and

(2) 902 KAR 10:021, License fees for frozen food locker plants.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner

AUDREY TAYSE HAYES, Secretary

APPROVED BY AGENCY: April 9, 2015

FILED WITH LRC: April 10, 2015 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on May 22, 2015, at 9:00 a.m., in the Cabinet for Health and Family Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2015, 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 until close of business June 1, 2015. 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, 5W-B, Frankfort, Kentucky 40602, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: The function of this administrative regulation is to repeal the administrative regulations governing frozen food locker plants.

(b) The necessity of this administrative regulation: The Cabinet

for Public Health has had regulatory oversight of this program for many years. However, there are no Frozen Food Locker Plants operating within Kentucky and in the future they would be regulated as a different entity.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authority to promulgate regulations for the efficient administration and enforcement of KRS 217.005 to 217.215 is vested in the Secretary to develop administrative regulations, set fees, and include provisions for regulating the issuance, suspension, and re-instatement of permits. KRS 194A.050(1) and 221.030(2) give the Secretary this authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repealed regulations are no longer necessary.

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

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

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

(c) How the amendment conforms to the content of the authorizing statutes: This is a Repealer Regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a Repealer Regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are no Frozen Food Locker Plants in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no Frozen Food Locker Plants in Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): -0- This is a Repealer regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no Frozen Food Locker Plants in Kentucky.

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

(a) Initially: -0- This is a Repealer regulation.

(b) On a continuing basis: -0- This is a Repealer regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This is a Repealer 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: This is a Repealer 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, as this is a Repealer regulation.

(9) TIERING: Is tiering applied? No. 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? There are no Frozen Food Locker Plants operating within Kentucky.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 194.050(1) authorizes this action.

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 - this is a Repealer regulation

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

(c) How much will it cost to administer this program for subsequent years? -0- This is a Repealer regulation

(d) How much will it cost to administer this program for subsequent years? -0- This is a Repealer 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: This is a Repealer regulation.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Repealer)

902 KAR 45:011. Repeal of 902 KAR 45:010, 902 KAR 45:030, 902 KAR 45:040, 902 KAR 45:050, 902 KAR 45:060, and 902 KAR 45:130.

RELATES TO: KRS Chapter 217

STATUTORY AUTHORITY: KRS 194A.050(1), 217.125(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) and 217.125(1) authorize the cabinet to promulgate administrative regulations for food establishments. In accordance with KRS 13A.310(3)(c), this administrative regulation repeals 902 KAR 45:010, Definitions; 902 KAR 45:030, Bakery products; 902 KAR 45:040, Carbonated beverages; 902 KAR 45:050, Food packaging and labeling; 902 KAR 45:060, Cosmetic packaging and labeling; and 902 KAR 45:130, Inspectors manual for state food and drug officials. These administrative regulations are being incorporated into the new administrative regulation, 902 KAR 45:160, Kentucky food processing, packaging, storage, and distribution operations.

Section 1. The following administrative regulations are hereby repealed:

- (1) 902 KAR 45:010, Definitions;
- (2) 902 KAR 45:030, Bakery products;
- (3) 902 KAR 45:040, Carbonated beverages;
- (4) 902 KAR 45:050, Food packaging and labeling;
- (5) 902 KAR 45:060, Cosmetic packaging and labeling; and
- (6) 902 KAR 45:130, Inspectors manual for state food and drug officials.

STEPHANIE MAYFIELD GIBSON, MD, FCAP

AUDREY TAYSE HAYES, Secretary

APPROVED BY AGENCY: April 9, 2015

FILED WITH LRC: April 10, 2015 at 1 pm

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on May 22, 2015, at 9:00 a.m., in the Cabinet for Health and Family Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2015, 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 until close of business June 1, 2015. 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, 5W-B, Frankfort, Kentucky 40602, phone 502-564-7905, fax 502-564-7573, tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin, 564-3970, ext. 4066

(1) Provide a brief summary of:

(a) What this administrative regulation does: This repeals administrative regulations which are being incorporated into the new regulation, 902 KAR 45:160, Kentucky food processing, packaging, storage, and distribution operations.

(b) The necessity of this administrative regulation: In order to meet the federal Food Manufacturing Regulatory Program Standards, specific parts of the Code of Federal Regulations are being incorporated into the new proposed administrative regulation, 902 KAR 45:160. This regulation repeals administrative regulations made obsolete by this action. The Inspectors Manual for State Food and Drug Officials is no longer published by the Association of Food and Drug Officials and is now published annually by the FDA and entitled Investigation Operations Manual.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation repeals administrative regulations incorporated into the proposed new regulation 902 KAR 45:160.

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

(a) How the amendment will change this existing administrative regulation: Not Applicable

(b) The necessity of the amendment to this administrative regulation: Not Applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not Applicable

(d) How the amendment will assist in the effective administration of the statutes: Not Applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1,300 food manufacturing, packing, and storage establishments holding a valid permit to operate in Kentucky. Administrative regulations repealed by this administrative regulation are incorporated into the proposed new regulation, 902 KAR 45:160.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There would be no actions indicated. The entities affected will be operating under the regulatory requirements incorporated within the new proposed regulation, 902 KAR 45:160.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A, this is a Repealer regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Repeal of these administrative regulations will eliminate duplicity since the program areas are included in the new administrative regulation, 902 KAR 45:160.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: No change in the administrative cost.

(a) Initially: No change in the administrative cost.

(b) On a continuing basis? No change.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This is a Repealer 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: This is a Repealer regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. Repeal of these administrative regulations will not require an increase in fees or establish new fees.

(9) TIERING: Is tiering applied? No. 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? The food manufacturing program is administered by the DPH, Division of Public Health protection and Safety, Food Safety Branch.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: DPH is currently working toward meeting the federal Manufactured Food Regulatory Program Standards in accordance with a Federal Cooperative Grant. One stipulation requires Kentucky to have equivalency in effect to the federal Code of Federal Regulations for the food manufacturing program and this regulation helps make Kentucky consistent with what other states have done.

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 is a Repealer regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This is a Repealer regulation.

(c) How much will it cost to administer this program for subsequent years? This is a Repealer regulation.

(d) How much will it cost to administer this program for subsequent years? This is a Repealer 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: There is no fiscal impact. This is a Repealer regulation.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (New Administrative Regulation)

902 KAR 45:160. Kentucky food processing, packaging, storage, and distribution operations.

RELATES TO: KRS 13B, 194A.050, 211.090, 211.180, 217.005 - 217.205, 217.290 - 217.390, 217.990 - 217.992, 318.130, 21 C.F.R. Part 1, 7, 70, 73, 74, 81, 82, 100 - 102, 104 - 107, 109, 110, 113, 114, 120, 123, 129, 130, 133, 135 - 137, 139, 145, 146, 150, 152, 155, 156, 158, 160, 161, 163 - 166, 169, 170, 172 - 178, 180 - 189, Pub. L. 101 - 535, Pub. L. 08 - 282

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.180(1), 217.125(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) and 217.125(1) authorize the Cabinet for Health and Family Services to adopt administrative regulations and regulate food processing, packaging, storage, and distribution operations.

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This administrative regulation establishes procedures and requirements for food processing, packaging, storage, and distribution operations for the purpose of protecting public health.

Section 1. Definitions. (1) "Adulterated" is defined by KRS 217.025. (2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Food processing establishment" is defined by KRS 217.015(20).

(4) "Food storage warehouse" is defined by KRS 217.015(22).

(5) "Imminent health hazard" is defined by KRS 217.015(24).

(6) "Misbranded" is defined by KRS 217.035.

(7) "No Action Indicated" or "NAI" means a plant inspection classification which indicates the firm has no violating condition or that only a minor violation was noted at the time of inspection.

(8) "Official Action Indicated" or "OAI" means a plant inspection classification which indicates a condition noted during the inspection was significant enough to pose an imminent health hazard, or was an uncorrected VAI condition on previous inspections.

(9) "Plant" means a food processing establishment or a food storage warehouse.

(10) "State Plumbing Code" is contained in KRS Chapter 318.

(11) "Voluntary Action Indicated" or "VAI" means a plant inspection classification which indicates that a condition was noted during the inspection that is in violation of this administrative regulation but was not significant enough to pose an imminent health hazard.

Section 2. Applicability. (1) A plant shall comply with the following federal requirements:

(a) 21 U.S.C. 373, Records;

(b) 21 C.F.R. 1.20 - 1.24, General labeling requirements;

(c) 21 C.F.R. 7.1 - 7.13, General enforcement policy provisions;

(d) 21 C.F.R. 7.40 - 7.59, Food recalls provisions;

(e) 21 C.F.R. 70.20 - 70.25, Packaging and labeling requirements;

(f) 21 C.F.R. 73.1 - 73.615, Listing of food color additives exempt from certification;

(g) 21 C.F.R. 74.101 - 74.706, Listing of food color additives subject to certification;

(h) 21 C.F.R. 81, General specifications and general restrictions for provisional color additives for use in foods, drugs, and cosmetics;

(i) 21 C.F.R. 82.3 - 82.706, Listing of certified provisionally listed food colors and specifications;

(j) 21 C.F.R. 100.155, Salt and iodized salt;

(k) 21 C.F.R. 101, Food Labeling;

(l) 21 C.F.R. 102, Common or usual name for non-standardized foods;

(m) 21 C.F.R. 104, Nutritional quality guidelines for foods;

(n) 21 C.F.R. 105, Foods for special dietary use;

(o) 21 C.F.R. 106, Infant formula quality control procedures;

(p) 21 C.F.R. 107, Infant formula;

(q) 21 C.F.R. 108.25, Specific requirements and conditions for exemption from or compliance with an emergency permit;

(r) 21 C.F.R. 108.35, Thermal processing of low-acid foods packaged in hermetically sealed containers;

(s) 21 C.F.R. 109, Unavoidable contaminants in food for human consumption and food packaging materials;

(t) 21 C.F.R. 110, Current good manufacturing practice in manufacturing, packaging and holding human food, whether sold interstate or intrastate commerce;

(u) 21 C.F.R. 113, Low acid foods;

(v) 21 C.F.R. 114, Acidified foods;

(w) 21 C.F.R. 120, Hazard analysis and critical control point (HACCP) systems;

(x) 21 C.F.R. 123, Fish and fishery products

(y) 21 C.F.R. 129, Processing and bottling of bottled drinking water;

(z) 21 C.F.R. 130, Food standards general;

(aa) 21 C.F.R. 133.10, 133.124, 133.125, 133.167 - 133.169, 133.171, 133.173 - 133.176, 133.179 - 133.180, Cheeses and

related cheese products;

(bb) 21 C.F.R. 135, Frozen desserts;

(cc) 21 C.F.R. 136, Bakery products;

(dd) 21 C.F.R. Part 137, Cereal flours and related products;

(ee) 21 C.F.R. 139, Macaroni and noodle products;

(ff) 21 C.F.R. 145, Canned fruits;

(gg) 21 C.F.R. 146, Canned fruit juices;

(hh) 21 C.F.R. 150, Fruit butters, jellies, preserves, and related

products;

(ii) 21 C.F.R. 152, Fruit pies;

(jj) 21 C.F.R. 155, Canned vegetables;

(kk) 21 C.F.R. 156, Vegetable juices;

(ll) 21 C.F.R. 158, Frozen vegetables;

(mm) 21 C.F.R. 160, Eggs and egg product;

(nn) 21 C.F.R. 161, Fish and shellfish;

(oo) 21 C.F.R. 163, Cacao products;

(pp) 21 C.F.R. 164, Tree nut and peanut products;

(qq) 21 C.F.R. 165, Beverages;

(rr) 21 C.F.R. 166, Margarine;

(ss) 21 C.F.R. 168, Sweeteners and table syrups;

(tt) 21 C.F.R. 169, Food dressings and flavorings;

(uu) 21 C.F.R. 170, Food additives;

(vv) 21 C.F.R. 172, Food additives permitted for direct addition to food for human consumption;

(ww) 21 C.F.R. 173, Secondary direct food additives permitted in food for human consumption;

(xx) 21 C.F.R. 174, Indirect food additives: general;

(yy) 21 C.F.R. 175, Indirect food additives adhesives and components of coatings;

(zz) 21 C.F.R. 176, Indirect food additives: paper and paperboard components;

(aaa) 21 C.F.R. 177, Indirect food additives: polymers;

(bbb) 21 C.F.R. 178, Indirect food additives: adjuvants, production aids; and sanitizers;

(ccc) 21 C.F.R. 180, Food additives permitted in food or in contact with food on an interim basis pending additional study;

(ddd) 21 C.F.R. 181, Prior sanctioned food ingredients;

(eee) 21 C.F.R. 182, Substances generally recognized as safe;

(fff) 21 C.F.R. 184, Direct food substances affirmed as generally recognized as safe;

(ggg) 21 C.F.R. 186, Indirect food substances affirmed as generally recognized as safe;

(hhh) 21 C.F.R. 189, Substances prohibited from use in human food;

(iii) Pub. L. 101 - 535, Nutritional labeling and educational act; and

(jjj) Pub. L. 108 - 282, Food allergen labeling and consumer protection act.

(2) A plant shall not comply with the following federal regulations:

(a) 21 C.F.R. 101.69;

(b) 21 C.F.R. 101.108;

(c) 21 C.F.R. 102.19;

(d) 21 C.F.R. 106.120;

(e) 21 C.F.R. 107.200 - 107.280;

(f) 21 C.F.R. 120.14;

(g) 21 C.F.R. 123.12;

(h) 21 C.F.R. 130.5 - 130.6;

(i) 21 C.F.R. 130.17;

(j) 21 C.F.R. 170.6;

(k) 21 C.F.R. 170.15; and

(l) 21 C.F.R. 170.17.

Section 3. Permits. (1) Before operating, a food manufacturing or processing plant, food packaging plant, food storage warehouse, or food distribution warehouse shall obtain a permit from the cabinet in accordance with KRS 217.125.

(2) Application for a permit shall be made on Form DFS-260, Application for Permit to Operate a Food Plant, and shall be submitted to the cabinet with the annual fee established by 902 KAR 45:110.

(3) A permit for food manufacturing, food packaging, food storage, or food distribution shall only be issued:

- (a) In the name of the applicant;
- (b) For the location identified in the application; and
- (c) For a firm that is in compliance with this administrative regulation and KRS 217.005 - 217.215.

(4) A permit shall:

- (a) Be posted in a conspicuous place in the firm;
- (b) Expire on December 31 of each year; and
- (c) Be renewed in accordance with KRS 217.125.

(5) Failure to apply for or renew a permit to operate a food processing, packaging, storage, or distribution plant shall result in the cabinet issuing a Notice to Cease Operation.

Section 4. Plan Review. (1) Approval shall be obtained from the cabinet or its local health department agent prior to beginning work, if:

- (a) A plant is constructed, remodeled, or altered;
- (b) A plant's plumbing is relocated;
- (c) Additional plumbing is added to a plant; or
- (d) An existing structure is converted for use as a plant.

(2) To obtain approval, an applicant shall submit plans and specifications for the construction, remodeling, or alteration to the local health department in the county in which the construction, remodeling, or alteration will take place.

(3) Plans shall be prepared to show:

- (a) Equipment layout;
- (b) Size;
- (c) Location and type of facilities; and
- (d) Plumbing riser diagram.

Section 5. Construction and Maintenance. (1) The floor of the food preparation, food storage, and utensil washing area, walk-in refrigerator, dressing room, locker room, toilet room, and vestibule shall be:

- (a) Smooth;
- (b) Durable;
- (c) Non-absorbent; and
- (d) Easily cleaned.

(2) Floors shall be cleaned and maintained.

(3) A juncture of a wall with a floor shall be covered and sealed.

(4) The juncture between the wall and floor shall be tight-fitting.

(5)(a) A floor drain shall be provided in a floor that is water flushed for cleaning or that receives discharge of water or other fluid waste from equipment.

(b) Floors shall be graded to drain all parts of the floor.

(6) Drip or condensate from fixtures, ducts, and pipes shall not contaminate food, food-contact surfaces, or food-packaging materials.

(7) Mats shall be:

- (a) Non-absorbent;
- (b) Slip resistant; and
- (c) Easily cleaned.

(8) Mats shall not be used as storage racks.

(9) Exposed utility service lines and pipes shall be installed to prevent tripping hazards and cleaning obstructions.

(10) Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair.

(11) Walls and ceilings of all food preparation and ware washing areas shall be:

- (a) Smooth;
- (b) Non-absorbent; and
- (c) Easily cleaned.

(12) Studs, joists, and rafters shall not be exposed in:

- (a) Walk-in-refrigerators;
- (b) Food preparation areas; and
- (c) Ware washing areas.

(13) Doors shall be:

- (a) Solid;
- (b) Tight-fitting; and
- (c) Closed, except during cleaning or maintenance.

(14) Light fixtures, vent covers, wall-mounted fans, and similar equipment attached to walls and ceilings shall be kept clean and maintained in good repair.

(15) Aisles and working spaces shall be:

(a) Unobstructed; and

(b) Of a width to permit employees to perform their duties and protect against contaminating food or food-contact surfaces with clothing or by personal contact.

(16) Lighting shall be provided in:

- (a) Hand-washing areas;
- (b) Dressing and locker rooms;
- (c) Toilet rooms;
- (d) Areas where food is examined, processed, or stored; and
- (e) Areas where equipment or utensils are cleaned.

(17) Lighting, glass fixtures, and skylights suspended over exposed food or food packaging materials shall be made of safety glass or otherwise shielded to protect against food contamination in case of breakage.

(18) Ventilation or exhaust control equipment shall be provided to minimize odors

or vapors in areas where odors or vapors may contaminate food.

(19) Fans and other air-blowing equipment shall be located and operated in a manner that minimizes the potential for contaminating food, food-packaging materials, and food-contact surfaces.

(20) Protection against pests shall be provided.

Section 6. Water Supply. (1) The water supply shall be:

- (a) Potable;
- (b) Of sufficient quantity to meet plant needs; and
- (c) From an approved public water system, if available.

(2) If a public water system is not available, the supply for the plant shall be approved pursuant to 401 KAR Chapters 8 and 11.

(3) If a community public water system later becomes available and has the capacity to serve the facility, connections may be made to it. The non-community water supply shall then be discontinued and inactivated.

(4) Hot and cold running water under pressure shall be provided in all areas where it is needed for:

- (a) Processing food;
- (b) Cleaning equipment, utensils, and food-packaging materials; and
- (c) Employee sanitary facilities.

(5) Bottled water plants shall have their water supply system designed, approved, and operated in accordance with 401 KAR 8:700.

Section 7. Plumbing. (1) All plumbing shall comply with the minimum fixture requirements, and be sized, installed, and maintained in accordance with the State Plumbing Code.

(2) All utensils used in food processing that are not a part of a clean-in-place operation shall be washed, rinsed, and sanitized in:

- (a) A permanently plumbed three (3) compartment sink; or
- (b) A commercial dishwasher installed and operated in compliance with the State Plumbing Code and the manufacturer's instructions.

(3) If a three (3) compartment sink is utilized, the sink compartments shall be large enough to permit the accommodation of the equipment and utensils and each compartment of the sink shall be supplied with hot and cold potable running water under pressure.

(4) Clean-in-place equipment shall be cleaned or sanitized according to manufacturer instructions and industry best practices for the commodity being processed.

(5) Written sanitation procedures shall be maintained for each type of clean-in-place equipment.

(6) A service sink or curbed cleaning facility with a drain that allows for disposal of mop and cleaning solution water shall be provided.

(7) A person, firm, or corporation shall not construct, install, or alter any plumbing without having procured a plumbing construction permit from the Department of Housing, Buildings and Construction, under KRS Chapter 318.

Section 8. Sewage Disposal. (1) All sewage shall be disposed of into a public sewerage system, if available.

(2) If a public sewerage system is not available, disposal shall be made into a private system designed, constructed, and operated pursuant to the requirements of 401 KAR Chapter 5 or 902 KAR 10:085.

(3) If a public sewerage system becomes available, connection shall be made and the private sewerage system shall be discontinued.

Section 9. Toilet Facilities. Toilet facilities shall meet the fixture and construction requirements of KRS Chapter 318 and the State Plumbing Code.

Section 10. Hand Washing Facilities. (1) Hand-washing facilities shall be installed in accordance with KRS Chapter 318 and the State Plumbing Code where:

- (a) Food is prepared;
- (b) Utensils are washed; and
- (c) Sanitary practices require employees to wash and sanitize their hands.

(2) All hand washing facilities shall be provided with:

- (a) Soap;
- (b) Disposable hand drying towels or mechanical hand drying devices; and

(c) Non-absorbent waste receptacles.

(3) Hand sanitizer shall not be used in lieu of hand washing.

(4) Lavatories used for hand washing shall not be used for food preparation or for washing equipment or utensils.

(5) Lavatories, soap dispensers, and hand drying devices shall be kept clean and maintained.

Section 11. Food Transportation. (1) Vehicles used for the transportation of food shall be maintained and loaded in a manner to prevent cross-contamination of food.

(2) Vehicles that transport refrigerated food shall be capable of maintaining frozen food frozen and refrigerated foods at forty-five (45) degrees Fahrenheit or below.

Section 12. Inspection Frequencies. (1) The cabinet shall assign an inspection frequency to each food manufacturing plant based upon the degree of risk associated with the commodity processed, packaged, stored, or distributed by the plant.

(2) The cabinet shall assign the inspection frequencies as follows:

(a) High risk plants shall be inspected no less than once every 360 days;

(b) Medium risk plants shall be inspected no less than once every 720 days; and

(c) Low risk plants shall be inspected no less than once every 1,080 days.

(3) The cabinet shall conduct additional inspections as necessary for enforcement pursuant to this administrative regulation.

Section 13. Violations. (1) If a plant has committed a violation of this administrative regulation, an opportunity to correct the violation shall be provided in accordance with the following classifications:

(a) NAI - No changes in the inspection frequency are warranted under this classification;

(b) VAI - A follow-up inspection is warranted within a period of time not to exceed ninety (90) days to determine if the violation causing this classification has been corrected; or

(c) OAI - A follow-up inspection shall be conducted within a period of time not to exceed forty-five (45) days to determine if the violation causing the classification has been corrected. A plant may also be classified as OAI if it continually fails to correct a violation previously classified under a VAI designation or if an imminent health hazard is noted during an inspection.

(2) Upon completion of the inspection, a recommended classification of NAI, VAI, or OAI and the timeframe for correction of the violation shall be specified on DFS-220, Food Plant Inspection Report.

(3) If, during a follow-up inspection, the violation noted on the

previous inspection has not been corrected within the timeframe specified by the cabinet, the cabinet shall:

(a) Extend the timeframe for corrective action if the cabinet determines that progress towards compliance has been made; or

(b) Initiate enforcement provisions pursuant to Section 17 of this administrative regulation.

Section 14. Food Plant Environmental Sampling. The cabinet shall collect an environmental sample in an area of the plant as necessary for the enforcement of this administrative regulation.

Section 15. Examination and Detention of Foods. (1) The cabinet shall examine and collect samples of food as often as necessary for the enforcement of this administrative regulation.

(2) When food is deemed to be adulterated or misbranded, DFS-265, Food Plant Quarantine/Final Disposition Report, shall be issued to the permit holder or person in charge pursuant to KRS 217.115.

Section 16. Imminent Health Hazard and Notification Requirements. (1) The permit holder shall take immediate steps to correct conditions which have caused an imminent health hazard.

(2)(a) The permit holder shall notify the cabinet within twenty-four (24) hours of the knowledge of an imminent health hazard that cannot be controlled by immediate corrective action and if food, food contact equipment, or food packaging has become contaminated because of an imminent health hazard.

(b) Written notification to the cabinet shall be made by:

1. Email to CHFSDPHENV@KY.gov; or

2. Fax to 502-696-1882.

(3) If the cabinet has evidence that a plant has failed to act to correct an imminent health hazard, enforcement provisions shall be initiated pursuant to Section 17 of this administrative regulation.

Section 17. Enforcement Provisions. (1) If the cabinet has substantial reason to believe that a permit holder has failed to act to correct an imminent health hazard or if the permit holder or an authorized agent has interfered with the cabinet in the performance of its duties after its agents have duly and officially identified themselves, the cabinet shall immediately, upon notice to the permit holder using the DFS-263, Food Plant Enforcement Notice:

(a) Suspend the permit without a conference; or

(b) Suspend that portion of the plant operation affected by the imminent health hazard without a conference.

(2) In the instance of a permit suspension due to an imminent health hazard, the permit holder may request a conference on a DFS-267, Request for Conference. A conference shall be granted as soon as practical, not to exceed seven (7) days from the receipt of the Request for Conference.

(3) In all other instances of violation of this administrative regulation, the cabinet shall serve the permit holder with a written notice specifying the violation and afford the holder opportunity to correct.

(4) If a permit holder or operator has failed to comply with an OAI inspection notice within the timeframe granted, the cabinet shall issue a Notice of Intent to Suspend Permit on a DFS-263, Food Plant Enforcement Notice.

(5) When a Notice of Intent to Suspend Permit is issued, the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of the notice, unless a written request for a conference is filed with the cabinet by the permit holder within the ten (10) day period.

(6) Any person whose permit has been suspended may make application on Form DFS-269, Application for Reinstatement, for a re-inspection for the purpose of reinstatement of the permit. Within seven (7) days following receipt of a written request, including a statement signed by the applicant that in his opinion the condition causing suspension of the permit has been corrected, the cabinet shall make an inspection, and if the inspection reveals that the condition causing suspension of the permit has been corrected, the permit shall be reinstated.

(7) For a plant that has had a suspended permit two (2) or more times within a five (5) year period, the cabinet shall initiate

permit revocation proceedings. Prior to this action, the cabinet shall notify the permit holder in writing on a DFS-263, Food Plant Enforcement Notice, stating the reasons for which the permit revocation is being sought and advising that the permit shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for an administrative hearing is filed with the cabinet pursuant to KRS Chapter 13B by the permit holder within the ten (10) day period.

(8) Notice provided for under this administrative regulation shall be deemed to have been properly served if:

(a) A copy of the inspection report or other notice has been delivered personally to the permit holder; or

(b) The notice has been sent by registered or certified mail, return receipt.

Section 18. Administrative Conferences. An administrative conference shall be conducted pursuant to 902 KAR 1:400.

Section 19. Administrative Hearings. An administrative hearing shall be conducted pursuant to KRS Chapter 13B.

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DFS-220, Food Plant Inspection Report", 09/2014;

(b) "DFS-221, Food Plant Inspection Continuation Sheet", 09/2014;

(c) "DFS-260, Application for Permit to Operate a Food Plant", 09/2014;

(d) "DFS-263, Food Plant Enforcement Notice," 09/2014;

(e) "DFS-264, Quarantine Tag", 09/2014;

(f) "DFS-265, Food Plant Quarantine/Final Disposition Report", 09/2014;

(g) "DFS-266, Notice to Apply for Food Plant Permit", 09/2014;

(h) "DFS-267, Request for Conference", 09/2014;

(i) "DFS-268, Notice of Conference", 09/2014; and

(j) "DFS-269, Application for Reinstatement", 09/2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Cabinet for Health and Family Services, Department for Public Health, Division of Public Health Protection and Safety, Food Safety Branch, 275 East Main Street, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHANIE MAYFIELD GIBSON, MD, FCAP COMMISSIONER
AUDREY TAYSE HAYES,

APPROVED BY AGENCY: April 9, 2015

FILED WITH LRC: April 10, 2015 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation will be held on May 22, 2015, at 9:00 a.m., in the Cabinet for Health and Family Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2015, 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 until close of business, June 1, 2015. 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 40602, phone 502-564-7905, fax 502-564-7573, tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin, 502-564-3970, ext. 4066

(1) Provide a brief summary of:

(a) What this administrative regulation does: The function of

this administrative regulation is to establish a uniform code for the regulation of all food processing, packaging, storage, and distribution plants in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation adopts the Federal Manufactured Food Regulatory Program Standards (MFRPS). In essence, it does not change the current regulatory requirements for these entities. It merely creates a Kentucky administrative regulation that is equivalent in effect to the current Title 21 C.F.R. regulations. To the regulated industry, the change will be seamless and invisible due to the fact that the same requirements will be in effect and the same state inspectors will be conducting their inspections.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authority to promulgate regulations for the efficient administration and enforcement of KRS 217.005 to 217.215 is vested in the Secretary. The Secretary may make the regulations promulgated under the federal acts: Fair Packaging and Labeling Act and the Nutritional Labeling and Education Act. Regulations promulgated may require permits to operate and include provisions for regulating the issuance, suspension, and reinstatement of permits. KRS 194A.050(1) and 217.125(1) authorize the Cabinet to regulate food processing, packaging, storage and distribution operations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation will provide uniformity statewide and nationwide for all types of food manufacturing, packing, and storage operations by defining the parameters to provide for a safe food supply. This national uniformity is very beneficial to corporations large and small that operate in various states in that they can depend on a uniform food safety code, which is business efficient.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1,300 food manufacturing entities holding a valid permit to operate in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The food manufacturing entities will not be required to take any additional actions. With the state program administrators and state program inspectors holding FDA Credentials and statutory authority to carry out the program authorized by KRS 217.005-217.998, the program has historically been administered, via practice, in accordance with the Title 21 C.F.R. regulatory requirements.

(b) In compliance with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost, just annual permit fees as usual.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will provide statewide uniformity for all types of food manufacturing, packing, and storage operations by defining the parameters to provide for a safe food supply. This national uniformity is very beneficial to corporations, large and small, that operate in various states in that they can depend on a uniform food safety code, which is business efficient.

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:

(a) Initially: There are no initial additional costs to implement this administrative regulation.

(b) On a continuing basis: There are no additional costs to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Permit fees and agency funds will continue to 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: This new administrative regulation does not create any new permit fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation amendment does not establish any new fees nor does it increase any fees.

(9) TIERING: Is tiering applied? No. 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? All Local Health Departments, as agents of the Cabinet, receive and process the Plans for Construction, Renovation, Remodeling, or Alteration. All inspection and enforcement is carried out by the Division of Public Health Protection and Safety, Food Safety Branch.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 217.005 to KRS 217.998 authorize these regulations. The food manufacturing regulatory requirements are outlined in Title 21 Code of Federal Regulations. KRS 194A.050(1) and 217.125(1) authorize the Cabinet to regulate food processing, packaging, storage and distribution operations.

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 revenue stream for the state will be the same as it is currently for these permits of regulated entities (approximately \$123,421).

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The revenue stream for the state will be the same as it is currently for these permits of regulated entities (approximately \$123,421).

(c) How much will it cost to administer this program for subsequent years? There would not be an increase in cost to administer the regulation, other than regular and customary increases, salaries, etc.

(d) How much will it cost to administer this program for subsequent years? There would not be an increase in cost to administer the regulation, other than regular and customary increases, salaries, etc.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(New Administrative Regulation)

907 KAR 9:015. Coverage provisions and requirements regarding outpatient services provided by Level I or Level II psychiatric residential treatment facilities.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 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 outpatient behavioral health services provided by Level I or Level II psychiatric residential treatment facilities.

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) 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 certified psychologist with autonomous functioning;
- (h) A licensed clinical social worker;
- (i) A licensed professional clinical counselor;
- (j) A licensed marriage and family therapist;
- (k) A licensed psychological associate;
- (l) A certified psychologist;
- (m) A marriage and family therapy associate;
- (n) A certified social worker;
- (o) A licensed professional counselor associate;
- (p) A licensed professional art therapist;
- (q) A licensed professional art therapist associate;
- (r) A licensed clinical alcohol and drug counselor in accordance

with Section 12 of this administrative regulation;

(s) A licensed clinical alcohol and drug counselor associate in accordance with Section 12 of this administrative regulation; or

(t) A certified alcohol and drug counselor.

(3) "Behavioral health practitioner under supervision" means an individual who is:

- (a) 1. A licensed professional counselor associate;
- 2. A certified social worker;
- 3. A marriage and family therapy associate;
- 4. A licensed professional art therapist associate;
- 5. A licensed assistant behavior analyst;
- 6. A physician assistant;
- 7. A certified alcohol and drug counselor; or
- 8. A licensed clinical alcohol and drug counselor associate in accordance with Section 12 of this administrative regulation; and
- (b) Employed by or under contract with the same billing provider as the billing supervisor.

(4) "Billing provider" means the individual who, 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.

(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 certified psychologist with autonomous functioning;
 9. A licensed marriage and family therapist;
 10. A licensed professional art therapist; or
 11. 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.
- (6) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).
- (7) "Certified psychologist" means an individual who is recognized as a certified psychologist in accordance with 201 KAR Chapter 26.
- (8) "Certified psychologist with autonomous functioning" means an individual who is a certified psychologist with autonomous functioning pursuant to KRS 319.056.
- (9) "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) "Department" means the Department for Medicaid Services or its designee.
- (12) "Electronic signature" is defined by KRS 369.102(8).
- (13) "Enrollee" means a recipient who is enrolled with a managed care organization.
- (14) "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) "Federal financial participation" is defined by 42 C.F.R. 400.203.
- (16) "Level I PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(a).
- (17) "Level II PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(b).
- (18) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).
- (19) "Licensed behavior analyst" is defined by KRS 319C.010(6).
- (20) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).
- (21) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).
- (22) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.
- (23) "Licensed marriage and family therapist" is defined by KRS 335.300(2).
- (24) "Licensed professional art therapist" is defined by KRS 309.130(2).
- (25) "Licensed professional art therapist associate" is defined by KRS 309.130(3).
- (26) "Licensed professional clinical counselor" is defined by KRS 335.500(3).
- (27) "Licensed professional counselor associate" is defined by KRS 335.500(4).
- (28) "Licensed psychological associate" means an individual who:
- (a) Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and
 - (b) Meets the licensed psychological associate requirements established in 201 KAR Chapter 26.
- (29) "Licensed psychological practitioner" means an individual who meets the requirements established in KRS 319.053.
- (30) "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.

(31) "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.

(32) "Marriage and family therapy associate" is defined by KRS 335.300(3).

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

(34) "Peer support specialist" means an individual who meets the peer specialist qualifications established in:

- (a) 908 KAR 2:220;
- (b) 908 KAR 2:230; or
- (c) 908 KAR 2:240.

(35) "Person-centered service plan" means a plan of services for a recipient that meets the requirements established in 42 C.F.R. 441.540.

(36) "Physician" is defined by KRS 205.510(11).

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

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

(39) "Provider abuse" is defined by KRS 205.8451(8).

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

(41) "Recipient abuse" is defined by KRS 205.8451(10).

(42) "Recipient's representative" means:

(a) For a recipient who is authorized by Kentucky law to provide written consent, an individual acting on behalf of, and with written consent from, the recipient; or

(b) A legal guardian.

(43) "Section 504 plan" means a plan developed under the auspices of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (Section 504), 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.

Section 2. 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. Except as established in subsection (6) or (7) of this section, to a recipient who is under twenty-two (22) years of age; and

2. By a Level I or Level II psychiatric residential treatment facility that meets the provider participation requirements established in Section 3 of this administrative regulation.

(2)(a) Face-to-face contact between a practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a recipient under the age of twenty-one (21) years if the collateral outpatient therapy is in the recipient's plan of care;

2. A family outpatient therapy service in which the corresponding current procedural terminology code establishes that the recipient is not present;

3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or others in which the corresponding current procedural terminology code establishes that the recipient is not present; or

4. A service planning activity in which the corresponding current procedural terminology code establishes that the recipient is not present.

(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 plan of care; and

(b) Provided in accordance with the recipient's plan of care.

(5)(a) A Level I or Level II psychiatric residential treatment facility shall establish a plan of care for each recipient receiving services from the Level I or Level II psychiatric residential treatment facility.

(b) A plan of care shall meet the treatment plan requirements

established in 902 KAR 20:320.

(6)(a) Family outpatient therapy may be provided to an individual who is over twenty-two (22) years of age if the:

1. Individual is a family member of a recipient who is:
 - a. Under twenty-two (22) years of age; and
 - b. Receiving outpatient behavioral health services from the same Level I or Level II PRTF that is providing family outpatient therapy regarding the recipient; and
2. Family outpatient therapy focuses on the needs and treatment of the recipient who is under twenty-two (22) years of age as identified in the recipient's plan of care.

(b) Peer support may be provided to an individual who is over twenty-two (22) years of age if the:

1. Individual is a family member of a recipient who is:
 - a. Under twenty-two (22) years of age; and
 - b. Receiving outpatient behavioral health services from the same Level I or Level II PRTF that is providing peer support regarding the recipient; and
2. Peer support focuses on the needs and treatment of the recipient who is under twenty-two (22) years of age as identified in the recipient's plan of care.

(7)(a) A recipient may continue to receive an outpatient behavioral health service listed in paragraph (b) of this subsection pursuant to this administrative regulation without disruption after reaching the age of twenty-two (22) years if the outpatient behavioral health service continues to be medically necessary for the recipient as identified in the recipient's plan of care.

(b) The outpatient behavioral health services that a recipient may receive in accordance with paragraph (a) of this subsection may include:

1. Individual outpatient therapy;
2. Group outpatient therapy;
3. Family outpatient therapy;
4. Collateral outpatient therapy;
5. Intensive outpatient program services;
6. Day treatment;
7. Assertive community treatment;
8. Therapeutic rehabilitation services;
9. Peer support; or
10. Comprehensive community support services.

Section 3. Provider Participation. (1)(a) To be eligible to provide services under this administrative regulation, a Level I or Level II psychiatric residential treatment facility shall:

1. Be currently enrolled as a provider in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;
2. Except as established in subsection (2) of this section, be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;
3. Be licensed as a Level I or Level II psychiatric residential treatment facility to provide outpatient behavioral health services in accordance with 902 KAR 20:320; and

4. Have:

- a. For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;
- b. Documented experience in serving individuals with behavioral health disorders;
- c. The administrative capacity to ensure quality of services;
- d. A financial management system that provides documentation of services and costs; and
- e. The capacity to document and maintain individual health records.

(b) The documentation referenced in paragraph (a)4.b. of this subsection shall be subject to audit by:

1. The department;
2. The Cabinet for Health and Family Services, Office of Inspector General;
3. A managed care organization, if the Level I or Level II psychiatric residential treatment facility is enrolled in its network;
4. The Centers for Medicare and Medicaid Services;
5. The Kentucky Office of the Auditor of Public Accounts; or
6. The United States Department of Health and Human Services, Office of the Inspector General.

(2) In accordance with 907 KAR 17:015, Section 3(3), a Level I or Level II psychiatric residential treatment facility which provides an outpatient service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(3) A Level I or Level II psychiatric residential treatment facility shall:

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

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

Section 4. 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 following requirements:

(a) A screening, crisis intervention, or intensive outpatient program service provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
13. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation; or
14. A behavioral health practitioner under supervision:

- a. In accordance with Section 12 of this administrative regulation; and
- b. Except for a licensed assistant behavior analyst;
- (b) An assessment provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A certified psychologist with autonomous functioning;
 4. A licensed clinical social worker;
 5. A licensed professional clinical counselor;
 6. A licensed professional art therapist;
 7. A licensed marriage and family therapist;
 8. A physician;
 9. A psychiatrist;
 10. An advanced practice registered nurse;
 11. A licensed behavior analyst;
 12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
 13. A certified psychologist working under the supervision of a board-approved licensed psychologist;
 14. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation; or
 15. A behavioral health practitioner under supervision in accordance with Section 12 of this administrative regulation;

- (c) Psychological testing provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A certified psychologist with autonomous functioning;
 4. A licensed psychological associate working under the supervision of a board-approved licensed psychologist; or
 5. A certified psychologist working under the supervision of a board-approved licensed psychologist;
- (d) Day treatment or mobile crisis services provided by:
 1. A licensed psychologist;

2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
13. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation;
14. A behavioral health practitioner under supervision:
 - a. Except for a licensed assistant behavior analyst; and
 - b. In accordance with Section 12 of this administrative regulation; or
15. A peer support specialist working under the supervision of an approved behavioral health services provider in accordance with Section 12 of this administrative regulation;
- (e) Peer support provided by a peer support specialist working under the supervision of an approved behavioral health services provider in accordance with Section 12 of this administrative regulation;
- (f) Individual outpatient therapy, group outpatient therapy, or collateral outpatient therapy provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A certified psychologist with autonomous functioning;
 4. A licensed clinical social worker;
 5. A licensed professional clinical counselor;
 6. A licensed professional art therapist;
 7. A licensed marriage and family therapist;
 8. A physician;
 9. A psychiatrist;
 10. An advanced practice registered nurse;
 11. A licensed behavior analyst;
 12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
 13. A certified psychologist working under the supervision of a board-approved licensed psychologist;
 14. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation; or
 15. A behavioral health practitioner under supervision in accordance with Section 12 of this administrative regulation;
- (g) Family outpatient therapy provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A certified psychologist with autonomous functioning;
 4. A licensed clinical social worker;
 5. A licensed professional clinical counselor;
 6. A licensed professional art therapist;
 7. A licensed marriage and family therapist;
 8. A physician;
 9. A psychiatrist;
 10. An advanced practice registered nurse;
 11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
 12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
 13. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation; or
 14. A behavioral health practitioner under supervision:
 - a. Except for a licensed assistant behavior analyst; and
 - b. In accordance with Section 12 of this administrative regulation;
- (h) Service planning provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A certified psychologist with autonomous functioning;
 4. A licensed clinical social worker;

5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed behavior analyst;
12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
13. A certified psychologist working under the supervision of a board-approved licensed psychologist; or
14. A behavioral health practitioner under supervision except for:
 - a. A certified alcohol and drug counselor; or
 - b. A licensed clinical alcohol and drug counselor associate;
- (i) A screening, brief intervention, and referral to treatment for a substance use disorder or SBIRT provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A certified psychologist with autonomous functioning;
 4. A licensed clinical social worker;
 5. A licensed professional clinical counselor;
 6. A licensed professional art therapist;
 7. A licensed marriage and family therapist;
 8. A physician;
 9. A psychiatrist;
 10. An advanced practice registered nurse;
 11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
 12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
 13. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation; or
 14. A behavioral health practitioner under supervision:
 - a. Except for a licensed assistant behavior analyst; and
 - b. In accordance with Section 12 of this administrative regulation;
- (j) Assertive community treatment provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A certified psychologist with autonomous functioning;
 4. A licensed clinical social worker;
 5. A licensed professional clinical counselor;
 6. A licensed professional art therapist;
 7. A licensed marriage and family therapist;
 8. A physician;
 9. A psychiatrist;
 10. An advanced practice registered nurse;
 11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
 12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
 13. A behavioral health practitioner under supervision except for a:
 - a. Licensed assistant behavior analyst;
 - b. Certified alcohol and drug counselor; or
 - c. Licensed clinical alcohol and drug counselor associate;
 14. A peer support specialist working under the supervision of an approved behavioral health services provider except for a:
 - a. Licensed clinical alcohol and drug counselor;
 - b. Licensed clinical alcohol and drug counselor associate; or
 - c. Certified alcohol and drug counselor; or
 15. A community support associate;
- (k) Comprehensive community support services provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A certified psychologist with autonomous functioning;
 4. A licensed clinical social worker;
 5. A licensed professional clinical counselor;
 6. A licensed professional art therapist;
 7. A licensed marriage and family therapist;
 8. A physician;
 9. A psychiatrist;

10. An advanced practice registered nurse;
 11. A licensed behavior analyst;
 12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
 13. A certified psychologist working under the supervision of a board-approved licensed psychologist;
 14. A behavioral health practitioner under supervision except for a:
 - a. Licensed clinical alcohol and drug counselor associate; or
 - b. Certified alcohol and drug counselor; or
 15. A community support associate; or
 - (l) Therapeutic rehabilitation program services provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A certified psychologist with autonomous functioning;
 4. A licensed clinical social worker;
 5. A licensed professional clinical counselor;
 6. A licensed professional art therapist;
 7. A licensed marriage and family therapist;
 8. A physician;
 9. A psychiatrist;
 10. An advanced practice registered nurse;
 11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
 12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
 13. A behavioral health practitioner under supervision except for a:
 - a. Licensed assistant behavior analyst;
 - b. Licensed clinical alcohol and drug counselor associate; or
 - c. Certified alcohol and drug counselor; or
 14. A peer support specialist working under the supervision of an approved behavioral health services provider except for a:
 - a. Licensed clinical alcohol and drug counselor;
 - b. Licensed clinical alcohol and drug counselor associate; or
 - c. Certified alcohol and drug counselor.
- (3)(a) A screening shall:
1. Determine 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 the development of 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 plan of care; and
 4. Not include psychological or psychiatric evaluations or assessments.
- (c) Psychological testing shall:
1. Include:
 - a. A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and
 - b. Interpretation and a written report of testing results; and
 2. Be performed by an individual who has met the requirements of KRS Chapter 319 related to the necessary credentials to perform psychological testing.
- (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 facility where the outpatient behavioral health services are provided;
 - b. As an immediate relief to the presenting problem or threat; and
 - c. In a face-to-face, one-on-one 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 that includes:
 - (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 per day, seven (7) days per week, every day of the year;
 2. Ensure access to a board-certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days per week, every day of the year;
 3. Be provided for a duration of less than twenty-four (24) hours;
 4. Not be an overnight service;
 5. Be a multi-disciplinary team-based intervention in a home or community setting that ensures access to mental health and substance use disorder services 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;
 6. 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
 7. Be provided face-to-face in a home or community setting.
 - (f) 1. Day treatment shall be a non-residential, intensive treatment program for an individual 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;
 - 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 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 on non-instructional weekdays during the school year including 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 approved behavioral health services provider in accordance with Section 12 of this administrative regulation or a behavioral health practitioner working under clinical supervision in accordance with Section 12 of this administrative regulation; 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 Level I or Level II psychiatric residential treatment facility 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 emotional support that is provided to a recipient 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. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

e. Be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

f. Be identified in each recipient's plan of care; and

g. Be designed to contribute directly to the recipient's individualized goals as specified in the recipient's plan of care.

2. To provide peer support services, a Level I or Level II psychiatric residential treatment facility 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 in accordance with Section 12 of this administrative regulation 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 Level I or Level II psychiatric residential treatment facility shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, physician, or an advanced practice 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 well-being 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-on-one encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified 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 plan of care;

b. Be provided to promote the:

(i) Health and well-being 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 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;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's 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 of 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 well-being 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, recipient's representative, school staff person, treating professional, or other person with custodial control or supervision of the recipient; and
 - (ii) That is provided in accordance with the recipient's plan of care; and
 - b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age.
- 2. Consent given to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed by the recipient or recipient's representative 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;
 - 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) 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 in order 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 to the recipient; 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.
- (o)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 severe 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) Group outpatient therapy;
 - (viii) Mobile crisis services;
 - (ix) Mental health consultation;
 - (x) Family support and basic living skills; or
 - (xi) Peer support.
- 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 psychiatric residential treatment facility shall:
 - a. Employ at least one (1) team of multidisciplinary professionals:
 - (i) Led by an approved behavioral health services provider except for a licensed clinical alcohol and drug counselor, a licensed clinical alcohol and drug counselor associate, or a certified alcohol and drug counselor; and
 - (ii) Comprised of at least four (4) full-time equivalents including a psychiatrist, a nurse, a case manager, a peer support specialist, or an approved behavioral health services provider except for a licensed clinical alcohol and drug counselor, a licensed clinical alcohol and drug counselor associate, or a certified alcohol and drug counselor;
 - 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 health records; and
 - d. Demonstrate experience in serving individuals with persistent and severe mental illness who have difficulty living independently in the community.
- (p)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 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 psychiatric residential treatment facility 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.

(q)1. Therapeutic rehabilitation program services shall be:

- a. A rehabilitative service for an individual under the age of twenty-one (21) years who has a severe emotional disability; and
- b. Designed to maximize the reduction of the effects of a mental health disorder 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 skills; and
- (v) Interpersonal skills; and

c. Be delivered individually or in a group.

(4) The extent and type of a screening shall depend upon the nature of the problem of the individual seeking or being referred for services.

(5) 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) 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 5. 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 health 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 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.

(3) The department shall not reimburse for both a screening and an SBIRT provided to a recipient on the same date of service.

(4) 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 psychiatric residential treatment facility;

(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" established in Section 1(14) of this administrative regulation;

(e) Travel time;

(f) A field trip;

(g) A recreational activity;

(h) A social activity; or

(i) A physical exercise activity group.

(5)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except as established in Section 4(3)(l)1 of this administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

(6) A billing supervisor arrangement between a billing supervisor and a behavioral health practitioner under supervision shall not:

(a) Violate the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision; or

(b) Substitute for the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision.

Section 6. 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 same 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 Level I or Level II psychiatric residential treatment facility.

Section 7. Records Maintenance, Documentation, Protection, and Security. (1) A Level I or Level II psychiatric residential treatment facility 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 within forty-eight (48) hours of the date that the individual provided the service.

(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 participation information;

f. Referral source's name and address;

g. Primary care physician's name 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's name; and

j. The name of the informant and any other information deemed necessary by the Level I or Level II psychiatric residential treatment facility in order to comply with the requirements of:

(i) This administrative regulation;

(ii) The Level I or Level II psychiatric residential treatment facility'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;
- 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 upon request:
 - a. To the Cabinet for Health and Family Services; or
 - b. For an enrollee, to the managed care organization in which the recipient is enrolled or has been enrolled in the past;
 - 3. Made available for inspection and copying by:
 - a. Cabinet for Health and Family Services' personnel; or
 - b. Personnel of the managed care organization in which the recipient is enrolled if applicable;
 - 4. Readily accessible; and
 - 5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient 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 Level I or Level II psychiatric residential treatment facility'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 plan of care if changes are made; and
 - d. Need for continued treatment if deemed necessary.
- (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.
- (c)1. Notes recorded by a behavioral health 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 behavioral health practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervising professional which reflects consultations with the behavioral health 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) Any change to a recipient's 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 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 has been 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 Level I or Level II psychiatric residential treatment facility shall, within ten (10) business days of awareness 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. 290ee-3; and
- b. 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, an acute care hospital, or to the residential setting of a Level I or Level II PRTF for care or treatment, the transferring outpatient Level I or Level II psychiatric residential treatment facility 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. 290ee-3; and
- b. 42 C.F.R. Part 2.

(12)(a) If a Level I or Level II psychiatric residential treatment facility'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 Level I or Level II psychiatric residential treatment facility shall:

- 1. Remain the property of the Level I or Level II psychiatric residential treatment facility; and
- 2. Be subject to the retention requirements established in subsection (13) of this section.

(b) A Level I or Level II psychiatric residential treatment facility 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 Level I or Level II psychiatric residential treatment facility shall maintain a health record regarding a recipient for at least six (6) years from the last date of the service or until any audit dispute or issue is resolved beyond six (6) years.

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

- 1. Six (6) years unless the recipient is a minor; or
- 2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

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

(14)(a) A Level I or Level II psychiatric residential treatment facility shall comply with 45 C.F.R. Part 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;
- b. Federal government; or

c. For an enrollee, managed care organization in which the enrollee is enrolled.

(c)1. Upon request, a Level I or Level II psychiatric residential treatment facility shall provide to an authorized representative of the department, federal government, or managed care organization if applicable, 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 or managed care organization.

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 8. Medicaid Program Participation Compliance. (1) A Level I or Level II psychiatric residential treatment facility 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 Level I or Level II psychiatric residential treatment facility receives any duplicate payment or overpayment from the department or a managed care organization, regardless of reason, the Level I or Level II psychiatric residential treatment facility shall return the payment to the department or managed care organization that made the duplicate payment or overpayment in accordance with 907 KAR 1:671.

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

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the Level I or Level II psychiatric residential treatment facility 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 Level I or Level II psychiatric residential treatment facility.

(b)1. A Level I or Level II psychiatric residential treatment facility 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. Level I or Level II psychiatric residential treatment facility makes the recipient aware in writing 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. Level I or Level II psychiatric residential treatment facility 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 Level I or Level II psychiatric residential treatment facility regarding the service.

(4)(a) A Level I or Level II psychiatric residential treatment facility attests by the Level I or Level II psychiatric residential treatment facility'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;
5. United States General Accounting Office or its designee; or
6. For an enrollee, managed care organization in which the enrollee is enrolled.

(c)1. If a Level I or Level II psychiatric residential treatment facility receives a request from the:

a. Department to provide a claim, related information, related documentation, or record for auditing purposes, the Level I or Level II psychiatric residential treatment facility shall provide the requested information to the department within the timeframe requested by the department; or

b. Managed care organization in which an enrollee is enrolled to provide a claim, related information, related documentation, or record for auditing purposes, the Level I or Level II psychiatric residential treatment facility shall provide the requested information to the managed care organization within the timeframe requested by the managed care organization.

2.a. The timeframe requested by the department or managed care organization for a Level I or Level II psychiatric residential treatment facility to provide requested information shall be:

- (i) A reasonable amount of time given the nature of the request and the circumstances surrounding the request; and
- (ii) A minimum of one (1) business day.

b. A Level I or Level II psychiatric residential treatment facility may request a longer timeframe to provide information to the department or a managed care organization if the Level I or Level II psychiatric residential treatment facility justifies the need for a longer timeframe.

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

2. Willful abuse by a Level I or Level II psychiatric residential treatment facility shall result in the suspension or termination of the Level I or Level II psychiatric residential treatment facility from Medicaid Program participation in accordance with 907 KAR 1:671.

Section 9. Third Party Liability. A Level I or Level II psychiatric residential treatment facility shall comply with KRS 205.622.

Section 10. 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 Level I or Level II psychiatric residential treatment facility 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 Level I or Level II psychiatric residential treatment facility'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 Level I or Level II psychiatric residential treatment facility's electronic signature policy;
2. The signed consent form; and
3. The original filed signature.

Section 11. Auditing Authority. The department or managed care organization in which an enrollee is enrolled shall have the authority to audit any:

- (1) Claim;
- (2) Health record; or
- (3) Documentation associated with any claim or health record.

Section 12. Federal Approval and Federal Financial Participation. (1) The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

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

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

(2) The coverage of services provided by a licensed clinical alcohol and drug counselor or licensed clinical alcohol and drug counselor associate shall be contingent and effective upon approval by the Centers for Medicare and Medicaid Services.

Section 13. 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.

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 9, 2015

FILED WITH LRC: April 13, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 22, 2015 at 9:00 a.m. in the Health Services Auditorium, Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2015, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business, June 1, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen (502) 564-4321, extension 2015

(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 outpatient behavioral health services provided by Level I or Level II psychiatric residential treatment facilities (PRTFs). This administrative regulation is being promulgated in conjunction with 907 KAR 9:020, Reimbursement for outpatient behavioral health services provided by Level I or Level II psychiatric residential treatment facilities. To qualify as a provider, a Level I or Level II psychiatric residential treatment facility must be licensed in accordance with 902 KAR 20:320. Level I or Level II PRTFs 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; 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 Level I or Level II psychiatric residential treatment facilities) 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: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Level I and Level II PRTFs, behavioral health professionals authorized to provide services in Level I or Level II PRTFs, and Medicaid recipients who receive services in Level I or Level II PRTFs will be affected by the administrative regulation. The following behavioral health professionals are authorized to provide services in a Level I or Level II psychiatric residential treatment facility: licensed psychologists, advanced practice registered nurses, licensed professional clinical counselors, licensed clinical social workers, licensed marriage and family therapists, licensed psychological practitioners, certified psychologists with autonomous functioning; licensed psychological associates, certified psychologists; 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, community support

associates, licensed clinical and alcohol drug counselors (contingent and effective upon approval by the Centers for Medicare and Medicaid Services), and licensed clinical and alcohol drug counselor associates (contingent and effective upon approval by the Centers for Medicare and Medicaid Services). Currently there are twenty-three (23) Level I PRTFs enrolled in the Medicaid Program and zero (0) Level II PRTFs enrolled in the Medicaid Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Level I or Level II PRTFs that wish to expand their scope of care to provide outpatient behavioral health services will need to provide the services in accordance with the parameters/requirements established in this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Level I or Level II PRTFs that choose to expand their scope of care to include outpatient behavioral health services will benefit by receiving Medicaid Program reimbursement for the services. Behavioral health professionals authorized to provide outpatient behavioral health services in a Level I or Level II psychiatric residential treatment facility will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of outpatient 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 outpatient behavioral health services provider base due to the variables involved as DMS cannot estimate the utilization of these services in Level I or Level II PRTFs 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 outpatient behavioral health services provider base due to the

variables involved as DMS cannot estimate the utilization of these services in Level I or Level II PRTFs 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
(New Administrative Regulation)

907 KAR 9:020. Reimbursement provisions and requirements regarding outpatient behavioral health services provided by Level I or Level II psychiatric residential treatment facilities.

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 outpatient behavioral health services provided by Level I or Level II psychiatric residential treatment facilities to Medicaid recipients who are not enrolled with a managed care organization.

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

(2) "Behavioral health practitioner under supervision" means an individual who is:

- (a) 1. A licensed professional counselor associate;
2. A certified social worker;
3. A marriage and family therapy associate;
4. A licensed professional art therapist associate;
5. A licensed assistant behavior analyst;
6. A physician assistant;
7. A certified alcohol and drug counselor; or

8. A licensed clinical alcohol and drug counselor associate in accordance with Section 5 of this administrative regulation; and

(b) Employed by or under contract with the same billing provider as the billing supervisor.

(3) "Billing provider" means the individual who, 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.

(4) "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 certified psychologist with autonomous functioning;

9. A licensed marriage and family therapist;

10. A licensed professional art therapist; or

11. 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.

(5) "Certified alcohol and drug counselor" means an individual who meets the requirements established in KRS 309.083.

(6) "Certified psychologist" means an individual who is recognized as a certified psychologist in accordance with 201 KAR Chapter 26.

(7) "Certified psychologist with autonomous functioning" means an individual who is a certified psychologist with autonomous functioning pursuant to KRS 319.056.

(8) "Certified social worker" means an individual who meets the requirements established in KRS 335.080.

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

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

(11) "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.

(12) "Level I PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(a).

(13) "Level II PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(b).

(14) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(15) "Licensed behavior analyst" is defined by KRS 319C.010(6).

(16) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).

(17) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).

(18) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(19) "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(20) "Licensed professional art therapist" is defined by KRS 309.130(2).

(21) "Licensed professional art therapist associate" is defined by KRS 309.130(3).

(22) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(23) "Licensed professional counselor associate" is defined by KRS 335.500(4).

(24) "Licensed psychological associate" means an individual who:

(a) Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychological associate requirements established in 201 KAR Chapter 26.

(25) "Licensed psychological practitioner" means an individual who meets the requirements established in KRS 319.053.

(26) "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.

(27) "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.

(28) "Marriage and family therapy associate" is defined by KRS 335.300(3).

(29) "Peer support specialist" means an individual who meets the peer specialist qualifications established in:

- (a) 908 KAR 2:220;
- (b) 908 KAR 2:230; or
- (c) 908 KAR 2:240.
- (30) "Physician" is defined by KRS 205.510(11).
- (31) "Physician assistant" is defined by KRS 311.840(3).
- (32) "Provider" is defined by KRS 205.8451(7).

Section 2. General Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall:

- (1) Meet the requirements established in 907 KAR 9:015; and
- (2) Be covered in accordance with 907 KAR 9:015.

Section 3. Reimbursement. (1)(a) A unit of service for a service listed on the Level I and Level II PRTF Non-Medicare Services Fee Schedule shall be as established on the Level I and Level II PRTF Non-Medicare Services Fee Schedule.

(b) A unit of service for a service not listed on the Level I and Level II PRTF Non-Medicare Services Fee Schedule shall be:

1. Fifteen (15) minutes in length unless a different amount is established for the service in the corresponding:

- a. Current procedural terminology code; or
- b. Healthcare common procedure coding system code; or
- 2. The unit amount established in the corresponding:
 - a. Current procedural terminology code; or
 - b. 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. Certified psychologist with autonomous functioning;
- 5. Licensed marriage and family therapist;
- 6. Licensed professional art therapist; or
- 7. Licensed clinical alcohol and drug counselor in accordance with Section 5 of this administrative regulation; 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 board-approved licensed psychologist;
- 4. Certified psychologist working under the supervision of a board-approved licensed psychologist;
- 5. Certified social worker working under the supervision of a billing supervisor;
- 6. Physician assistant working under the supervision of a billing supervisor;
- 7. Licensed professional art therapist associate working under the supervision of a billing supervisor;
- 8. Certified alcohol and drug counselor working under the supervision of a billing supervisor; or
- 9. Licensed clinical alcohol and drug counselor associate:
 - a. In accordance with Section 5 of this administrative regulation; and
 - b. 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. Certified psychologist with autonomous functioning;
- 5. Licensed marriage and family therapist;
- 6. Licensed professional art therapist;
- 7. Licensed behavior analyst; or
- 8. Licensed clinical alcohol and drug counselor in accordance with Section 5 of this administrative regulation; 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 board-approved licensed psychologist;
- 4. Certified psychologist working under the supervision of a board-approved licensed psychologist;
- 5. Certified social worker working under the supervision of a billing supervisor;
- 6. Physician assistant working under the supervision of a billing supervisor;
- 7. Licensed professional art therapist associate working under the supervision of a billing supervisor;
- 8. Licensed assistant behavior analyst working under the supervision of a billing supervisor;
- 9. Certified alcohol and drug counselor working under the supervision of a billing supervisor; or
- 10. Licensed clinical alcohol and drug counselor associate:
 - a. In accordance with Section 5 of this administrative regulation; and
 - b. 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:

- 1. Licensed psychological practitioner; or
- 2. Certified psychologist with autonomous functioning;

(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:

- 1. Licensed psychological associate working under the supervision of a board-approved licensed psychologist; or
- 2. Certified psychologist working under the supervision of a board-approved 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. Certified psychologist with autonomous functioning;
 5. Licensed marriage and family therapist;
 6. Licensed professional art therapist;
 7. Licensed behavior analyst; or
 8. Licensed clinical and alcohol drug counselor in accordance with Section 5 of this administrative regulation; 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 board-approved licensed psychologist;
 4. Certified psychologist working under the supervision of a board-approved licensed psychologist;
 5. Certified social worker working under the supervision of a billing supervisor;
 6. Physician assistant working under the supervision of a billing supervisor;
 7. Licensed professional art therapist associate working under the supervision of a billing supervisor;
 8. Licensed assistant behavior analyst working under the supervision of a billing supervisor;
 9. Certified alcohol and drug counselor working under the supervision of a billing supervisor; or
 10. Licensed clinical alcohol and drug counselor associate:
 a. In accordance with Section 5 of this administrative regulation; and
 b. 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. Certified psychologist with autonomous functioning;
 5. Licensed marriage and family therapist;
 6. Licensed professional art therapist; or
 7. Licensed clinical and alcohol drug counselor in accordance with Section 5 of this administrative regulation; 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 board-approved licensed psychologist;
 4. Certified psychologist working under the supervision of a board-approved licensed psychologist;
 5. Certified social worker working under the supervision of a billing supervisor;
 6. Physician assistant working under the supervision of a billing supervisor;
 7. Licensed professional art therapist associate working under the supervision of a billing supervisor;
 8. Certified alcohol and drug counselor working under the supervision of a billing supervisor; or
 9. Licensed clinical and alcohol drug counselor associate in accordance with Section 5 of this administrative regulation.

(7) Reimbursement for the following services shall be as established on the PRTF 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) Screening, brief intervention, and referral to treatment;
 (h) Assertive community treatment;
 (i) Comprehensive community support services; or
 (j) 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 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 9:015; and
- (2) This administrative regulation.

Section 5. Federal Approval and Federal Financial Participation. (1) The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

- (a) Receipt of federal financial participation for the reimbursement; and
 - (b) Centers for Medicare and Medicaid Services' approval for the reimbursement.
- (2) The reimbursement of services provided by a licensed clinical alcohol and drug counselor or licensed clinical alcohol and drug counselor associate shall be contingent and effective upon approval by the Centers for Medicare and Medicaid Services.

Section 6. Incorporation by Reference. (1) "Level I and Level II PRTF Non-Medicare Services Fee Schedule", January 2015, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

- (a) At 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>.

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 9, 2015

FILED WITH LRC: April 9, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 22, 2015 at 9:00 a.m. in the Health Services Auditorium, Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2015 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this

proposed administrative regulation until close of business June 1, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen (502) 564-4321

(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 outpatient behavioral health services provided by Level I or Level II psychiatric residential treatment facilities (PRTFs). This administrative regulation is being promulgated in conjunction with 907 KAR 9:015, Coverage provisions and requirements regarding outpatient services provided by psychiatric residential treatment facilities, and the Cabinet for Health and Family Services, Office of Inspector General's Level I and Level II PRTF licensure administrative regulation (902 KAR 20:430). To qualify as a provider, a psychiatric residential treatment facility must be licensed in accordance with 902 KAR 20:430. Level I and Level II PRTFs are authorized to provide, to Medicaid recipients, outpatient 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; 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 Level I and Level II PRTFs) 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 outpatient 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 outpatient 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: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Level I and Level II PRTFs, behavioral health professionals authorized to provide services in Level I or Level II PRTFs, and Medicaid recipients who receive services in Level I or Level II PRTFs will be affected by the administrative regulation. The following behavioral health professionals are authorized to provide services in a Level I or Level II psychiatric residential treatment facility: licensed psychologists, advanced practice registered nurses, licensed professional clinical counselors, licensed clinical social workers, licensed marriage and family therapists, licensed psychological practitioners, certified psychologists with autonomous functioning; licensed psychological associates, certified psychologists; 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, community support associates, licensed clinical and alcohol drug counselors (contingent and effective upon approval by the Centers for Medicare and Medicaid Services), and licensed clinical and alcohol drug counselor associates (contingent and effective upon approval by the Centers for Medicare and Medicaid Services). Currently there are twenty-three (23) Level I PRTFs enrolled in the Medicaid Program and zero (0) Level II PRTFs enrolled in the Medicaid Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Level I or Level II PRTFs that wish to expand their scope of care to provide outpatient behavioral health services will need to provide the services in accordance with the parameters/requirements established in this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Level I or Level II PRTFs that choose to expand their scope of care to include outpatient behavioral health services will benefit by receiving Medicaid Program reimbursement for the services. Behavioral health professionals authorized to provide outpatient behavioral health services in a Level I or Level II psychiatric residential treatment facility will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of outpatient 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 outpatient behavioral health services provider base due to the variables involved as DMS cannot estimate the utilization of these services in Level I or Level II PRTFs 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 outpatient behavioral health services provider base due to the variables involved as DMS cannot estimate the utilization of these services in Level I or Level II PRTFs 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
(New Administrative Regulation)

907 KAR 10:020. Coverage provisions and requirements regarding outpatient psychiatric hospital services.

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 outpatient services provided by psychiatric hospitals.

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) 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 certified psychologist with autonomous functioning;
- (h) A licensed clinical social worker;
- (i) A licensed professional clinical counselor;
- (j) A licensed marriage and family therapist;
- (k) A licensed psychological associate;
- (l) A certified psychologist;
- (m) A marriage and family therapy associate;
- (n) A certified social worker;
- (o) A licensed professional counselor associate;
- (p) A licensed professional art therapist;
- (q) A licensed professional art therapist associate;

(r) A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation;

(s) A licensed clinical alcohol and drug counselor associate in accordance with Section 12 of this administrative regulation; or

(t) A certified alcohol and drug counselor.

(3) "Behavioral health practitioner under supervision" means an individual who is:

- (a) 1. A licensed professional counselor associate;
- 2. A certified social worker;
- 3. A marriage and family therapy associate;
- 4. A licensed professional art therapist associate;
- 5. A licensed assistant behavior analyst;
- 6. A physician assistant;
- 7. A certified alcohol and drug counselor; or

8. A licensed clinical alcohol and drug counselor associate in accordance with Section 12 of this administrative regulation; and

(b) Employed by or under contract with the same billing provider as the billing supervisor.

(4) "Billing provider" means the individual who, 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.

(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 certified psychologist with autonomous functioning;
- 9. A licensed marriage and family therapist;
- 10. A licensed professional art therapist; or
- 11. 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.

(6) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(7) "Certified psychologist" means an individual who is recognized as a certified psychologist in accordance with 201 KAR

Chapter 26.

(8) "Certified psychologist with autonomous functioning" means an individual who is a certified psychologist with autonomous functioning pursuant to KRS 319.056.

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

(12) "Electronic signature" is defined by KRS 369.102(8).

(13) "Enrollee" means a recipient who is enrolled with a managed care organization.

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

(16) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(17) "Licensed behavior analyst" is defined by KRS 319C.010(6).

(18) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).

(19) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).

(20) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(21) "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(22) "Licensed professional art therapist" is defined by KRS 309.130(2).

(23) "Licensed professional art therapist associate" is defined by KRS 309.130(3).

(24) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(25) "Licensed professional counselor associate" is defined by KRS 335.500(4).

(26) "Licensed psychological associate" means an individual who:

(a) Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychological associate requirements established in 201 KAR Chapter 26.

(27) "Licensed psychological practitioner" means an individual who meets the requirements established in KRS 319.053.

(28) "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) "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) "Marriage and family therapy associate" is defined by KRS 335.300(3).

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

(32) "Peer support specialist" means an individual who meets the peer specialist qualifications established in:

(a) 908 KAR 2:220;

(b) 908 KAR 2:230; or

(c) 908 KAR 2:240.

(33) "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) "Physician" is defined by KRS 205.510(11).

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

- (36) "Provider" is defined by KRS 205.8451(7).
- (37) "Provider abuse" is defined by KRS 205.8451(8).
- (38) "Recipient" is defined by KRS 205.8451(9).
- (39) "Recipient abuse" is defined by KRS 205.8451(10).
- (40) "Recipient's representative" means:

(a) For a recipient who is authorized by Kentucky law to provide written consent, an individual acting on behalf of, and with written consent from, the recipient; or

(b) A legal guardian.

(41) "Section 504 plan" means a plan developed under the auspices of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (Section 504), 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.

Section 2. 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 psychiatric hospital that meets the provider participation requirements established in Section 3 of this administrative regulation.

(2)(a) Face-to-face contact between a practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a recipient under the age of twenty-one (21) years if the collateral outpatient therapy is in the recipient's plan of care;

2. A family outpatient therapy service in which the corresponding current procedural terminology code establishes that the recipient is not present;

3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or others in which the corresponding current procedural terminology code establishes that the recipient is not present; or

4. A service planning activity in which the corresponding current procedural terminology code establishes that the recipient is not present.

(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 plan of care; and

(b) Provided in accordance with the recipient's plan of care.

(5)(a) A psychiatric hospital shall establish a plan of care for each recipient receiving outpatient services from the psychiatric hospital.

(b) A plan of care shall meet the master treatment plan requirements established in 902 KAR 20:180.

Section 3. Provider Participation. (1)(a) To be eligible to provide services under this administrative regulation, a psychiatric hospital shall:

1. Be currently enrolled as a provider in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

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

3. Be licensed as a psychiatric hospital to provide outpatient behavioral health services in accordance with 902 KAR 20:180; and

4. Have:

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

b. Documented experience in serving individuals with behavioral health disorders;

c. The administrative capacity to ensure quality of services;

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

e. The capacity to document and maintain individual health records.

(b) The documentation referenced in paragraph (a)4.b. of this subsection shall be subject to audit by:

1. The department;

2. The Cabinet for Health and Family Services, Office of Inspector General;

3. A managed care organization, if the psychiatric hospital is enrolled in its network;

4. The Centers for Medicare and Medicaid Services;

5. The Kentucky Office of the Auditor of Public Accounts; or

6. The United States Department of Health and Human Services, Office of the Inspector General.

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

(3) A psychiatric hospital shall:

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

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

Section 4. 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 following requirements:

(a) A screening, crisis intervention, or intensive outpatient program service provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A certified psychologist with autonomous functioning;

4. A licensed clinical social worker;

5. A licensed professional clinical counselor;

6. A licensed professional art therapist;

7. A licensed marriage and family therapist;

8. A physician;

9. A psychiatrist;

10. An advanced practice registered nurse;

11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

12. A certified psychologist working under the supervision of a board-approved licensed psychologist;

13. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation; or

14. A behavioral health practitioner under supervision:

a. In accordance with Section 12 of this administrative regulation; and

b. Except for a licensed assistant behavior analyst;

(b) An assessment provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A certified psychologist with autonomous functioning;

4. A licensed clinical social worker;

5. A licensed professional clinical counselor;

6. A licensed professional art therapist;

7. A licensed marriage and family therapist;

8. A physician;

9. A psychiatrist;

10. An advanced practice registered nurse;

11. A licensed behavior analyst;

12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

13. A certified psychologist working under the supervision of a board-approved licensed psychologist;

14. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation; or

15. A behavioral health practitioner under supervision in accordance with Section 12 of this administrative regulation;

(c) Psychological testing provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed psychological associate working under the supervision of a board-approved licensed psychologist; or
5. A certified psychologist working under the supervision of a board-approved licensed psychologist;

(d) Day treatment or mobile crisis services provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
13. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation;
14. A behavioral health practitioner under supervision:
 - a. Except for a licensed assistant behavior analyst; and
 - b. In accordance with Section 12 of this administrative regulation; or
15. A peer support specialist working under the supervision of an approved behavioral health services provider in accordance with Section 12 of this administrative regulation;

(e) Peer support provided by a peer support specialist working under the supervision of an approved behavioral health services provider in accordance with Section 12 of this administrative regulation;

(f) Individual outpatient therapy, group outpatient therapy, or collateral outpatient therapy provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed behavior analyst;
12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
13. A certified psychologist working under the supervision of a board-approved licensed psychologist;
14. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation; or
15. A behavioral health practitioner under supervision in accordance with Section 12 of this administrative regulation;

(g) Family outpatient therapy provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
12. A certified psychologist working under the supervision of a

board-approved licensed psychologist;

13. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation; or
14. A behavioral health practitioner under supervision:
 - a. Except for a licensed assistant behavior analyst; and
 - b. In accordance with Section 12 of this administrative regulation;

(h) Service planning provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed behavior analyst;
12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
13. A certified psychologist working under the supervision of a board-approved licensed psychologist; or
14. A behavioral health practitioner under supervision except for:
 - a. A certified alcohol and drug counselor; or
 - b. A licensed clinical alcohol and drug counselor associate;

(i) A screening, brief intervention, and referral to treatment for a substance use disorder or SBIRT provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
13. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation; or
14. A behavioral health practitioner under supervision:
 - a. Except for a licensed assistant behavior analyst; and
 - b. In accordance with Section 12 of this administrative regulation;

(j) Assertive community treatment provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
13. A behavioral health practitioner under supervision except for a:
 - a. Licensed assistant behavior analyst;
 - b. Certified alcohol and drug counselor; or
 - c. Licensed clinical alcohol and drug counselor associate;
14. A peer support specialist working under the supervision of an approved behavioral health services provider except for a:
 - a. Licensed clinical alcohol and drug counselor;
 - b. Licensed clinical alcohol and drug counselor associate; or

- c. Certified alcohol and drug counselor; or
- 15. A community support associate;
- (k) Comprehensive community support services provided by:
 - 1. A licensed psychologist;
 - 2. A licensed psychological practitioner;
 - 3. A certified psychologist with autonomous functioning;
 - 4. A licensed clinical social worker;
 - 5. A licensed professional clinical counselor;
 - 6. A licensed professional art therapist;
 - 7. A licensed marriage and family therapist;
 - 8. A physician;
 - 9. A psychiatrist;
 - 10. An advanced practice registered nurse;
 - 11. A licensed behavior analyst;
 - 12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
 - 13. A certified psychologist working under the supervision of a board-approved licensed psychologist;
 - 14. A behavioral health practitioner under supervision except for a:
 - a. Licensed clinical alcohol and drug counselor associate; or
 - b. Certified alcohol and drug counselor; or
 - 15. A community support associate;
 - (l) Therapeutic rehabilitation program services provided by:
 - 1. A licensed psychologist;
 - 2. A licensed psychological practitioner;
 - 3. A certified psychologist with autonomous functioning;
 - 4. A licensed clinical social worker;
 - 5. A licensed professional clinical counselor;
 - 6. A licensed professional art therapist;
 - 7. A licensed marriage and family therapist;
 - 8. A physician;
 - 9. A psychiatrist;
 - 10. An advanced practice registered nurse;
 - 11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
 - 12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
 - 13. A behavioral health practitioner under supervision except for a:
 - a. Licensed assistant behavior analyst;
 - b. Licensed clinical alcohol and drug counselor associate; or
 - c. Certified alcohol and drug counselor; or
 - 14. A peer support specialist working under the supervision of an approved behavioral health services provider except for a:
 - a. Licensed clinical alcohol and drug counselor;
 - b. Licensed clinical alcohol and drug counselor associate; or
 - c. Certified alcohol and drug counselor; or
 - (m) Partial hospitalization provided by:
 - 1. A licensed psychologist;
 - 2. A licensed professional clinical counselor;
 - 3. A licensed clinical social worker;
 - 4. A licensed marriage and family therapist;
 - 5. A physician;
 - 6. A psychiatrist;
 - 7. An advanced practice registered nurse;
 - 8. A licensed psychological practitioner;
 - 9. A certified psychologist with autonomous functioning;
 - 10. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation;
 - 11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
 - 12. A certified psychologist working under the supervision of a board-approved licensed psychologist; or
 - 13. A behavioral health practitioner under supervision:
 - a. Except for a licensed assistant behavioral analyst; and
 - b. In accordance with Section 12 of this administrative regulation.
- (3)(a) A screening shall:
 - 1. Determine 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 the development of 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 plan of care; and
 - 4. Not include psychological or psychiatric evaluations or assessments.
- (c) Psychological testing shall:
 - 1. Include:
 - a. A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and
 - b. Interpretation and a written report of testing results; and
 - 2. Be performed by an individual who has met the requirements of KRS Chapter 319 related to the necessary credentials to perform psychological testing.
- (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 psychiatric hospital;
 - b. As an immediate relief to the presenting problem or threat; and
 - c. In a face-to-face, one-on-one 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 that includes:
 - (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 per day, seven (7) days per week, every day of the year;
 - 2. Ensure access to a board-certified or board-eligible psychiatrist twenty-four (24) hours per day, seven (7) days per week, every day of the year;
 - 3. Be provided for a duration of less than twenty-four (24) hours;
 - 4. Not be an overnight service;
 - 5. Be a multi-disciplinary team-based intervention in a home or community setting that ensures access to mental health and substance use disorder services 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;
 - 6. 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
 - 7. Be provided face-to-face in a home or community setting.
- (f) 1. Day treatment shall be a non-residential, intensive treatment program for an individual 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;

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 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 on non-instructional weekdays during the school year including 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 approved behavioral health services provider in accordance with Section 12 of this administrative regulation or a behavioral health practitioner working under clinical supervision in accordance with Section 12 of this administrative regulation; 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 psychiatric hospital 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 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. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

e. Be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

f. Be identified in each recipient's plan of care; and

g. Be designed to contribute directly to the recipient's individualized goals as specified in the recipient's plan of care.

2. To provide peer support services, a psychiatric hospital 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 in accordance with Section 12 of this administrative regulation 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 psychiatric hospital shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, physician, or advanced practice 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 well-being 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-on-one encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified 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 plan of care;
- b. Be provided to promote the:
 - (i) Health and well-being 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 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;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's 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 well-being 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, recipient's representative, school staff person, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's plan of care; and

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age.

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;

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) 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 in order 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 to the recipient; 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.

(o)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 severe 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) Group outpatient therapy;

(viii) Mobile crisis services;

(ix) Mental health consultation;

(x) Family support and basic living skills; or

(xi) Peer support.

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 psychiatric hospital shall:

a. Employ at least one (1) team of multidisciplinary professionals:

(i) Led by an approved behavioral health services provider except for a licensed clinical alcohol and drug counselor, a licensed clinical alcohol and drug counselor associate, or a certified alcohol and drug counselor; and

(ii) Comprised of at least four (4) full-time equivalents including a psychiatrist, a nurse, a case manager, a peer support specialist, or an approved behavioral health services provider except for a licensed clinical alcohol and drug counselor, a licensed clinical alcohol and drug counselor associate, or a certified alcohol and drug counselor;

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 health records; and

d. Demonstrate experience in serving individuals with persistent and severe mental illness who have difficulty living independently in the community.

(p)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 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 psychiatric hospital 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.

(q)1. Therapeutic rehabilitation program services shall be:

a. A rehabilitative service for an:

(i) Adult with a severe mental illness; or

(ii) Individual under the age of twenty-one (21) years who has a severe emotional disability; and

b. Designed to maximize the reduction of the effects of a mental health disorder 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 skills; and

(v) Interpersonal skills; and

c. Be delivered individually or in a group.

(r)1. Partial hospitalization shall be a short-term (average of four (4) to six (6) weeks), less than twenty-four (24)-hour, intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to a substance use disorder, a mental health disorder, or co-occurring mental health and substance use disorders.

2. Partial hospitalization may be provided to an adult or a child.

3. Admission criteria for partial hospitalization shall be based on an inability to adequately treat the recipient through community-based therapies or intensive outpatient services.

4. A partial hospitalization program shall consist of individual outpatient therapy, group outpatient therapy, family outpatient therapy, or medication management.

5.a. The department shall not reimburse for educational, vocational, or job training services provided as part of partial hospitalization.

b. An outpatient hospital's partial hospitalization program shall have an agreement with the local educational authority to come into the program to provide all educational components and instruction which are not Medicaid billable or reimbursable.

c. The department shall not reimburse for services identified in a Medicaid-eligible child's individualized education program.

6. Partial hospitalization shall typically be:

a. Provided for at least four (4) hours per day; and

b. Focused on one (1) primary presenting problem (i.e. substance use, sexual reactivity, or another problem).

7. An outpatient hospital's partial hospitalization program shall:

a. Include the following personnel for the purpose of providing medical care if necessary:

(i) An advanced practice registered nurse;

(ii) A physician assistant or physician available on site; and

(iii) A board-certified or board-eligible psychiatrist available for consultation; and

b. Have the capacity to:

(i) Provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;

(ii) Employ required practitioners and coordinate service provision among rendering practitioners; and

(iii) Provide the full range of services included in the scope of partial hospitalization established in this subsection.

(4) The extent and type of a screening shall depend upon the nature of the problem of the individual seeking or being referred for services.

(5) 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) 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 5. 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 health 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 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.

(3) The department shall not reimburse for both a screening and an SBIRT provided to a recipient on the same date of service.

(4) 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 psychiatric hospital;

(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" established in Section 1(14) of this administrative regulation;

- (e) Travel time;
- (f) A field trip;
- (g) A recreational activity;
- (h) A social activity; or
- (i) A physical exercise activity group.

(5)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except as established in Section 4(3)(l)1 of this administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

(6) A billing supervisor arrangement between a billing supervisor and a behavioral health practitioner under supervision shall not:

(a) Violate the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision; or

(b) Substitute for the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision.

Section 6. 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 same 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 psychiatric hospital.

Section 7. Records Maintenance, Documentation, Protection, and Security. (1) A psychiatric hospital 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 within forty-eight (48) hours of the date that the individual provided the service.

(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 participation information;
- f. Referral source's name and address;
- g. Primary care physician's name 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's name; and

j. The name of the informant and any other information deemed necessary by the psychiatric hospital in order to comply with the requirements of:

- (i) This administrative regulation;
- (ii) The psychiatric hospital'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;

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 upon request:

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

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

3. Made available for inspection and copying by:

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

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

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient 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 psychiatric hospital'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 plan of care if changes are made; and

d. Need for continued treatment if deemed necessary.

(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 behavioral health 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 behavioral health practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervising professional which reflects consultations with the behavioral health 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) Any change to a recipient's 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 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 has been 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 psychiatric hospital shall, within ten (10) business days of awareness 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. 290ee-3; and
 - b. 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, a Level I psychiatric residential treatment facility, a Level II psychiatric residential treatment facility, or an acute care hospital for care or treatment, the transferring psychiatric hospital 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. 290ee-3; and
 - b. 42 C.F.R. Part 2.
- (12)(a) If a psychiatric hospital'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 psychiatric hospital shall:
 1. Remain the property of the psychiatric hospital; and
 2. Be subject to the retention requirements established in subsection (13) of this section.
- (b) A psychiatric hospital 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 psychiatric hospital shall maintain a health record regarding a recipient for at least six (6) years from the last date of the service or until any audit dispute or issue is resolved beyond six (6) years.
- (b) After a recipient's death or discharge from services, a provider shall maintain the recipient's record for the longest of the following periods:
 1. Six (6) years unless the recipient is a minor; or
 2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.
- (c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

- (14)(a) A psychiatric hospital shall comply with 45 C.F.R. Part 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;
 - b. Federal government; or
 - c. For an enrollee, managed care organization in which the enrollee is enrolled.
 - (c)1. Upon request, a psychiatric hospital shall provide to an authorized representative of the department, federal government, or managed care organization if applicable, 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 8. Medicaid Program Participation Compliance. (1) A psychiatric hospital 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 psychiatric hospital receives any duplicate payment or overpayment from the department or a managed care organization, regardless of reason, the psychiatric hospital shall return the payment to the department or managed care organization in accordance with 907 KAR 1:671.
- (b) Failure to return a payment to the department or managed care organization in accordance with paragraph (a) of this subsection may be:
 1. Interpreted to be fraud or abuse; and
 2. Prosecuted in accordance with applicable federal or state law.
- (3)(a) When the department makes payment for a covered service and the psychiatric hospital 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 psychiatric hospital.
- (b)1. A psychiatric hospital 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. Psychiatric hospital makes the recipient aware in writing 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. Psychiatric hospital 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 psychiatric hospital regarding the service.
- (4)(a) A psychiatric hospital attests by the psychiatric hospital'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;

5. United States General Accounting Office or its designee; or
6. For an enrollee, managed care organization in which the enrollee is enrolled.

(c)1. If a psychiatric hospital receives a request from the:

a. Department to provide a claim, related information, related documentation, or record for auditing purposes, the psychiatric hospital shall provide the requested information to the department within the timeframe requested by the department; or

b. Managed care organization in which an enrollee is enrolled to provide a claim, related information, related documentation, or record for auditing purposes, the psychiatric hospital shall provide the requested information to the managed care organization within the timeframe requested by the managed care organization.

2.a. The timeframe requested by the department or managed care organization for a psychiatric hospital to provide requested information shall be:

(i) A reasonable amount of time given the nature of the request and the circumstances surrounding the request; and

(ii) A minimum of one (1) business day.

b. A psychiatric hospital may request a longer timeframe to provide information to the department or a managed care organization if the psychiatric hospital justifies the need for a longer timeframe.

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

2. Willful abuse by a psychiatric hospital shall result in the suspension or termination of the psychiatric hospital from Medicaid Program participation in accordance with 907 KAR 1:671.

Section 9. Third Party Liability. A psychiatric hospital shall comply with KRS 205.622.

Section 10. 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 psychiatric hospital 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 psychiatric hospital'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 psychiatric hospital's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 11. Auditing Authority. The department or managed care organization in which an enrollee is enrolled shall have the authority to audit any:

(1) Claim;

(2) Health record; or

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

Section 12. Federal Approval and Federal Financial Participation. (1) The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

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

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

(2) The coverage of services provided by a licensed clinical

alcohol and drug counselor or licensed clinical alcohol and drug counselor associate shall be contingent and effective upon approval by the Centers for Medicare and Medicaid Services.

Section 13. 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.

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 10, 2015

FILED WITH LRC: April 13, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 22, 2015 at 9:00 a.m. in the Health Services Auditorium, Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2015 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business June 1, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen (502) 564-4321, ext 2015

(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 outpatient behavioral health services provided by psychiatric hospitals. This administrative regulation is being promulgated in conjunction with 907 KAR 10:025, Reimbursement for outpatient services provided by psychiatric hospitals. To qualify as a provider, a psychiatric hospital must be licensed in accordance with 902 KAR 20:180. Psychiatric hospitals are authorized to provide, to Medicaid recipients, outpatient 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; a screening, brief intervention, and referral to treatment for a substance use disorder; assertive community treatment; comprehensive community support services; therapeutic rehabilitation program services; and partial hospitalization.

(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 for outpatient behavioral health services (to include psychiatric hospitals) 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 outpatient 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 outpatient 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: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Psychiatric hospitals, behavioral health professionals authorized to provide outpatient behavioral health services in psychiatric hospitals, and Medicaid recipients in need of outpatient behavioral health services will be affected by the administrative regulation. Currently, there are twelve (12) psychiatric hospitals enrolled in the Medicaid Program. The following behavioral health professionals are authorized to provide services in a Level I or Level II psychiatric residential treatment facility: licensed psychologists, advanced practice registered nurses, licensed professional clinical counselors, licensed clinical social workers, licensed marriage and family therapists, licensed psychological practitioners, certified psychologists with autonomous functioning; licensed psychological associates, certified psychologists; 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, community support associates, licensed clinical and alcohol drug counselors (contingent and effective upon approval by the Centers for Medicare and Medicaid Services), and licensed clinical and alcohol drug counselor associates (contingent and effective upon approval by the Centers for Medicare and Medicaid Services). Currently there are twenty-three (23) Level I PRTFs enrolled in the Medicaid Program and zero (0) Level II PRTFs enrolled in the Medicaid Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Psychiatric hospitals who wish to provide outpatient behavioral health services will need to comply with the service requirements.

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

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3). Psychiatric hospitals will benefit by receiving Medicaid Program reimbursement for outpatient behavioral health services. Behavioral health professionals authorized to provide outpatient behavioral health services will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of outpatient 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 outpatient behavioral health services provider base due to the variables involved as DMS cannot estimate the utilization of these services in psychiatric hospitals 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 outpatient behavioral health services provider base due to the variables involved as DMS cannot estimate the utilization of these services in psychiatric hospitals 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

(New Administrative Regulation)

907 KAR 10:025. Reimbursement provisions and requirements regarding outpatient psychiatric hospital services.

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 outpatient behavioral health services provided by psychiatric hospitals to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. (1) "Billing provider" means the individual who, 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.

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

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

(4) "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.

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

Section 2. General Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall:

(1) Meet the requirements established in 907 KAR 10:020; and

(2) Be covered in accordance with 907 KAR 10:020.

Section 3. Reimbursement. (1)(a) Except as established in Section 4 of this administrative regulation, the department shall reimburse a psychiatric hospital on an interim basis for outpatient behavioral health services at a facility specific outpatient cost-to-charge ratio based on the facility's most recently filed cost report that has been reviewed and approved by the department.

(b) An outpatient behavioral health service cost-to-charge ratio shall be expressed as a percent of the psychiatric hospital's outpatient behavioral health service charges.

(2) Except as established in subsection (4) of this section, a facility specific outpatient behavioral health service cost-to-charge ratio paid during the course of a psychiatric hospital's fiscal year shall be designed to result in reimbursement, at the psychiatric hospital's fiscal year end, equaling ninety-five (95) percent of the psychiatric hospital's total outpatient behavioral health services costs, excluding diagnostic laboratory services costs, incurred during the psychiatric hospital's fiscal year.

(3) Except as established in subsection (4) of this section:

(a) Upon reviewing a psychiatric hospital's as submitted cost report for the hospital's fiscal year, the department shall preliminarily settle reimbursement to the psychiatric hospital equal to ninety-five (95) percent of the psychiatric hospital's total outpatient behavioral health services costs, excluding diagnostic laboratory services costs, incurred in the corresponding fiscal year; and

(b) Upon receiving and reviewing a psychiatric hospital's finalized outpatient behavioral health services cost report for the

hospital's fiscal year, the department shall settle final reimbursement to the facility equal to ninety-five (95) percent of the psychiatric hospital's total outpatient behavioral health services costs, excluding diagnostic laboratory services costs, incurred in the corresponding fiscal year.

(4)(a) The department's total reimbursement for psychiatric hospital outpatient behavioral health services shall not exceed the aggregate limit established in 42 C.F.R. 447.321.

(b) If projections indicate for a given state fiscal year that reimbursing for a psychiatric hospital's outpatient behavioral health services at ninety-five (95) percent of costs would result in the department's total psychiatric hospital outpatient behavioral health service reimbursement exceeding the aggregate limit established in 42 C.F.R. 447.321, the department shall proportionately reduce the final psychiatric hospital outpatient behavioral health service reimbursement for each psychiatric hospital to equal a percent of costs which shall result in the total psychiatric hospital outpatient behavioral health service reimbursement equaling the aggregate limit established in 42 C.F.R. 447.321.

(5) 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 4. Initial Interim Reimbursement and New Hospital Reimbursement. (1)(a) Except as established in subsection (2) of this section, until a psychiatric hospital has submitted to the department a cost report containing twelve (12) months of outpatient behavioral health services cost information that has been reviewed and approved by the department, the department shall reimburse the psychiatric hospital on an interim basis for outpatient behavioral health services using the most recently available statewide average cost-to-charge ratio for in-state acute care hospitals.

(b) The department shall update the statewide average in-state acute care hospital cost-to-charge ratio effective July 1 of each year.

(2)(a) After the department has established a cost-to-charge ratio for at least two (2) psychiatric hospitals pursuant to Section 3 of this administrative regulation, the department shall reimburse on an interim basis a newly participating psychiatric hospital for which a cost report containing twelve (12) months of outpatient behavioral health services information has not been reviewed and approved by the department, the statewide average cost-to-charge ratio of in-state psychiatric hospitals.

(b) The department shall update the statewide average in-state psychiatric hospital cost-to-charge ratio effective July 1 of each year.

Section 5. Cost Reporting Requirements. (1) A psychiatric hospital participating in the Medicaid Program shall submit to the department a copy of the Medicare cost report it submits to CMS, an electronic cost report file (ECR), the Supplemental Medicaid Schedule KMAP-1, the Supplemental Medicaid Schedule KMAP-4, and the Supplemental Medicaid Schedule KMAP-6.

(a) A cost report shall be submitted:

1. For the fiscal year used by the psychiatric hospital; and
2. Within five (5) months after the close of the psychiatric hospital's fiscal year.

(b) Except as provided in subparagraphs 1, 2, or 3 of this paragraph, the department shall not grant a cost report submittal extension.

1. The department shall grant an extension if an extension has been granted by Medicare. If an extension has been granted by Medicare, when the facility submits its cost report to Medicare, it shall simultaneously submit a copy of the cost report to the department.

2. If a catastrophic circumstance exists, as determined by the department (for example flood, fire, or other equivalent occurrence), the department shall grant a thirty (30) day extension.

3. The department shall extend the deadline for a psychiatric hospital to submit a cost report if:

- a. The psychiatric hospital:
 - (i) Requests the extension in writing; and
 - (ii) Describes the circumstances necessitating the extension;

and

b. The department approves the extension.

(c) A psychiatric hospital shall include all Medicaid outpatient behavioral health services costs on the cost report that it submits to:

1. Medicare; and
2. The department.

(2)(a) If a cost report submittal date lapses and no extension has been granted, the department shall immediately suspend all payment to the psychiatric hospital for outpatient behavioral health services until a complete cost report is received.

(3) If a cost report indicates that payment is due by a psychiatric hospital to the department, the psychiatric hospital shall submit the amount due or submit a payment plan request with the cost report.

(4) If a cost report indicates a payment is due by a psychiatric hospital to the department and the psychiatric hospital fails to remit the amount due or request a payment plan, the department shall suspend future payment to the psychiatric hospital for outpatient behavioral health services until the psychiatric hospital remits the payment or submits a request for a payment plan.

(5) An estimated payment shall not be considered payment-in-full until a final determination of cost has been made by the department.

(6) A cost report submitted by a psychiatric hospital to the department shall be subject to departmental audit and review.

(7) Within seventy (70) days of receipt from the Medicare intermediary, a hospital shall submit to the department a printed copy of the final Medicare-audited cost report including adjustments.

(8)(a) If it is determined that an additional payment is due by a psychiatric hospital after a final determination of cost has been made by the department, the additional payment shall be due by a hospital to the department within sixty (60) days after notification.

(b) If a psychiatric hospital does not submit the additional payment within sixty (60) days, the department shall withhold future payment to the psychiatric hospital until the department has collected in full the amount owed by the psychiatric hospital to the department.

Section 6. Outpatient Psychiatric Hospital Laboratory Services Reimbursement.

(1) The department shall reimburse for an in-state or out-of-state outpatient psychiatric hospital diagnostic laboratory service:

(a) At the Medicare-established technical component rate for the service in accordance with 907 KAR 1:028 if a Medicare-established component rate exists for the service; or

(b) By multiplying the facility's current outpatient cost-to-charge ratio by its billed laboratory charges if no Medicare rate exists for the service.

(2) Laboratory service reimbursement, in accordance with subsection (1) of this section, shall be:

- (a) Final; and
- (b) Not settled to cost.

Section 7. Out-of-State Outpatient Psychiatric Hospital Services Reimbursement.

(1)(a) Except as established in paragraph (b) of this subsection, excluding laboratory services, reimbursement for psychiatric hospital outpatient behavioral health services provided by an out-of-state hospital shall equal ninety-five (95) percent of the statewide average in-state psychiatric hospital cost-to-charge ratio multiplied by the applicable covered Medicaid charges for the service.

(b) The department shall update the statewide average in-state psychiatric hospital cost-to-charge ratio effective July 1 of each year.

(2) Out-of-state hospital reimbursement, in accordance with subsection (1) of this section, shall be:

- (a) Final; and
- (b) Not settled to cost.

Section 8. 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 10:020; and
- (2) This administrative regulation.

Section 9. 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 10. Appeals. A psychiatric hospital may appeal a decision by the department regarding the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Supplemental Worksheet E-3, Part III", May 2004;
 - (b) "Supplemental Medicaid Schedule KMAP-1", January 2007;
 - (c) "Supplemental Medicaid Schedule KMAP-4", January 2007;
 - (d) The "Supplemental Medicaid Schedule KMAP-5", November 2011; and
 - (e) "Supplemental Medicaid Schedule KMAP-6", January 2007.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law:
- (a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 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>.

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 10, 2015

FILED WITH LRC: April 13, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 22, 2015 at 9:00 a.m. in the Health Services Auditorium, Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2015 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business June 1, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen (502) 564-4321

- (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 outpatient behavioral health services provided by psychiatric hospitals. This administrative regulation is being promulgated in conjunction with 907 KAR 10:020 (Coverage provisions and requirements regarding psychiatric hospital outpatient behavioral health services). Psychiatric hospitals are authorized to provide, to Medicaid recipients, outpatient 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; 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 ultimately reimburse a psychiatric hospital ninety-five (95) percent of the hospital's costs for outpatient behavioral health services. To achieve this each psychiatric hospital will annually submit a cost report identifying all of the hospital's outpatient behavioral health services' costs incurred for the given fiscal year. DMS will review and audit the report and compare the reimbursement paid to the hospital on an interim basis (during the course of the given fiscal year) to the psychiatric hospital's incurred costs. If DMS's interim reimbursement exceeded the psychiatric hospital's incurred costs for the fiscal year, the psychiatric hospital will remit the amount due back to DMS. If DMS's interim reimbursement was less than the psychiatric hospital's costs, DMS will send the amount owed to the psychiatric hospital to equate to the incurred costs. DMS will use the most recent cost report to establish an interim reimbursement (cost-to-charge ratio) to pay the psychiatric hospital during the course of the fiscal year. For the initial year, as no cost report yet exists, DMS will pay on an interim basis a reimbursement equal to the statewide average cost-to-charge ratio for acute care hospitals.

- (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 psychiatric hospitals) 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: This is a new administrative regulation.

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

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

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

- (3) List the type and number of individuals, businesses,

organizations, or state and local government affected by this administrative regulation: Psychiatric hospitals, behavioral health professionals authorized to provide outpatient behavioral health services in psychiatric hospitals, and Medicaid recipients in need of outpatient behavioral health services will be affected by the administrative regulation. Currently, there are twelve (12) psychiatric hospitals enrolled in the Medicaid Program. The following behavioral health professionals are authorized to provide outpatient behavioral health services in a psychiatric hospital: 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.

(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. Psychiatric hospitals who wish to provide outpatient behavioral health services will need to comply with the service requirements.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Psychiatric hospitals will benefit by receiving Medicaid Program reimbursement for outpatient behavioral health services. Behavioral health professionals authorized to provide outpatient behavioral health services will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of outpatient 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 outpatient behavioral health services provider base due to the variables involved as DMS cannot estimate the utilization of these services in psychiatric hospitals 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 \$27.00 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 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 outpatient behavioral health services provider base due to the variables involved as DMS cannot estimate the utilization of these services in psychiatric hospitals 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 \$27 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

(New Administrative Regulation)

907 KAR 15:080. Coverage provisions and requirements regarding outpatient chemical dependency treatment center services.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 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 outpatient chemical dependency treatment center services.

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 chemical dependency treatment center that meets the provider participation requirements established in Section 2 of this administrative regulation.

(2)(a) Face-to-face contact between a practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a recipient under the age of twenty-one (21) years if the collateral outpatient therapy is in the

recipient's plan of care;

2. A family outpatient therapy service in which the corresponding current procedural terminology code establishes that the recipient is not present;

3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or others in which the corresponding current procedural terminology code establishes that the recipient is not present; or

4. A service planning activity in which the corresponding current procedural terminology code establishes that the recipient is not present.

(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 plan of care; and

(b) Provided in accordance with the recipient's plan of care.

(5)(a) A chemical dependency treatment center shall establish a plan of care for each recipient receiving services from a chemical dependency treatment center.

(b) A plan of care shall meet the treatment plan requirements established in 902 KAR 20:160.

Section 2. Provider Participation. (1)(a) To be eligible to provide services under this administrative regulation, a chemical dependency treatment center shall:

1. Be currently enrolled as a provider in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

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

3. Be licensed as a chemical dependency treatment center to provide outpatient behavioral health services in accordance with 902 KAR 20:160; and

4. Have:

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

b. Documented experience in serving individuals with behavioral health disorders;

c. The administrative capacity to ensure quality of services;

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

e. The capacity to document and maintain individual health records.

(b) The documentation referenced in paragraph (a)4.b. of this subsection shall be subject to audit by:

1. The department;

2. The Cabinet for Health and Family Services, Office of Inspector General;

3. A managed care organization, if the chemical dependency treatment center is enrolled in its network;

4. The Centers for Medicare and Medicaid Services;

5. The Kentucky Office of the Auditor of Public Accounts; or

6. The United States Department of Health and Human Services, Office of the Inspector General.

(2) In accordance with 907 KAR 17:015, Section 3(3), a chemical dependency treatment center which provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(3) A chemical dependency treatment center 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) The services covered may be provided for a substance use disorder.

(2) The following services shall be covered under this administrative regulation in accordance with the following requirements:

(a) A screening, crisis intervention, or intensive outpatient

program service provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
13. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation; or
14. A behavioral health practitioner under supervision:
 - a. In accordance with Section 11 of this administrative regulation; and
 - b. Except for a licensed assistant behavior analyst;
- (b) An assessment provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A certified psychologist with autonomous functioning;
 4. A licensed clinical social worker;
 5. A licensed professional clinical counselor;
 6. A licensed professional art therapist;
 7. A licensed marriage and family therapist;
 8. A physician;
 9. A psychiatrist;
 10. An advanced practice registered nurse;
 11. A licensed behavior analyst;
 12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
 13. A certified psychologist working under the supervision of a board-approved licensed psychologist;
 14. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation; or
 15. A behavioral health practitioner under supervision in accordance with Section 11 of this administrative regulation;
- (c) Psychological testing provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A certified psychologist with autonomous functioning;
 4. A licensed psychological associate working under the supervision of a board-approved licensed psychologist; or
 5. A certified psychologist working under the supervision of a board-approved licensed psychologist;
- (d) Day treatment or mobile crisis services provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A certified psychologist with autonomous functioning;
 4. A licensed clinical social worker;
 5. A licensed professional clinical counselor;
 6. A licensed professional art therapist;
 7. A licensed marriage and family therapist;
 8. A physician;
 9. A psychiatrist;
 10. An advanced practice registered nurse;
 11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
 12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
 13. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation;
 14. A behavioral health practitioner under supervision:
 - a. Except for a licensed assistant behavior analyst; and
 - b. In accordance with Section 11 of this administrative regulation; or
 15. A peer support specialist working under the supervision of an approved behavioral health services provider in accordance with Section 11 of this administrative regulation;

(e) Peer support provided by a peer support specialist working under the supervision of an approved behavioral health services provider in accordance with Section 11 of this administrative regulation;

(f) Individual outpatient therapy, group outpatient therapy, or collateral outpatient therapy provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed behavior analyst;
12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
13. A certified psychologist working under the supervision of a board-approved licensed psychologist;
14. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation; or
15. A behavioral health practitioner under supervision in accordance with Section 11 of this administrative regulation;

(g) Family outpatient therapy provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
13. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation; or
14. A behavioral health practitioner under supervision:
 - a. Except for a licensed assistant behavior analyst; and
 - b. In accordance with Section 11 of this administrative regulation; or

(h) A screening, brief intervention, and referral to treatment for a substance use disorder or SBIRT provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
13. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation; or
14. A behavioral health practitioner under supervision:
 - a. Except for a licensed assistant behavior analyst; and
 - b. In accordance with Section 11 of this administrative regulation.

(3)(a) A screening shall:

1. Determine the likelihood that an individual has a substance use disorder;
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 substance use disorder;
 - 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 the development of 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 plan of care; and
4. Not include psychological or psychiatric evaluations or assessments.

(c) Psychological testing shall:

1. Include:
 - a. A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and
 - b. Interpretation and a written report of testing results; and
2. Be performed by an individual who has met the requirements of KRS Chapter 319 related to the necessary credentials to perform psychological testing.

(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 in the facility where the outpatient behavioral health services are provided;
 - b. As an immediate relief to the presenting problem or threat; and
 - c. In a face-to-face, one-on-one 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 that includes:
 - (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 per day, seven (7) days per week, every day of the year;
2. Ensure access to a board-certified or board-eligible psychiatrist twenty-four (24) hours per day, seven (7) days per week, every day of the year;
3. Be provided for a duration of less than twenty-four (24) hours;
4. Not be an overnight service;
5. Be a multi-disciplinary team-based intervention in a home or community setting that ensures access to substance use disorder services 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;
6. 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
7. Be provided face-to-face in a home or community setting.

(f)1. Day treatment shall be a non-residential, intensive treatment program for an individual under the age of twenty-one (21) years who has:

- a. A substance use disorder; 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;
- 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 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 on non-instructional weekdays during the school year including 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 approved behavioral health services provider in accordance with Section 11 of this administrative regulation or a behavioral health practitioner working under clinical supervision in accordance with Section 11 of this administrative regulation; 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 chemical dependency treatment center 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 emotional support that is provided to a recipient by:
 - (i) An individual who has been trained and certified in accordance with 908 KAR 2:220 or 907 KAR 2:240 and who is experiencing or has experienced a substance use disorder to a recipient by sharing a similar substance use disorder 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 substance use disorder to a parent or family member of a child sharing a similar 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 substance use disorder to a parent or family member of a child sharing a similar 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. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;
- e. Be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;
- f. Be identified in each recipient's plan of care; and
- g. Be designed to contribute directly to the recipient's individualized goals as specified in the recipient's plan of care.

2. To provide peer support services, a chemical dependency treatment center 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 in accordance with Section 11 of this administrative regulation 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 substance use disorder;

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 chemical dependency treatment center shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, physician, or advanced practice 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 well-being of the individual; and

b. Recovery from a substance use disorder;

2. Consist of:

a. A face-to-face, one-on-one encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified 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 plan of care;

b. Be provided to promote the:

(i) Health and wellbeing of the individual; and

(ii) Recovery from a substance use disorder;

c. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified 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;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's 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 of 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 well-being of the individual; or

(ii) Recovery from a substance use disorder; 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, recipient's representative, school staff person, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's plan of care; and

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age.

2. Consent given to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed by the recipient or recipient's representative and filed in the recipient's health record.

(m) 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 in order 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 to the recipient; and

c. Referring a recipient to additional substance use disorder services if the recipient is determined to need additional services to address substance use.

(4) The extent and type of a screening shall depend upon the

nature of the problem of the individual seeking or being referred for services.

(5) 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) 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 health 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) The department shall not reimburse for both a screening and an SBIRT provided to a recipient on the same date of service.

(3) 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) A consultation or educational service provided to a recipient or to others;

(c) 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" established in 907 KAR 15:005, Section 1(14);

(d) Travel time;

(e) A field trip;

(f) A recreational activity;

(g) A social activity; or

(h) A physical exercise activity group.

(4)(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.

(5) A billing supervisor arrangement between a billing supervisor and a behavioral health practitioner under supervision shall not:

(a) Violate the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision; or

(b) Substitute for the clinical 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 same 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 chemical dependency treatment center.

Section 6. Records Maintenance, Documentation, Protection, and Security. (1) A chemical dependency treatment center 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 within forty-eight (48) hours of 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 participation information;
- f. Referral source's name and address;
- g. Primary care physician's name 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's name; and

j. The name of the informant and any other information deemed necessary by the chemical dependency treatment center in order to comply with the requirements of:

(i) This administrative regulation;

(ii) The chemical dependency treatment center'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;

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 upon request:

- a. To the Cabinet for Health and Family Services; or
- b. For an enrollee, to the managed care organization in which the recipient is enrolled or has been enrolled in the past;

3. Made available for inspection and copying by:

- a. Cabinet for Health and Family Services' personnel; or
- b. Personnel of the managed care organization in which the recipient is enrolled if applicable;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient 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 chemical dependency treatment center'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 plan of care if changes are made; and

d. Need for continued treatment if deemed necessary.

(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 behavioral health 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 behavioral health practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervising professional which reflects consultations with the behavioral health 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) Any change to a recipient's 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 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 has been 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 chemical dependency treatment center shall, within ten (10) business days of awareness 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. 290ee-3; and
- b. 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, a Level I psychiatric residential treatment facility, a Level II psychiatric residential treatment facility, or an acute care hospital for care or treatment, the transferring chemical dependency treatment center 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. 290ee-3; and
- b. 42 C.F.R. Part 2.

(12)(a) If a chemical dependency treatment center'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 chemical dependency treatment center shall:

1. Remain the property of the chemical dependency treatment center; and
2. Be subject to the retention requirements established in subsection (13) of this section.

(b) A chemical dependency treatment center 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 chemical dependency treatment center shall maintain a health record regarding a recipient for at least six (6) years from the last date of the service or until any audit dispute or issue is resolved beyond six (6) years.

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

1. Six (6) years unless the recipient is a minor; or
2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

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

(14)(a) A chemical dependency treatment center shall comply with 45 C.F.R. Part 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;
 - b. Federal government; or
 - c. For an enrollee, managed care organization in which the enrollee is enrolled.

(c)1. Upon request, a chemical dependency treatment center shall provide to an authorized representative of the department, federal government, or managed care organization if applicable, 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 chemical dependency treatment center 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 chemical dependency treatment center receives any duplicate payment or overpayment from the department or a managed care organization, regardless of reason, the chemical

dependency treatment center shall return the payment to the department or managed care organization in accordance with 907 KAR 1:671.

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

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the chemical dependency treatment center 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 chemical dependency treatment center.

(b)1. A chemical dependency treatment center 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. Chemical dependency treatment center makes the recipient aware in writing 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. Chemical dependency treatment center 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 chemical dependency treatment center regarding the service.

(4)(a) A chemical dependency treatment center attests by the chemical dependency treatment center'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;
5. United States General Accounting Office or its designee; or
6. For an enrollee, managed care organization in which the enrollee is enrolled.

(c)1. If a chemical dependency treatment center receives a request from the:

a. Department to provide a claim, related information, related documentation, or record for auditing purposes, the chemical dependency treatment center shall provide the requested information to the department within the timeframe requested by the department; or

b. Managed care organization in which an enrollee is enrolled to provide a claim, related information, related documentation, or record for auditing purposes, the chemical dependency treatment center shall provide the requested information to the managed care organization within the timeframe requested by the managed care organization.

2.a. The timeframe requested by the department or managed care organization for a chemical dependency treatment center to provide requested information shall be:

- (i) A reasonable amount of time given the nature of the request and the circumstances surrounding the request; and
- (ii) A minimum of one (1) business day.

b. A chemical dependency treatment center may request a longer timeframe to provide information to the department or a managed care organization if the chemical dependency treatment center justifies the need for a longer timeframe.

- (d)1. All services provided shall be subject to review for

recipient or provider abuse.

2. Willful abuse by a chemical dependency treatment center shall result in the suspension or termination of the chemical dependency treatment center from Medicaid Program participation in accordance with 907 KAR 1:671.

Section 8. Third Party Liability. A chemical dependency treatment center 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 chemical dependency treatment center 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 chemical dependency treatment center'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 chemical dependency treatment center's electronic signature policy;
 2. The signed consent form; and
 3. The original filed signature.

Section 10. Auditing Authority. The department or managed care organization in which an enrollee is enrolled shall have the authority to audit any:

- (1) Claim;
- (2) Health record; or
- (3) Documentation associated with any claim or health record.

Section 11. Federal Approval and Federal Financial Participation. (1) The department's reimbursement of services pursuant to this administrative regulation shall be contingent upon:

- (a) Receipt of federal financial participation for the coverage; and
- (b) Centers for Medicare and Medicaid Services' approval for the coverage.

(2) The reimbursement of services provided by a licensed clinical alcohol and drug counselor or licensed clinical alcohol and drug counselor associate shall be contingent and effective upon approval by the Centers for Medicare and Medicaid Services.

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.

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 10, 2015

FILED WITH LRC: April 13, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 22, 2015 at 9:00 a.m. in the Health Services Auditorium, Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2015 five (5) workdays prior to the hearing, of their intent to attend.

If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business June 1, 2015. 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

(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 outpatient chemical dependency treatment center (CDTC) services. This administrative regulation is being promulgated in conjunction with 907 KAR 15:085, Reimbursement for outpatient chemical dependency treatment center services. To qualify as a provider, a chemical dependency treatment center must be licensed in accordance with 902 KAR 20:160. CDTCs are authorized to provide, to Medicaid recipients, behavioral health services related to a substance use disorder. 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; and a screening, brief intervention, and referral to treatment (SBIRT) for a substance use disorder.

(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 chemical dependency treatment centers) 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: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Entities licensed as chemical dependency treatment centers (CDTCs), behavioral health professionals authorized to provide services in CDTCs, and Medicaid recipients who receive services in CDTCs will be affected by the administrative regulation. The following behavioral health professionals are authorized to provide services in a CDTC: licensed psychologists, advanced practice registered nurses, licensed professional clinical counselors, licensed clinical social workers, licensed marriage and family therapists, licensed psychological practitioners, certified psychologists with autonomous functioning, licensed psychological associates, certified psychologists, certified social workers, licensed professional counselor associates, marriage and family therapy associates, licensed professional art therapists, licensed professional art therapist associates, certified alcohol and drug counselors, licensed clinical alcohol and drug counselors (contingent and effective upon approval by the Centers for Medicare and Medicaid Services), licensed clinical alcohol and drug counselor associates (contingent and effective upon approval by the Centers for Medicare and Medicaid Services), and peer support specialists. Currently, there are four (4) licensed CDTCs in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities that qualify as chemical dependency treatment center 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 for providing behavioral health services to Medicaid recipients. Behavioral health professionals authorized to provide services in a chemical dependency treatment center 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 CDTCs 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 CDTCs 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

(New Administrative Regulation)

907 KAR 15:085. Reimbursement provisions and requirements regarding outpatient chemical dependency treatment center services.

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 outpatient chemical dependency treatment center services 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:

- (1) Meet the requirements established in 907 KAR 15:080; and
- (2) Be covered in accordance with 907 KAR 15:080.

Section 2. Reimbursement. (1)(a) A unit of service for a service listed on the CDTC Non-Medicare Services Fee Schedule shall be as established on the CDTC Non-Medicare Services Fee Schedule.

(b) A unit of service for a service not listed on the CDTC Non-Medicare Services Fee Schedule shall be:

1. Fifteen (15) minutes in length unless a different amount is established for the service in the corresponding:

- a. Current procedural terminology code; or
- b. Healthcare common procedure coding system code; or
2. The unit amount established in the corresponding:
 - a. Current procedural terminology code; or
 - b. 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. Certified psychologist with autonomous functioning;
5. Licensed marriage and family therapist;
6. Licensed professional art therapist; or
7. Licensed clinical alcohol and drug counselor in accordance with Section 4 of this administrative regulation; 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 board-approved licensed psychologist;
4. Certified psychologist working under the supervision of a board-approved licensed psychologist;
5. Certified social worker working under the supervision of a billing supervisor;
6. Physician assistant working under the supervision of a billing supervisor;
7. Licensed professional art therapist associate working under the supervision of a billing supervisor;
8. Certified alcohol and drug counselor working under the supervision of a billing supervisor; or
9. Licensed clinical alcohol and drug counselor associate:
 - a. In accordance with Section 4 of this administrative regulation; and
 - b. 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. Certified psychologist with autonomous functioning;

5. Licensed marriage and family therapist;

6. Licensed professional art therapist;

7. Licensed behavior analyst; or

8. Licensed clinical alcohol and drug counselor in accordance with Section 4 of this administrative regulation; 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 board-approved licensed psychologist;
4. Certified psychologist working under the supervision of a board-approved licensed psychologist;
5. Certified social worker working under the supervision of a billing supervisor;
6. Physician assistant working under the supervision of a billing supervisor;
7. Licensed professional art therapist associate working under the supervision of a billing supervisor;
8. Licensed assistant behavior analyst working under the supervision of a billing supervisor;
9. Certified alcohol and drug counselor working under the supervision of a billing supervisor; or
10. Licensed clinical alcohol and drug counselor associate:
 - a. In accordance with Section 4 of this administrative regulation; and
 - b. 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:

1. Licensed psychological practitioner; or
2. Certified psychologist with autonomous functioning; 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:

1. Licensed psychological associate working under the supervision of a board-approved licensed psychologist; or
2. Certified psychologist working under the supervision of a board-approved 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. Certified psychologist with autonomous functioning;
5. Licensed marriage and family therapist;
6. Licensed professional art therapist;
7. Licensed behavior analyst; or
8. Licensed clinical alcohol and drug counselor in accordance with Section 4 of this administrative regulation; 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 board-approved licensed psychologist;

4. Certified psychologist working under the supervision of a board-approved licensed psychologist;

5. Certified social worker working under the supervision of a billing supervisor;

6. Physician assistant working under the supervision of a billing supervisor;

7. Licensed professional art therapist associate working under the supervision of a billing supervisor;

8. Licensed assistant behavior analyst working under the supervision of a billing supervisor;

9. Certified alcohol and drug counselor working under the supervision of a billing supervisor; or

10. Licensed clinical alcohol and drug counselor associate:

a. In accordance with Section 4 of this administrative regulation; and

b. 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. Certified psychologist with autonomous functioning;

5. Licensed marriage and family therapist;

6. Licensed professional art therapist; or

7. Licensed clinical and alcohol drug counselor in accordance with Section 4 of this administrative regulation; 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 board-approved licensed psychologist;

4. Certified psychologist working under the supervision of a board-approved licensed psychologist;

5. Certified social worker working under the supervision of a billing supervisor;

6. Physician assistant working under the supervision of a billing supervisor;

7. Licensed professional art therapist associate working under the supervision of a billing supervisor;

8. Certified alcohol and drug counselor working under the supervision of a billing supervisor; or

9. Licensed clinical and alcohol drug counselor associate in accordance with Section 4 of this administrative regulation.

(7) Reimbursement for the following services shall be as established on the CDTC 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; or

(f) Screening, brief intervention, and referral to treatment.

(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. 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 15:080; and

(2) This administrative regulation.

Section 4. Federal Approval and Federal Financial Participation. (1) The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

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

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

(2) The reimbursement of services provided by a licensed clinical alcohol and drug counselor or licensed clinical alcohol and drug counselor associate shall be contingent and effective upon approval by the Centers for Medicare and Medicaid Services.

Section 5. Incorporation by Reference. (1) "CDTC Non-Medicare Services Fee Schedule", January 2015, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a) At 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>.

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 10, 2015

FILED WITH LRC: April 13, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 22, 2015 at 9:00 a.m. in the Health Services Auditorium, Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2015 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business June 1, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen (502) 564-4321

(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 outpatient chemical dependency treatment centers (CDTC) services. This administrative regulation is being promulgated in conjunction with 907 KAR 15:080 (Coverage provisions and requirements regarding

outpatient chemical dependency treatment center services) and the Cabinet for Health and Family Services, Office of Inspector General's CDTC licensure administrative regulation (902 KAR 20:160). To qualify as a provider, a chemical dependency treatment center must be licensed in accordance with 902 KAR 20:160. CDTCs are authorized to provide, to Medicaid recipients, behavioral health services related to a substance use disorder. The array of services includes a screening; an assessment; 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; and a screening, brief intervention, and referral to treatment (SBIRT) for a substance use disorder. 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 chemical dependency treatment centers) 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: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Entities licensed as chemical dependency treatment centers (CDTCs), behavioral health professionals authorized to provide services in CDTCs, and Medicaid recipients who receive services in CDTCs will be affected by the administrative regulation. The following behavioral health professionals are authorized to provide services in a CDTC: 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 professional art therapists, licensed professional art therapist associates, certified alcohol and drug counselors, and peer support specialists. Currently, there are four (4) licensed CDTCs enrolled in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Entities that qualify as chemical dependency treatment centers 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 for providing behavioral health services to Medicaid recipients. Entities licensed as CDTCs will benefit by being able to be reimbursed by the Medicaid Program for services. Behavioral health professionals authorized to provide services in a chemical dependency treatment center 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 CDTCs 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 \$27 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 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 CDTCs 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 \$27.00 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:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of April 14, 2015

Call to Order and Roll Call

The April 2015 meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, April 14, 2015, at 1 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 March 2015 meeting were approved.

Present were:

Members: Senators Perry Clark, and Ernie Harris and Representatives Denver Butler, Will Coursey, Mary Lou Marzian and Tommy Turner.

LRC Staff: Donna Little, Sarah Amburgey, Carrie Klaber, Karen Howard, Emily Harkenrider, Emily Caudill, Ange Bertholf, and Betsy Cupp.

Guests: Sherman Nave, Steve Washing, Department of Revenue; Karen Waldrop, David Wicker, Department of Fish and Wildlife; Clint Quarles, Robert Stout, Department of Agriculture; Chase Bannister, Kay Kennedy, Amy Peabody, Leslie Slaughter, Department of Education; Diona Mullins, Office of Health Policy; Laura Begin, Carlene Egbert, Department for Public Health; Stuart Owen, Department for Medicaid Services; Elizabeth Caywood, Department for Community Based Services; Judy Roberts, Michael Roberts, United Bow Hunters of Kentucky; Gary Williams.

The Administrative Regulation Review Subcommittee met on Tuesday, April 14, 2015, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Office of Income Taxation: Forms

103 KAR 3:040 & E. Income Tax Forms Manual. Sherman Nave, director of corporation taxation, and Steve Washing, director, Division of Income Tax, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game

301 KAR 2:132. Elk quota hunts, elk depredation permits, landowner cooperator permits, and voucher cooperator permits. Dr. Karen Waldrop, deputy commissioner, and David Wicker, general counsel, represented the department. Judy Roberts, member, United Bowhunters of Kentucky; Michael Roberts, legislative chairman, United Bowhunters of Kentucky; and Gary Williams, Hopkinsville sportsman, appeared in opposition to these administrative regulations.

In response to questions by Co-Chair Harris, Dr. Waldrop stated that various stakeholders made extensive efforts since 1997 to reestablish elk in the Commonwealth. There were now between 9,000 and 11,000 elk in Kentucky. The elk restoration project resulted in many successful elk hunts and new businesses, such as elk tours, elk-related artwork, and elk-related tourism. The changes to these administrative regulations pertained to increasing hunting opportunities.

In response to questions by Representative Turner, Dr. Waldrop stated that the department and stakeholders, in conjunction with former Senators Pendleton and Tapp and Representative Turner, met in 2005 or 2006 to address concerns regarding crossbow hunting and archery hunting. While the three (3) legislators facilitated the meeting, the department and stakeholders were the actual parties to the compromise. The United Bowhunters of Kentucky, along with other sportsmen, opposed a fully concurrent crossbow-archery season on the grounds that the crossbow did not constitute archery equipment because the crossbow was a much more efficient weapon. The

outcome of the meeting was an agreement for a partial, but not completely concurrent, crossbow-archery season in which there would be a portion of the season that was open to archery without the inclusion of crossbow hunting. These administrative regulations allowed crossbow hunting concurrent with the archery season for senior hunters sixty-five (65) years or older.

Ms. Roberts stated that the Fish and Wildlife Commission made its determination regarding crossbow requirements based in part on incidences of wounded game. The Fish and Wildlife Commission failed to prove that incidences of wounded game would decrease with increased crossbow hunting. The department did not provide adequate public involvement in the development of these administrative regulations.

Mr. Williams stated that he agreed with Representative Turner regarding his recollection that the 2005 or 2006 meeting was facilitated by the three (3) legislators but that the legislators were not a party to the actual compromise. Bowhunters were opposed to these administrative regulations because there was less opportunity for archery-only hunting. Communication with the department was inadequate, especially as concerns the public comments. Mr. Williams stated that he would like the Higginson – Henry Wildlife Management Area to continue the prohibition of crossbow hunting.

Mr. Roberts stated that he had attended most Fish and Wildlife Commission meetings since 1976. The United Bowhunters of Kentucky educated youth throughout the Commonwealth on archery-related topics. The crossbow was not considered to be archery equipment, just as a modern firearm was inappropriate for use during muzzleloader season. At the meeting in 2005 or 2006, the department agreed that there would not be further incursion of crossbow hunting during the archery season. Most sportsmen were unaware of these changes. Crossbow hunters did not ask the department to make these proposed changes. The public hearing was canceled without notice, and the three (3) Statements of Consideration did not include the full text of each comment.

Representative Turner stated that biologists had recommended that the department keep the elk hunting limit at 1,000; however, the department decided to establish the cap at 900. Elk guides had too much input on the elk limits. Representative Turner stated that he was extremely displeased with the lack of communication between the department and the sportsmen groups.

Dr. Waldrop apologized for inadequate communication and stated that the department would improve communication with stakeholders. The department included all public comments received by the published deadline in the three (3) Statements of Consideration. The hearing was canceled, as provided in KRS Chapter 13A, because the department did not receive any notices that anyone intended to attend the public hearing. The public hearing was typically not a give-and-take type of hearing, and written public comments were of no less value than comments from the public hearing. Biologists had recommended an elk cap of 1,000; however, the department determined that there were low numbers of elk in certain limited-entry areas. The Fish and Wildlife Commission determined that elk hunting, for cows only, should be reduced in these limited-entry areas to avoid overharvesting.

In response to a question by Co-Chair Marzian, Dr. Waldrop stated that most hunters were ethical and would search for wounded game. There was not a specific time frame for such a search. Co-Chair Marzian stated that she appreciated the crossbow exemption for a senior hunter sixty-five (65) years or older because such a hunter would not have the expense of getting a note from a doctor to support the exemption.

Co-Chair Harris stated that communication was clearly an issue and should be improved by all parties.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a citation; and (2) to amend Sections 1, 3, 5, 8, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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301 KAR 2:172. Deer hunting seasons, zones, and requirements.

301 KAR 2:178. Deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 3, 6, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

DEPARTMENT OF AGRICULTURE: Office of State Veterinarian: Division of Animal Health: Livestock Sanitation

302 KAR 20:110. Treatment of imported mares. Clint Quarles, attorney, represented the division.

In response to a question by Co-Chair Harris, Mr. Quarles stated that Kentucky experienced some confirmed infections of contagious equine metritis that led to developing these better standards, which were based on nationwide standard revisions.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a citation; and (2) to amend Sections 1, 2, 5, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 20:120. Treatment of imported stallions.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph and Section 2 to correct citations; and (2) to amend Sections 1, 2, 3, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: School Administration and Finance

702 KAR 3:320. Finance officer certification requirements. Kay Kennedy, director, and Amy Peabody, attorney, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 5, and 7 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 6 to specify the requirements for approval of continuing education courses. Without objection, and with agreement of the agency, the amendments were approved.

Instructional Programs

705 KAR 4:250. Energy technology engineering career pathway. Chase Bannister, staff attorney, and Leslie Slaughter, policy advisor, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to add Section 5, Incorporation by Reference, to incorporate the Energy Technology Engineering Career Pathway Grant Application; (3) to amend Sections 2 through 4 to specify application requirements; and (4) to amend Sections 1 through 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.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Data Reporting and Public Use Data Sets

900 KAR 7:030 & E. Data reporting by health care providers. Diona Mullins, policy advisor, represented the cabinet.

Department for Public Health: Division of Maternal and Child Health: Maternal and Child Health

902 KAR 4:041. Repeal of 902 KAR 4:040. Laura Begin, regulation coordinator, and Carlene Egbert, supervisor,

represented the cabinet.

Department for Medicaid Services: Division of Provider Operations: Payment and Services

907 KAR 3:017 & E. Enhanced reimbursement for preventive and wellness services. Stuart Owen, regulation coordinator, represented the cabinet.

A motion was made and seconded to approve the following amendments: (1) to amend Section 8 to change the edition date of the material incorporated by reference; (2) to amend the Medicaid Preventive and Wellness Enhanced Fee Schedule to: (a) reorganize the schedule alphabetically by category of wellness or preventive procedure; (b) insert two (2) more columns with enhanced rates for certain procedures; (c) insert a requirement that current procedural terminology (CPT) coding guidelines shall be followed; (d) clarify the "after hours" enhanced rate to conform with federal and CPT guidelines; and (e) add a few additional codes with corresponding enhanced reimbursement; and (3) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Family Support: K-TAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2:015 & E. Supplemental programs for persons who are aged, blind, or have a disability. Elizabeth Caywood, internal policy analyst, represented the cabinet.

Other Business: A motion was made by Representative Butler, seconded by Representative Turner to elect Representative Mary Lou Marzian for the position of House Co-Chair for the subcommittee. Without objection, and with unanimous agreement of House members present, Representative Marzian was elected for the position of House Co-Chair.

A motion was made by Senator Clark, seconded by Senator Harris, to elect Senator Ernie Harris for the position of Senate Co-Chair for the subcommittee. Without objection, and with unanimous agreement of Senate members present, Senator Harris was elected for the position of Senate Co-Chair.

The following administrative regulations were deferred to the May 12, 2015, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Chiropractic Examiners: Board

201 KAR 21:090 & E. Prechiropractic education requirements.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Motor Carriers: Motor Carriers

601 KAR 1:112 & E. Transportation network company.

Office of the Secretary: Kentucky Bicycle and Bikeways Commission: Motorcycle and Bicycle Safety

601 KAR 14:020. Bicycle safety standards.

LABOR CABINET: Labor Standards; Wages and Hours

803 KAR 1:035. Hearing procedure.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Community Based Services: Division of Family Support: Supplemental Nutrition Assistance Program

921 KAR 3:060. Administrative disqualification hearings and penalties.

The Subcommittee adjourned at 2:00 p.m. until May 12, 2015, at 1 p.m.

(Note from Regulations Compiler: The meeting date for May was changed to May 5 after the minutes for April were submitted.)

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.

NONE

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

K- 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

K - 15

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

K - 28

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

K - 29

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.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	40 Ky.R. Page No.	Effective Date	Regulation Number	40 Ky.R. Page No.	Effective Date
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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 before being printed in Register
- **** Emergency expired after 180 days
- ‡ Withdrawn deferred more than twelve months (KRS 13A.300(4) and 13A.315(1)(d))
- (r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

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
Expired		6-24-14
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		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	40 Ky.R. Page No.	Effective Date	Regulation Number	40 Ky.R. Page No.	Effective Date
Amended	2811	See 41 Ky.R.	603 KAR 10:010		
201 KAR 11:121			Amended	1889	
Amended	2812	See 41 Ky.R.	Withdrawn		4-14-14
201 KAR 14:085			Amended	2456	
Amended	1863	See 41 Ky.R.	Withdrawn		4-13-15
201 KAR 14:090			603 KAR 10:020	2022	
Amended	2195		Amended	2474	
As Amended	2686	7-7-14	Withdrawn		4-13-15
201 KAR 14:115			603 KAR 10:030	2027	
Amended	1866		Amended	2478	
As Amended	2688	7-7-14	Withdrawn		4-13-15
201 KAR 18:192			702 KAR 7:065		
Amended	2593	See 41 Ky.R.	Amended	2618	See 41 Ky.R.
201 KAR 20:056			704 KAR 3:345		
Amended	2596	See 41 Ky.R.	Repealed	2925	8-11-14
201 KAR 20:057			704 KAR 3:346(r)	2925	8-11-14
Amended	2599	See 41 Ky.R.	704 KAR 3:370	2651	See 41 Ky.R.
201 KAR 20:161			739 KAR 2:090	2231	
Amended	2602	See 41 Ky.R.	Amended	2798	See 41 Ky.R.
201 KAR 20:360			803 KAR 2:300		
Amended	2346	See 41 Ky.R.	Amended	2823	9-5-14
201 KAR 20:370			803 KAR 2:306		
Amended	2605	See 41 Ky.R.	Amended	2825	9-5-14
201 KAR 20:411			803 KAR 2:308		
Amended	2607	See 41 Ky.R.	Amended	2828	9-5-14
201 KAR 20:450			803 KAR 2:309		
Amended	2609	See 41 Ky.R.	Amended	2830	9-5-14
201 KAR 22:040			803 KAR 2:314		
Amended	2612	See 41 Ky.R.	Amended	2832	9-5-14
201 KAR 22:160			803 KAR 2:317		
Amended	2227	See 41 Ky.R.	Amended	2834	9-5-14
201 KAR 23:015			803 KAR 2:318		
Amended	2614	See 41 Ky.R.	Amended	2837	9-5-14
201 KAR 34:060	2387	See 41 Ky.R.	803 KAR 2:400		
201 KAR 42:035			Amended	2839	See 41 Ky.R.
Amended	2202	See 41 Ky.R.	803 KAR 2:404		
201 KAR 42:040			Amended	2841	9-5-14
Amended	2204	See 41 Ky.R.	803 KAR 2:406		
201 KAR 42:060			Amended	2843	See 41 Ky.R.
Amended	2206	See 41 Ky.R.	803 KAR 2:412		
201 KAR 42:080			Amended	2845	See 41 Ky.R.
Amended	2207	See 41 Ky.R.	803 KAR 2:421		
201 KAR 42:110			Amended	2849	9-5-14
Amended	2210	See 41 Ky.R.	803 KAR 2:423		
201 KAR 43:100	2649	See 41 Ky.R.	Amended	2851	9-5-14
301 KAR 1:201			803 KAR 2:500		
Amended	2814	See 41 Ky.R.	Amended	2852	9-5-14
301 KAR 2:132			803 KAR 2:505		
Amended	2349		Amended	2854	See 41 Ky.R.
As Amended	2689	7-7-14	803 KAR 2:550		
301 KAR 2:300			Repealed	2926	9-5-14
Amended	2615	See 41 Ky.R.	803 KAR 2:551(r)	2926	9-5-14
500 KAR 8:030			803 KAR 50:010		
Amended	2219		Amended	1440	
As Amended	2692	7-7-14	As Amended	2695	7-7-14
501 KAR 6:020			804 KAR 1:050		
Amended	2353	See 41 Ky.R.	Repealed	2391	7-7-14
501 KAR 6:110			804 KAR 1:051(r)	2391	7-7-14
Amended	2819	See 41 Ky.R.	804 KAR 1:100		
505 KAR 1:110			Amended	2857	9-5-14
Amended	2821	See 41 Ky.R.	804 KAR 9:050		
600 KAR 6:040			Amended	2358	
Amended	2355	7-1-14	As Amended	2702	7-7-14
601 KAR 1:230	2389		804 KAR 11:040	2927	10-3-14
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601 KAR 14:020			Amended	2622	See 41 Ky.R.
Amended	2223		806 KAR 38:100		
603 KAR 10:001	2019		Amended	2623	See 41 Ky.R.
Amended	2453		806 KAR 47:010		
Withdrawn		4-13-15	Amended	2629	See 41 Ky.R.

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815 KAR 7:125			907 KAR 1:835		
Amended	2633	8-1-14	Amended	2899	See 41 Ky.R.
900 KAR 6:055			907 KAR 3:005		
Amended	2858	See 41 Ky.R.	Amended	2002	
900 KAR 6:070			Amended	2540	
Amended	2860	See 41 Ky.R.	As Amended	2759	7-7-14
900 KAR 6:075			907 KAR 8:005	2038	
Amended	2862	See 41 Ky.R.	As Amended	2765	7-7-14
900 KAR 7:030			907 KAR 8:010	2040	
Amended	2865	See 41 Ky.R.	As Amended	2765	7-7-14
902 KAR 30:001			907 KAR 8:015	2043	
Amended	2869	See 41 Ky.R.	Amended	2547	
902 KAR 30:110			As Amended	2766	7-7-14
Amended	2872	See 41 Ky.R.	907 KAR 8:020	2045	
902 KAR 30:120			As Amended	2767	7-7-14
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902 KAR 30:130			Amended	2550	
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902 KAR 30:150			907 KAR 8:030	2051	
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902 KAR 30:160			907 KAR 8:035	2054	
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902 KAR 30:180			As Amended	2770	7-7-14
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902 KAR 30:200			Amended	2009	
Amended	2893	10-15-14	Amended	2554	
902 KAR 55:045			As Amended	2771	7-7-14
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902 KAR 55:090			Amended	1491	
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907 KAR 1:019			Withdrawn		3-16-14
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907 KAR 1:030			907 KAR 13:010	2058	
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907 KAR 1:038			907 KAR 13:015	2062	
Amended	1945		As Amended	2777	7-7-14
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907 KAR 1:039			As Amended	2778	7-7-14
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907 KAR 1:044			As Amended	2779	7-7-14
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Amended	2487		Amended	2577	
As Amended	2718	7-7-14	As Amended	2788	7-7-14
907 KAR 1:045			907 KAR 18:001	2658	See 41 Ky.R.
Amended	1959		907 KAR 18:005	2660	See 41 Ky.R.
Amended	2492		908 KAR 2:240	2234	
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907 KAR 1:054			908 KAR 2:250	2236	
Amended	1962		As Amended	2795	6-18-14
Amended	2495		910 KAR 2:040		
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907 KAR 1:082			AmComments	2801	See 41 Ky.R.
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Amended	2510		Amended	2642	8-1-14
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907 KAR 1:604			Amended	2369	See 41 Ky.R.
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907 KAR 1:631			Amended	2912	9-5-14
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Amended	2532		Amended	2914	9-5-14
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907 KAR 1:632	2034		Amended	2917	9-5-14

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921 KAR 3:060 Amended	2921	9-5-14			
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			

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VOLUME 41					
SYMBOL KEY:			907 KAR 15:045E	1002	9-16-14
* Statement of Consideration not filed by deadline			907 KAR 15:050E	1004	9-16-14
** Withdrawn before being printed in Register			907 KAR 15:055E	1010	9-16-14
**** Emergency expired after 180 days			907 KAR 15:060E	1012	9-16-14
(r) Repealer regulation: KRS 13A.310-on the effective date of an			907 KAR 15:065E	1018	9-16-14
administrative regulation that repeals another, the regulations			907 KAR 15:070E	727	8-20-14
compiler shall delete the repealed administrative regulation and			Replaced	1803	3-6-15
the repealing administrative regulation.			907 KAR 15:075E	732	8-20-14
			Replaced	1807	3-6-15
EMERGENCY ADMINISTRATIVE REGULATIONS:			907 KAR 18:001E		See 40 Ky.R.
(Note: Emergency regulations expire 180 days from the date filed;			Replaced	44	8-1-14
or 180 days from the date filed plus number of days of requested			907 KAR 18:005E		See 40 Ky.R.
extension, or upon replacement or repeal, whichever occurs first.)			Replaced	44	8-1-14
13 KAR 2:045E	2062	3-2-15	908 KAR 2:220E	1766	1-7-15
30 KAR 6:010E		See 40 Ky.R.	908 KAR 2:230E	1770	1-7-15
Replaced	10	8-1-14	908 KAR 2:260E	1773	1-7-15
31 KAR 4:130E	367	7-22-14	921 KAR 2:015E	1776	12-30-14
Replaced	1031	12-5-14	922 KAR 1:360E	417	8-1-14
31 KAR 4:140E	372	7-22-14	Replaced	1660	2-5-15
Replaced	1033	12-5-14	922 KAR 2:160E	423	8-1-14
31 KAR 5:010E	375	7-22-14	Replaced	1021	10-15-14
Replaced	1035	12-5-14	922 KAR 5:070E	432	7-23-14
101 KAR 2:210E	717	9-15-14	Replaced	1665	2-5-15
Replaced	845	1-5-15	922 KAR 5:120E	436	7-23-14
103 KAR 3:030E	1958	1-16-15	Replaced	1668	2-5-15
103 KAR 3:040E	1742	12-31-14	ORDINARY ADMINISTRATIVE REGULATIONS:		
103 KAR 15:180E	4	6-5-14	11 KAR 3:100		
Replaced	439	10-3-14	Amended	817	
200 KAR 15:010E	1752	12-19-14	As Amended	1485	2-6-15
201 KAR 21:090E	1969	2-10-15	11 KAR 4:080		
301 KAR 2:221E	1300	10-27-14	Amended	1124	
Replaced	1444	3-6-15	As Amended	1493	2-6-15
301 KAR 2:222E	1302	10-27-14	Amended	2099	
Replaced	1446	3-6-15	11 KAR 5:001		
301 KAR 2:225E	719	8-22-14	Amended	828	
Replaced	859	1-5-15	As Amended	1494	2-6-15
405 KAR 8:030E	379	8-6-14	11 KAR 5:033		
Replaced	1314	1-5-15	Amended	831	
405 KAR 8:040E	389	8-6-14	As Amended	1496	2-6-15
Replaced	1324	1-5-15	11 KAR 5:034		
405 KAR 10:025E	235	6-30-14	Amended	832	
Replaced	1053	12-5-14	As Amended	1496	2-6-15
601 KAR 1:112E	1481	12-5-14	11 KAR 5:145		
804 KAR 4:230E	237	7-15-14	Amended	2100	
Replaced	761	10-31-14	11 KAR 5:170		
804 KAR 4:400E	239	7-15-14	Amended	834	
Replaced	762	10-31-14	As Amended	1497	2-6-15
804 KAR 4:410E	240	7-15-14	11 KAR 8:030		
Replaced	762	10-31-14	Amended	835	
900 KAR 7:030E	1755	12-31-14	As Amended	1497	2-6-15
902 KAR 20:430E	242	7-15-14	11 KAR 15:010		
Replaced	1346	12-17-14	Amended	2102	
902 KAR 20:440E	250	7-15-14	11 KAR 15:060		
Replaced	1355	12-17-14	Amended	839	
907 KAR 1:045E	1759	12-31-14	As Amended	1500	2-6-15
907 KAR 1:516E(r)	995	9-16-14	11 KAR 15:090		
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907 KAR 3:005E	721	8-20-14	As Amended	1501	2-6-15
Replaced	1798	3-6-15	Amended	2104	
907 KAR 3:017E	1764	12-31-14	11 KAR 16:001		
907 KAR 15:005E	401	7-22-14	Amended	841	
Replaced	1647	2-6-15	Withdrawn		12-1-14
907 KAR 15:020E	404	7-22-14	11 KAR 16:010		
Replaced	1648	2-6-15	Amended	843	
907 KAR 15:025E	413	7-22-14	Withdrawn		12-1-14
Replaced	1656	2-6-15	11 KAR 19:010		
907 KAR 15:040E	996	9-16-14			

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11 KAR 20:001	1240		103 KAR 3:040		
As Amended	1506	2-6-15	Amended	1841	
11 KAR 20:010	1241		As Amended	2199	
As Amended	1506	2-6-15	103 KAR 15:180		
11 KAR 20:020	1242		Amended	85	
As Amended	1507	2-6-15	As Amended	439	
11 KAR 20:030	1244		103 KAR 43:330		See 40 Ky.R.
As Amended	1507	2-6-15	As Amended	12	8-1-14
11 KAR 20:040	1245		105 KAR 1:291	1253	2-6-15
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11 KAR 20:050	1246		As Amended	1511	2-6-15
As Amended	1508	2-6-15	200 KAR 1:015	670	
11 KAR 20:060	1248		As Amended	1308	1-5-15
As Amended	1509	2-6-15	200 KAR 15:010		
11 KAR 20:070	1249		Amended	1852	
As Amended	1509	2-6-15	As Amended	2068	
13 KAR 2:045			200 KAR 40:010		
Amended	2108		Amended	1701	
16 KAR 2:010		See 40 Ky.R.	As Amended	1973	
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16 KAR 2:120			Amended	1703	
Amended	533	1-5-15	As Amended	1974	
16 KAR 4:060		See 40 Ky.R.	201 KAR 1:190		
As Amended	256	9-5-14	Amended	548	
16 KAR 5:060	1251		As Amended	1036	12-5-14
As Amended	1510	2-6-15	201 KAR 2:030		
16 KAR 6:010			Amended	298	
Amended	1698		As Amended	738	10-15-14
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16 KAR 9:080			Amended	300	
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31 KAR 3:040	2447		201 KAR 8:550		See 40 Ky.R.
31 KAR 4:120			Am Comments	56	9-5-14
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31 KAR 4:130			As Amended	257	9-5-14
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As Amended	1031	12-5-14	AmComments	1670	
31 KAR 4:140			As Amended	1975	
Amended	541		201 KAR 9:305		See 40 Ky.R.
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31 KAR 5:010			201 KAR 9:307		See 40 Ky.R.
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101 KAR 1:325			A mended	1132	
Amended	1839		As Amended	1783	2-26-15
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101 KAR 2:102			Amended	1135	2-26-15
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101 KAR 2:105			Amended	1136	
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101 KAR 2:210			201 KAR 11:121		See 40 Ky.R.
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101 KAR 3:015			201 KAR 12:083		
Amended	2125		Amended	2292	
103 KAR 3:010			201 KAR 12:110		
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201 KAR 20:056		See 40 Ky.R.	Amended	1861	
As Amended	17	8-1-14	201 KAR 30:125		
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201 KAR 20:240			Amended	1866	
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As Amended	2075		Recodified as 791 KAR 1:025		6-12-14
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Amended	1424		Recodified as 791 KAR 1:027		6-12-14
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201 KAR 28:070			Recodified as 791 KAR 1:030		6-12-14
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As Amended	2076		Recodified as 791 KAR 1:035		6-12-14
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Amended	2132		Amended	1142	
201 KAR 44:090			As Amended	1521	2-6-15
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Withdrawn			Amended	1873	
201 KAR 44:110			AmComments	2092	
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SYMBOL KEY:

* Statement of Consideration not filed by deadline

** Withdrawn, not in effect within 1 year of publication

*** Withdrawn before being printed in Register

(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the *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 to show the technical corrections in the *Administrative Register of Kentucky*. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at <http://www.lrc.ky.gov/home.htm>.

‡ - Pursuant to KRS 13A.320(e), this indicates a technical change was made to this administrative regulation during the promulgation process.

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