ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 41, NUMBER 12
MONDAY, JUNE 1, 2015

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ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 41, NUMBER 12
MONDAY, JUNE 1, 2015

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

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet June 9, 2015, at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages 2523 - 2525 of this Administrative Register.

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

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
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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)

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

Hospital Service Coverage and Reimbursement

907 KAR 10:830. Acute care inpatient hospital reimbursement. (Comments Received)

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

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
31 KAR 4:180E

Nature of the emergency: This emergency administrative regulation is being promulgated pursuant to KRS 117.015(1)(a) in order to carry out the State Board of Elections' duty to administer the election laws of the state by implementing KRS 117.235(5) and specifying conduct that must be prohibited in order to maintain law and order at the polls and within 300 feet of any entrance to the building in which a voting machine is located if that entrance is unlocked and is used by voters pursuant to KRS 117.235(5). An electioneering-free zone around polling places is necessary to prevent voter intimidation and election fraud. KRS 117.235(3), which prohibited electioneering within 300 feet of any entrance to a building in which a voting machine is located if that entrance is unlocked and is used by voters on election day and prohibited electioneering within the interior of a building or affixing electioneering materials to the exterior or interior of a building where absentee voting is being conducted during the hours absentee voting is being conducted, was declared unconstitutional by the United States Court of Appeals for the Sixth Circuit on April 28, 2015. There is a Primary Election scheduled to be held in Kentucky on May 19, 2015, and absentee voting is already underway for that election. There may also be local option elections scheduled before an ordinary administrative regulation is enacted. This emergency regulation needs to become effective immediately to prevent voter intimidation and election fraud in any elections held before an ordinary administrative regulation is enacted. The reasons why an ordinary administrative regulation is not sufficient: An ordinary administrative regulation is not sufficient because it will not put in place an electioneering-free zone around polling places, necessary to maintain law and order at the polls and within 300 feet of any entrance to the building in which a voting machine is located if that entrance is unlocked and is used by voters pursuant to KRS 117.235(5) and to prevent voter intimidation and election fraud, pending enactment of an ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
ALISON LUNDERGAN GRIMES, Chair

KENTUCKY STATE BOARD OF ELECTIONS
(New Emergency Administrative Regulation)

31 KAR 4:180E. Activities prohibited within 100 feet of the entrance to a building in which a voting machine is located.

RELATES TO: KRS 117.015, 117.235
STATUTORY AUTHORITY: KRS 117.015(1)(a)
EFFECTIVE: May 5, 2015
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 117.235(5) authorizes any precinct election officer, county clerk, deputy county clerk, or law enforcement official to maintain law and order at the polls and within 300 feet of any entrance to the building in which the voting machine is located if that entrance is unlocked and is used by voters. This administrative regulation establishes activities that are prohibited during the hours voting is being conducted on the day of any election on public property and private property in which a polling place is located within 100 feet of any entrance to a building in which a voting machine is located if that entrance is unlocked and is used by voters, and in or on the building where the county clerk's office is located, or any building designated by the county board of elections and approved by the State Board of Elections for absentee voting, during the hours absentee voting is being conducted in the building by the county clerk pursuant to KRS 117.085(1)(c) so that law and order in that area may be maintained pursuant to KRS 117.235(5).

Section 1. Definition. "Bumper sticker" means a sticker that measures within fourteen (14) inches by five (5) inches for display on a vehicle bearing a printed message soliciting votes for or against any bona fide candidate or ballot question in a manner that expressly advocates the election or defeat of the candidate or expressly advocates the passage or defeat of the ballot question.

Section 2. Activities prohibited within 100 feet of the entrance to a building in which a voting machine is located. (1) Except as otherwise provided in this administrative regulation, on the day of any election, no person shall display signs, distribute campaign literature, cards, or handbills, solicit signatures to any petition, or solicit votes for or against any bona fide candidate or ballot question in a manner that expressly advocates the election or defeat of the candidate or expressly advocates the passage or defeat of the ballot question within 100 feet of any entrance to the building in which a voting machine is located if that entrance is unlocked and is used by voters during the hours voting is being conducted in the building.

(2) Except as otherwise provided in this administrative regulation, no person shall display signs, distribute campaign literature, cards, or handbills, solicit signatures to any petition, or solicit votes for or against any bona fide candidate or ballot question in a manner that expressly advocates the election or defeat of the candidate or expressly advocates the passage or defeat of the ballot question within the interior of a building or affix any signs, campaign literature, cards, handbills, solicitations of signatures to petitions, solicitations of votes for or against any bona fide candidate or ballot question in a manner that expressly advocates the election or defeat of the candidate or expressly advocates the passage or defeat of the ballot question to the exterior or interior of a building where the county clerk's office is located, or any building designated by the county board of elections and approved by the State Board of Elections for absentee voting, during the hours absentee voting is being conducted in the building by the county clerk pursuant to KRS 117.085(1)(c).

(3) The prohibitions established in subsections (1) and (2) of this section shall not apply to:

(a) Private property, unless the property is being used as a voting place established in accordance with the provisions of KRS 117.065;

(b) Exit polling; or

(c) Bumper stickers affixed to a person's vehicle while parked within or passing through a distance of 100 feet of any entrance to the building in which a voting machine is located if that entrance is unlocked and is used by voters during the hours voting is being conducted in the building for a reasonable amount of time in which to vote.

ALISON LUNDERGAN GRIMES, Chair
APPROVED BY AGENCY: May 5, 2015
FILED WITH LRC: May 5, 2015 at 3 p.m.
CONTACT PERSON: Lindsay Hughes Thurston, Assistant Secretary of State, 700 Capital Ave., Ste. 152, Frankfort, Kentucky 40601, phone (502) 564-3490, fax (502) 564-5687.

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 117.235(5) authorizes any precinct election officer, county clerk, deputy county clerk, or law enforcement official to maintain law and order at the polls and

within 300 feet of any entrance to a building in which a voting machine is located if that entrance is unlocked and is used by voters. This administrative regulation implements KRS 117.235(5) by establishing activities that are prohibited during the hours voting is being conducted on the day of any election on public property and private property in which a polling place is located within 100 feet of any entrance to a building in which a voting machine is located if that entrance is unlocked and is used by voters and in or on the building where the county clerk's office is located, or any building designated by the county board of elections and approved by the State Board of Elections for absentee voting, during the hours absentee voting is being conducted in the building by the county clerk pursuant to KRS 117.085(1)(c) so that law and order in that area may be maintained pursuant to KRS 117.235(5).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement KRS 117.235(5) and to maintain law and order within 300 feet of any entrance to a building in which a voting machine is located if that entrance is unlocked and is used by voters pursuant to KRS 117.235(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 117.235(5) authorizes any precinct election officer, county clerk, deputy county clerk, or law enforcement official to maintain law and order at the polls and within 300 feet of any entrance to a building in which a voting machine is located if that entrance is unlocked and is used by voters. This administrative regulation conforms to the authorizing statutes by implementing KRS 117.235(5) and establishing activities that are prohibited during the hours voting is being conducted on the day of any election on public property and private property in which a polling place is located within 100 feet of any entrance to a building in which a voting machine is located if that entrance is unlocked and is used by voters and in or on the building where the county clerk's office is located, or any building designated by the county board of elections and approved by the State Board of Elections for absentee voting, during the hours absentee voting is being conducted in the building by the county clerk pursuant to KRS 117.085(1)(c) so that law and order in that area may be maintained pursuant to KRS 117.235(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 117.235(5) authorizes any precinct election officer, county clerk, deputy county clerk, or law enforcement official to maintain law and order at the polls and within 300 feet of any entrance to a building in which a voting machine is located if that entrance is unlocked and is used by voters. This administrative regulation assists in the effective administration of the statutes by implementing KRS 117.235(5) and establishing activities that are prohibited during the hours voting is being conducted on the day of any election on public property and private property in which a polling place is located within 100 feet of any entrance to a building in which a voting machine is located if that entrance is unlocked and is used by voters and in or on the building where the county clerk's office is located, or any building designated by the county board of elections and approved by the State Board of Elections for absentee voting, during the hours absentee voting is being conducted in the building by the county clerk pursuant to KRS 117.085(1)(c) so that law and order in that area may be maintained pursuant to KRS 117.235(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 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 precinct election officers, county clerks, deputy county clerks, law enforcement officials, voters, and individuals who desire to conduct activities prohibited by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Precinct election officers, county clerks, deputy county clerks, and law enforcement officials will need to familiarize themselves with the activities that are prohibited by this administrative regulation. Voters and individuals who desire to conduct activities prohibited by this administrative regulation are not required to take any action to comply with this administrative regulation but must refrain from the activities proscribed by it.

(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 administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this amendment, precinct election officers, county clerks, deputy county clerks, and law enforcement officials will be able to further their interests in maintaining law and order around buildings where voting is being conducted. In addition, each of the entities and persons identified in question (3) will benefit from this administrative regulation by being assured that Kentucky elections are free from voter intimidation and election fraud.

(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 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 county clerks, deputy county clerks, and law enforcement officials.

(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? 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(+/-):

STATEMENT OF EMERGENCY
201 KAR 2:360E

This emergency administrative regulation is being promulgated to comply with KRS 217.186 which requires the board to establish by administrative regulation the requirements for a pharmacist to dispense naloxone pursuant to a physician-approval protocol. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a) to meet a deadline for the promulgation of an administrative regulation that is established by state law. Failure to enact this administrative regulation on an emergency basis in accordance with KRS 13A.190(1)(a) compromises the board's ability to comply with the provisions of KRS 217.186 on the date that the Act becomes effective as law, thereby interfering with the board's ability to act quickly in its efforts to address the prescription drug epidemic. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEPHEN L. BESHEAR, Governor
JOEL THORNBURY, President

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(New Emergency Administrative Regulation)

201 KAR 2:360E. Naloxone Dispensing.

RELATES TO: KRS 217.186

STATUTORY AUTHORITY: KRS 217.186, 315.191

EFFECTIVE: May 14, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.186 authorizes the Board of Pharmacy to promulgate administrative regulations governing dispensing of naloxone by a pharmacist pursuant to a physician-approved protocol. This administrative regulation establishes the minimum requirements for the pharmacist to be able to dispense naloxone pursuant to a physician-approval protocol.

Section 1. Certification. (1) A pharmacist desiring to achieve certification to initiate the dispensing of naloxone shall complete and submit an Application for Pharmacist Certification for Naloxone Dispensing, Form 1, with the board and provide the following:

(a) Name;

(b) Address;

(c) Phone number;

(d) Pharmacist license number;

(e) Employer;

(f) Employer address; and

(g) Proof of education and training in the use and dispensing of naloxone for treatment of opioid overdose pursuant to the requirements set forth in Section 5 of this administrative regulation.

(2) The board shall issue the certification to a pharmacist who meets the requirements of subsection (1) of this section within thirty (30) days of the receipt of the application.

Section 2. Procedures for Dispensing of Naloxone. A pharmacist is authorized to initiate the dispensing of naloxone under the following conditions:

(1) The pharmacist has met the requirements of Section 1 of this administrative regulation;

(2) The pharmacist has received his or her certification;

(3) The pharmacist has a physician-approved protocol that meets the minimum requirements of Section 3 of this administrative regulation; and

(4) The pharmacist documents the dispensing event in the pharmacy management system including:

(a) Documentation as required in 201 KAR 2:170 for the dispensing of prescription medication; and

(b) Documentation that the individual receiving naloxone was provided with the required training and education pursuant to Section 4 of this administrative regulation.

Section 3. Protocol Minimum Requirements. A physician-approved protocol authorizing a pharmacist to initiate the dispensing of naloxone shall contain:

(1) Criteria for identifying persons eligible to receive naloxone under the protocol;

(2) Naloxone products authorized to be dispensed shall include:

(a) Name of product;

(b) Dose; and

(c) Route of administration;

(3) Specific education to be provided to the person whom the naloxone is dispensed;

(4) Procedures for documentation of naloxone dispensation, including procedures for notification of the physician authorizing the protocol;

(5) The length of time the protocol is in effect;

(6) The date and signature of the physician approving the protocol; and

(7) The names and work addresses of pharmacist(s) authorized to initiate dispensing of naloxone under the protocol.

Section 4. Education to be Provided to Person Receiving Naloxone Prescription Under Protocol. A pharmacist dispensing naloxone to a person shall provide verbal counseling and written educational materials, appropriate to the dosage form of naloxone dispensed, including:

(1) Risk factors of opioid overdose;

(2) Strategies to prevent opioid overdose;

(3) Signs of opioid overdose;

(4) Steps in responding to an overdose;

(5) Information on naloxone;

(6) Procedures for administering naloxone; and

(7) Proper storage and expiration of naloxone product dispensed.

Section 5. Pharmacist Education and Training Required for Certification. A pharmacist who applies for certification to initiate dispensing of naloxone shall have received education and training related to the safe dispensing of opioids and use of naloxone as rescue therapy for opioid overdose, including:

(1) Risk factors for opioid abuse and overdose;

(2) Opioid overdose prevention;

(3) Recognizing and responding to opioid overdoses;

(4) Indications for use of naloxone as rescue therapy;

(5) Contraindications for use of naloxone;

(6) Administration of naloxone;

(7) Adverse effects associated with naloxone rescue therapy;

(8) Identification of a patient who meets the criteria for provision of naloxone;

(9) Required education to provide to persons receiving naloxone;

(10) Required elements of protocol to initiate dispensing of naloxone; and

(11) Required documentation when initiating dispensing of naloxone.

Section 6. Incorporation by Reference. (1) "Application for Pharmacist Certification for Naloxone Dispensing", Form 1, 5/2015, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOEL THORNBURY, President

APPROVED BY AGENCY: May 13, 2015

FILED WITH LRC: May 14, 2015 at noon

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation allows a pharmacist that has received certification from the Board of Pharmacy to dispense naloxone pursuant to a physician-approved protocol.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with SB192.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation is in conformity with the authorizing statute that authorizes the board to promulgate administrative regulations that establishes the requirements for a pharmacist to dispense naloxone pursuant to a physician-approved protocol.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will set the requirements for a pharmacist to dispense naloxone pursuant to a physician-approved protocol.

(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: The board anticipates 500 pharmacists annually will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A pharmacist will apply to receive certification from the Board to dispense naloxone pursuant to a physician-approved protocol.

(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): A pharmacist will be able to dispense naloxone pursuant to a physician-approved protocol to assist those individuals that have an opioid overdose.

(5) Provide an estimate of how much it will cost 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: None 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: None.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable any pharmacist applying for certification to dispense naloxone pursuant to a physician-approved protocol.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy 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. 2015 RS SB 192 and KRS 315.191 requires or authorizes the action taken by this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? 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: The board anticipates no revenues.

Expenditures: The board anticipates no expenditures.

Other Explanation:

STATEMENT OF EMERGENCY
921 KAR 3:060E

This emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)2 to correct federal review findings from the U.S. Department of Agriculture, Food and Nutrition Service pertaining to the Supplemental Nutrition Assistance Program (SNAP) and to prevent the loss of federal funds. The Cabinet for Health and Family Services, Department for Community Based Services has been threatened with federal financial penalty if the state fails to address these federal findings timely and continues to engage in noncompliant policy and practice. Any loss of federal funding would harm the state's provision of eligibility determination and human support services to impoverished Kentucky citizenry, including working families and individuals with disabilities. The content of this administrative regulation was negotiated with the federal agency as a time-sensitive corrective action to avoid federal financial penalty. An ordinary administrative regulation would not allow the agency to adhere to negotiated actions to immediately correct federal review findings and avoid federal financial penalty. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is

identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Emergency Amendment)

921 KAR 3:060E. Administrative disqualification hearings and penalties.

RELATES TO: KRS 205.231, 7 C.F.R. 273.15, 273.17, 7 U.S.C. 2015

STATUTORY AUTHORITY: KRS Chapter 13B, 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 273.16

EFFECTIVE: April 30, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires each state to administer a Supplemental Nutrition Assistance Program (SNAP). 7 C.F.R. 273.16 requires the agency administering SNAP to provide a hearing process for individuals accused of intentionally violating a SNAP regulation and to implement penalties and disqualifications for such violations. KRS Chapter 13B establishes the hearing process to be followed in the Commonwealth. This administrative regulation establishes the procedures used by the cabinet in determining if an intentional program violation (IPV) has occurred and the penalties that shall be applied for an IPV.

Section 1. Administrative Disqualification Hearings. (1) Unless a different procedure is specified in this administrative regulation, an administrative disqualification hearing shall:

(a) Be conducted in accordance with 921 KAR 3:070 and KRS Chapter 13B; and

(b) Include[~~:~~

~~1.~~] the issuance of an[~~a recommended order;~~

~~2. Procedures for written exceptions; and~~

~~3. The issuance of a final~~] order in accordance with the Correspondence from the Office of the Attorney General dated April 5, 2012.

(2) The cabinet shall retain:

(a) The official record of an administrative disqualification hearing until all appeals have been exhausted; and

(b) A case record with an IPV disqualification indefinitely.

Section 2. Intentional Program Violations. (1) If the cabinet suspects that an individual committed an IPV, as defined in 921 KAR 3:010, the cabinet shall:

(a) Initiate an administrative disqualification hearing; or

(b) If warranted by the facts of the case, refer the suspected IPV claim to the Office of the Inspector General (OIG) for investigation or referral for prosecution.

(2) An administrative disqualification hearing may be initiated regardless of the current eligibility of an individual.

(3) If the OIG determines that the IPV does not warrant investigation or referral for prosecution, the cabinet shall initiate an administrative disqualification hearing as specified in this administrative regulation.

Section 3. Notification. (1) Form FS-80, Notice of SNAP Suspected Intentional Program Violation, shall serve as the notification to a household of the:

(a) Cabinet's suspicion that an IPV has been committed;

(b) Amount and period of the overpayment for the suspected IPV; and

(c) Household's right to an administrative disqualification hearing.

(2) The cabinet shall provide an individual suspected of an IPV a Form FS-80, Supplement A, Voluntary Waiver of SNAP Administrative Disqualification Hearing, which allows the individual to waive the right to an administrative disqualification hearing, with or without admitting an IPV was committed.

(3) If the household does not return the FS-80 Supplement A, the cabinet shall schedule an administrative disqualification hearing in accordance with 7 C.F.R. 273.16(e)(3) and (4).

(4) In accordance with KRS 13B.050, the administrative disqualification hearing notice shall be sent:

(a) By certified mail, return receipt requested, to the individual; or

(b) By another method, such as electronic or first class mail, if the individual waives his or her right to certified mail delivery under KRS 13B.050[~~To the addressee only; and~~

~~(c) With a return receipt requested~~].

(5) The administrative disqualification hearing notice shall provide information as specified in 7 C.F.R. 273.16(e)(3)(iii).

(6) In accordance with 7 C.F.R. 273.16(e)(2)(iii), the hearing officer shall advise the household member or representative that they may refuse to answer questions during the hearing.

(7) The cabinet shall provide a household notice regarding the IPV determination in accordance with 7 C.F.R. 273.16(e)(9) and KRS 13B.120.

Section 4. Timeframes. (1) Within the ninety (90) day timeframe specified in 7 C.F.R. 273.16(e)(2)(iv), the cabinet shall:

(a) Conduct an administrative disqualification hearing; and

(b) Issue a final order pursuant to the provisions established in 921 KAR 3:070, Section 14[~~17~~].

(2) In accordance with 7 C.F.R. 273.16(e)(2)(iv), a hearing may be postponed:

(a) One (1) time; and

(b) For no more than thirty (30) days.

(3) If a hearing is postponed, the time limit specified in subsection (1) of this section shall be extended for as many days as the hearing is postponed.

Section 5. Hearing Attendance. (1) An administrative disqualification hearing shall be conducted in accordance with 7 C.F.R. 273.16(e)(4).

(2) If a household member or representative cannot be located or does not appear for the administrative disqualification hearing, the hearing officer shall:

(a) Conduct the hearing without the household member or representative;

(b) Consider the evidence; and

(c) Determine whether an intentional program violation was committed based on clear and convincing evidence[~~If a household representative does not appear for the administrative disqualification hearing, the hearing officer shall review the case file to determine if the hearing shall:~~

~~(a) Proceed without household representation, because the return receipt from the hearing notice verified the notice was received by the individual; or~~

~~(b) Not be conducted, because the hearing notice or return receipt is annotated as unclaimed or undeliverable~~].

(3) In accordance with 7 C.F.R. 273.16(e)(4), the cabinet shall rescind a determination of an intentional program violation and conduct a new hearing upon an order of finding if the:

(a) Household was not represented at the hearing;

(b) Individual was determined to have committed an IPV;[~~and~~]

(c)1. Individual, within ten (10) days of the scheduled hearing, establishes good cause for failure to appear in accordance with 921 KAR 3:070, Section 8(2); or

2. Individual, within thirty (30) days after the date of the notice, establishes good cause for failure to appear in accordance with 921 KAR 3:070, Section 8(2)(f), by showing nonreceipt of the notice of hearing; and

(d) Appeal Board for Public Assistance is not considering the

same matter[~~Hearing officer later determines the household had good cause, in accordance with 921 KAR 3:070, Section 8(2), for not appearing~~].

Section 6. Benefits and Participation. (1) In accordance with 7 C.F.R. 273.16(e)(5), the participation of a household suspected of an IPV shall not be affected by the suspected IPV until a disqualification is implemented based on the:

(a) IPV being substantiated by the final order or a court of appropriate jurisdiction;

(b) Individual waiving the right to an administrative disqualification hearing by completing, signing, and returning the FS-80, Supplement A; or

(c) Individual completing, signing, and returning the form FS-111, Deferred Adjudication Disqualification Consent Agreement, pursuant to Section 7 of this administrative regulation.

(2) If the cabinet's determination of an IPV is later reversed, the cabinet shall:

(a) Reinstate the individual, if eligible; and

(b) In accordance with 7 C.F.R. 273.17, restore benefits:

1. That were lost as a result of the disqualification; and

2. For no more than twelve (12) months.

Section 7. Deferred Adjudication. (1) The cabinet shall accept a completed form FS-111, Deferred Adjudication Disqualification Consent Agreement, in a case of deferred adjudication pursuant to 7 C.F.R. 273.16(h).

(2) In accordance with 7 C.F.R. 273.16(h), the cabinet shall notify an individual signing a FS-111 of the:

(a) Consequences of consenting to disqualification;

(b) Disqualification; and

(c) Effective date of the disqualification.

Section 8. Penalties. (1) In accordance with 7 C.F.R. 273.16(b), an individual shall be ineligible to participate in SNAP, if the individual has:

(a) Committed an IPV, as determined by:

1. An administrative disqualification hearing: or

2. A court; or

(b) Signed a waiver of right to an administrative disqualification hearing or a disqualification consent agreement.

(2) The time periods for IPV disqualifications shall be implemented in accordance with 7 C.F.R. 273.16(b).

(3) In accordance with 7 C.F.R. 273.16(b)(11), the cabinet shall only disqualify the individual who meets the criteria specified in subsection (1) of this section, not the entire household.

(4) In accordance with 7 C.F.R. 273.16(b)(12), the cabinet shall hold the entire household responsible for making restitution on an overpayment, not just the disqualified individual.

(5) The cabinet shall inform the household in writing of the disqualification penalties for committing an IPV each time the household applies for benefits.

Section 9. Procedures for Appeal. In accordance with 7 C.F.R. 273.16(e)(8)(ii):

(1) Further administrative appeal procedures shall not exist after an:

(a) Administrative disqualification hearing determines that an IPV was committed; or

(b) Individual waives the right to an administrative disqualification hearing;

(2) A cabinet determination of an IPV shall not be reversed by a final order from a subsequent fair hearing; and

(3) An individual determined to have committed an IPV may seek relief in a court having appropriate jurisdiction pursuant to KRS 13B.140.

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

(a) The "Correspondence from the Office of Attorney General dated April 5, 2012", April 5, 2012;

(b) "FS-80, Notice of SNAP Suspected Intentional Program Violation", 4/15[~~9/14~~];

(c)[~~(b)~~] "FS-80, Supplement A, Voluntary Waiver of SNAP Administrative Disqualification Hearing", 9/14; and

(d)[~~(c)~~] "FS-111, Deferred Adjudication Disqualification Consent Agreement", 9/14.

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

TERESA C. JAMES, LCSW, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 27, 2015

FILED WITH LRC: April 30, 2015 at 1 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria used by the Cabinet for Health and Family Services, Department for Community Based Services in determining if an intentional program violation (IPV) has occurred in the Supplemental Nutrition Assistance Program (SNAP) and the penalties that shall be applied for said violation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to comply with 7 C.F.R. 273.16 and KRS Chapter 13B by establishing a hearing process for individuals suspected of intentionally violating a SNAP regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing a hearing process and penalties associated with intentional program violations of SNAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by developing a hearing process and establishing penalties for SNAP intentional program violations.

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

(a) How the amendment will change this existing administrative regulation: The amendment to the administrative regulation incorporates an exemption to KRS Chapter 13B, administrative hearing requirements, as approved by the Office of the Attorney General to assure the state's compliance with federally prescribed timeframes for SNAP administrative hearings. The amendment permits the individual subject to the administrative disqualification hearing to select a means for notification other than certified mail. The amendment also revises material incorporated by reference, form FS-80, Notice of SNAP Suspected Intentional Program Violation, by adding language to inform individuals of their rights during a disqualification hearing as required by the U.S. Department of Agriculture, Food and Nutrition Service (FNS). Lastly, the amendment makes technical corrections in accordance with federal requirements and KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to address findings from a recent federal review of the program and to avoid federal financial penalty.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by assuring conformity with federal requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by informing individuals of their rights during a disqualification hearing as required by the federal administrating agency.

(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 SNAP recipients and potential applicants. There were 777,300 individuals comprising 373,355 households receiving SNAP benefits in Kentucky during 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 take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will not require any additional action on the part of SNAP applicants or recipients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Neither the amendment nor the administrative regulation involves any cost to SNAP applicants or recipients.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All SNAP applicants and recipients will benefit from timely administrative hearings and their rights during a disqualification hearing more clearly stated on the program form. SNAP applicants and recipients may also indirectly benefit from the state maintaining federal resources to support the provisions of SNAP benefits.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and has no initial cost to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and has no fiscal impact on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100 percent federally funded through the United States Department of Agriculture. Program administrative costs are fifty (50) percent federally funded and fifty (50) percent state funded. Funding has been appropriated in the enacted budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The implementation of the amendment to this administrative regulation will not create 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 or directly or indirectly increase any fees

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 7 C.F.R 273.16

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

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment to this administrative regulation will impose no stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Justification for the imposition of a stricter standard, or additional or different responsibilities or requirements, is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13B, 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 7 C.F.R. 273.16

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 does not generate revenue and will not generate any revenue for the 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 does not generate revenue and will not generate any revenue for the state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this program for subsequent years.

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

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

STATEMENT OF EMERGENCY
921 KAR 3:070E

This emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)2 to correct federal review findings from the U.S. Department of Agriculture, Food and Nutrition Service pertaining to administrative hearings in the Supplemental Nutrition Assistance Program (SNAP) and prevent the loss of federal funds. The Cabinet for Health and Family Services, Department for Community Based Services has been threatened with federal financial penalty if the state fails to address these federal findings timely and continues to engage in noncompliant policy and practice. Any loss of federal funding would harm the state's provision of eligibility determination and human support services to impoverished Kentucky citizenry, including working families and individuals with disabilities. The content of this administrative regulation was negotiated with the federal agency as a time-sensitive corrective action to avoid federal financial penalty. An ordinary administrative regulation would not allow the agency to adhere to negotiated actions to immediately correct federal review findings and avoid federal financial penalty. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
AUDREY TAYSE HAYNES, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Emergency Amendment)

921 KAR 3:070E. Fair hearings.

RELATES TO: KRS Chapter 13B, 45.237, 205.231, 7 C.F.R. 273.16

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1), 205.231(5), 7 C.F.R. 271.4, 273.15

EFFECTIVE: April 30, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires each state to administer a Supplemental Nutrition Assistance Program (SNAP). 7 C.F.R. 273.15 requires the agency administering SNAP to provide a hearing system for any SNAP applicant or recipient who is dissatisfied with an agency decision or action. KRS Chapter 13B establishes the hearing process to be followed in the Commonwealth. This administrative regulation establishes the fair hearing procedures used by the cabinet in the administration of the Supplemental Nutrition Assistance Program.

Section 1. Opportunity for Fair Hearing. (1) An opportunity for a fair hearing shall be provided to a household aggrieved by an action or inaction:

(a) On the part of the cabinet; and

(b) That affects the SNAP benefits of the household.

(2) A fair hearing shall be conducted:

(a) On a state level;

(b) By a hearing officer assigned by the Division of Administrative Hearings, Families and Children Administrative Hearings Branch; and

(c) At:

1.[~~At~~] The local office administering the benefits of the appellant; or

2. An alternate site, if the appellant:

a. Is unable to travel to the local office; and

b. Requests an alternate site.

(3) If consent is obtained from each party required to testify under oath, a telephonic hearing may be conducted.

(4) If a participant or authorized representative speaks a language other than English, the cabinet shall insure that the hearing procedures are translated and explained in accordance with 7 C.F.R. 273.15(i).

(5) An administrative hearing shall be conducted in accordance with KRS Chapter 13B, this administrative regulation,[~~and~~] the Correspondence from the Office of Attorney General dated June 4, 2014, and the Correspondence from the Office of Attorney General dated April 5, 2012.

Section 2. Notification of Hearing Rights. (1) At the time of application, a participant shall receive written notification of the:

(a) Right to a hearing;

(b) Procedures for requesting a hearing, as specified in Section 4 of this administrative regulation; and

(c) In accordance with 7 C.F.R. 273.15(f), option to designate a representative for a hearing, such as:

1. Legal counsel;

2. A relative;

3. A friend; or

4. An individual to act on behalf of the participant.

(2) Written notification shall be provided to remind a participant of the right to request a fair hearing if:

(a) An action is taken that affects the benefits of the participant; or

(b) The participant disagrees with an action taken by the cabinet and expresses this disagreement to the cabinet.

(3) The participant shall be informed in writing of the availability of free representation from legal aid or other organizations within the community.

Section 3. Timeframe for a Hearing Request. (1) Within a certification period, an active household may request a fair hearing to dispute current benefits.

(2) In accordance with the timeframes of 7 C.F.R. 273.15(g), a SNAP household may request a hearing on any cabinet action.

(3) If a hearing officer determines an appellant meets good cause criteria in accordance with Section 8 of this administrative regulation, the appellant shall be granted an additional thirty (30) days to submit a hearing request.

Section 4. Request for a Hearing. (1) The request for a hearing shall clearly state the reason for the request.

(2) If the reason for the request is unclear, the cabinet may request additional clarification from the appellant.

(3) In accordance with 7 C.F.R. 273.15(h), a request for a hearing shall not be interfered with or limited in any way.

(4) Upon request, and in accordance with 7 C.F.R. 273.15(i), the cabinet shall:

(a) Help an appellant with a hearing request; and

(b) Make available, without charge, the materials necessary for an appellant to:

1. Determine whether a hearing may be requested; or

2. Prepare for a hearing.

(5) As determined by the hearing officer, an appellant may have the hearing process expedited in accordance with 7 C.F.R. 273.15(i)(2).

Section 5. Notice of Hearing[~~Notification~~]. (1) The Division of Administrative Hearings, Families and Children Administrative Hearings Branch shall acknowledge a hearing request by issuing a notice of hearing.

(2) The notice of the hearing shall:

(a) Comply with the requirements of KRS 13B.050(3), subject to the exemption granted by the attorney general in the Correspondence from the Office of Attorney General dated June 4, 2014. The notice shall provide all parties involved with ten (10) days advance written notice of an administrative hearing, and the notice shall not be less than ten (10) days prior to the hearing, unless requested by the appellant;

(b) Specify the name, address, and phone number of the person to notify if an appellant is unable to attend the scheduled hearing; and

(c) Specify that the hearing request shall be dismissed if an appellant or representative fails to appear for a hearing without good cause as specified in Section 8(2) of this administrative regulation.

(3) In accordance with 7 C.F.R. 273.15(1), unless an appellant's request for an expedited hearing is granted, written notice shall be provided at least ten (10) days prior to the date of the hearing to permit adequate preparation of the case.

(4) The appellant may:

(a) Waive the right to certified mail delivery under KRS 13B.050; and

(b) Select another method of delivery, such as electronic or first class mail.

Section 6. Continuation of Benefits. Unless the appellant requests a discontinuance of benefits, benefits shall be continued, in accordance with 7 C.F.R. 273.15(k), pending the final order.

Section 7. Timely Action on Hearing Requests. (1) In accordance with 7 C.F.R. 273.15(c), within sixty (60) days of a request for a fair hearing, the cabinet shall:

(a) Acknowledge the request in accordance with Section 5 of this administrative regulation;

(b) Conduct a hearing; and

(c) Issue a final order.

(2) In accordance with 7 C.F.R. 273.15(c), benefits shall be adjusted:

(a) Within ten (10) days of the final order; or

(b) With the next issuance following receipt of the final order.

(3) If an appellant requests a postponement of a hearing, the:

(a) Hearing shall be postponed;

(b) Postponement shall not exceed thirty (30) days from the request for the postponement; and

(c) Time limit for issuing a final order may be extended for the same number of days as the hearing is postponed.

Section 8. Denial or Dismissal of a Hearing Request. (1) A hearing request shall be denied or dismissed if the:

(a) Request does not meet the criteria specified in Section 3 of this administrative regulation;

(b) Appellant submits a written request to withdraw the hearing request; or

(c) Appellant or representative fails to appear for the scheduled hearing without:

1. Notifying the cabinet prior to the hearing; or

2. Establishing good cause for failure to appear as defined in subsection (2) of this section, within ten (10) days.

(2) Good cause for the delay of a hearing request or failure to appear at a hearing may be granted if the appellant:

(a) Was away from home during the entire filing period;

(b) Is unable to read or comprehend the notice;

(c) Moved, resulting in a delay in receiving or failure to receive the notice;

(d) Or other household member had a serious illness;

(e) Was not at fault for the delay, as determined by the hearing officer; or

(f) Did not receive the notice.

(3) The cabinet shall notify an appellant of the dismissal of a hearing request through the issuance of a Final[~~Recommended~~] Order of Dismissal by the Hearing Officer.

Section 9. Consolidation of Hearings. (1) A fair hearing and an administrative disqualification hearing may be combined into a single hearing if the:

(a) Issues of the hearings are based on the same or related circumstances; and

(b) Appellant receives prior notice of the hearings being combined.

(2) If a fair hearing and an administrative disqualification hearing are combined the:

(a) Timeframe for conducting an administrative disqualification hearing specified in 921 KAR 3:060, Section 4, shall be followed; and

(b) Thirty (30) day advance notice period required by 921 KAR 3:060, Section 3 may be waived if requested by the appellant.

(3) An appellant shall lose the right to a subsequent fair hearing on the amount of a claim if a combined hearing is held to determine:

(a) The amount of the claim; and

(b) If an intentional program violation occurred.

Section 10. Group Hearings. (1) In accordance with 7 C.F.R. 273.15(e), the cabinet may respond to a series of individual requests for a fair hearing by conducting a single group hearing if:

(a) Individual issues of fact are not disputed; and

(b) The issues relate to the same state or federal:

1. Laws;

2. Regulations; or

3. Policy.

(2) The same procedures specified in this administrative regulation for an individual hearing shall apply to a group hearing.

Section 11. Agency Conference. (1) In accordance with 7 C.F.R. 273.15(d), the cabinet shall offer an agency conference to an appellant adversely affected by an action of the cabinet.

(2) The appellant shall be informed that an agency conference:

(a) Is optional; and

(b) Shall not delay or replace the fair hearing process.

(3) A fair hearing shall be dismissed if:

(a) An agency conference leads to an informal resolution of the dispute; and

(b) The appellant makes a written withdrawal of the request for a hearing.

(4) An agency conference shall be attended by the:

(a) Appellant's caseworker;

(b) Local office supervisor; and

(c) Appellant or representative.

Section 12. Rights During the Hearing. (1) During the hearing process, the appellant or representative shall be provided the opportunity to:

(a) Examine:

1. The contents of the case file; and

2. All documents and records to be used at the hearing;

(b) Present the case or have the case presented by a representative or legal counsel;

(c) Bring witnesses, friends, or relatives;

(d) Present arguments without undue interference;

(e) Submit evidence to establish the pertinent facts and circumstances of the case; and

(f)1. Question or refute testimony or evidence; and

2. Cross-examine an adverse witness.

(2) Upon request, a copy of the portions of the case file that are relevant to the hearing shall be provided to the appellant at no charge.

(3) Confidential information, such as the following, shall be protected from release:

(a) Names of individuals who have disclosed information about the appellant's household; and

(b) The nature or status of pending criminal prosecutions.

(4) The following information shall not be introduced at the hearing or affect the recommendation of the hearing officer:

(a) Confidential information as specified in subsection (3) of this section;

(b) Documents, testimony, or records irrelevant to the hearing; and

(c) Other information for which the appellant is not provided an opportunity to contest or challenge.

Section 13. Hearing Officer. (1) The cabinet shall designate a hearing officer who:

(a) Is employed by the cabinet's Division of Administrative Hearings, Health and Family Services Administrative Hearings Branch; and

(b) Meets the criteria specified in KRS 13B.040 and 7 C.F.R. 273.15(m).

(2) When conducting a hearing, a hearing officer shall:

(a) Have the authority set forth in KRS 13B.080;

(b) In accordance with 7 C.F.R. 273.15(m), order an independent medical assessment or professional evaluation from a source:

1. Not associated with the original action; and

2. Agreeable to both the appellant and the cabinet if:

a. The hearing involves medical issues; and

b. The hearing officer considers it necessary;

(c) Maintain a hearing record in accordance with KRS 13B.130 and 921 KAR 3:050, Section 13;[~~and~~]

(d) Issue an[~~a recommended~~] order:

1. In accordance with KRS 13B.110; and

2. As specified in Section 14 of this administrative regulation; and

(e) Issue a final order under Section 9 of this administrative regulation.

Section 14. Hearing Officer's[~~Recommended~~] Order. (1) After the hearing has concluded, the hearing officer shall draft an[~~a recommended~~] order which:

(a) Summarizes the facts of the case;

(b) Specifies the:

1. Reasons for the[~~recommended~~] order; and

2. Address to which a party in the hearing may send an exception to the[~~recommended~~] order; and

(c) Identifies the:

1. Findings of fact;

2. Conclusions of law;

3. Supporting evidence;[~~and~~]

4. Applicable state and federal regulations; and

5. Address the parties' arguments.

(2) A copy of the[~~recommended~~] order shall be sent simultaneously to the:

(a) Appellant or representative; and

(b) Department for Community Based Services' Division of Family Support[~~; and~~

~~(c) Appeal Board for Public Assistance established in accordance with KRS 205.231~~].

(3) A hearing officer's order shall become a final order for an administrative hearing in accordance with KRS 13B.120, 205.231, and 7 C.F.R. 273.15(c), (n), and (q) sixteen (16) days from the issuance of the order unless a written exception is filed pursuant to Section 15 of this administrative regulation.

(4) If necessary, benefits of the appellant shall be adjusted:

(a) Based on a hearing officer's order that becomes a final order in accordance with subsection (3) of this section; and

(b) Within ten (10) days of the hearing officer's order becoming the final order.

Section 15. Written Exceptions and Rebuttals. (1) If a party to a hearing disagrees with the hearing officer's[~~recommended~~] order, the party may file a written exception with the Appeal Board for Public Assistance established in accordance with KRS 205.231.

(2) A written exception or rebuttal shall:

(a) Be filed within fifteen (15) days of the date the hearing officer's[~~recommended~~] order was mailed;

(b) Be based on facts and evidence presented at the hearing;

(c) Not refer to evidence that was not introduced at the hearing; and

(d) Be sent to each other party involved in the hearing.

Section 16. Appeal Board Review. (1) The Appeal Board for Public Assistance shall send a written acknowledgement of the exception to the hearing officer's[~~recommended~~] order to the:

(a) Parties to the hearing; and

(b) Commissioner of the Department for Community Based Services.

(2) The acknowledgement shall:

(a) Offer the opportunity to:

1. File a brief; or

2. Request permission to submit new or additional evidence; and

(b) State the tentative date on which:

1. A brief, new evidence, or new exhibit are to be received by the Appeal Board for Public Assistance for consideration; and

2. The Appeal Board for Public Assistance shall consider the appeal.

(3) The Appeal Board for Public Assistance shall consider:

(a) The records of the hearing; and

(b) New evidence or exhibits introduced before the Appeal Board for Public Assistance in accordance with this section.

(4) If an appeal is being considered on the record, the parties may:

(a) Submit written arguments; and

(b) Present oral arguments at the Appeal Board for Public Assistance's discretion. Telecommunications may be utilized for the presentation of oral arguments.

(5) If needed, the Appeal Board for Public Assistance may request additional evidence to resolve the appeal.

Section 17. The Appeal Board Decision. (1) The decision of the Appeal Board for Public Assistance shall be a final order in accordance with KRS 13B.120, 205.231, and 7 C.F.R. 273.15(c), (n), (q).

(2) If necessary, benefits of the appellant shall be adjusted:

(a) Based on the decision of the Appeal Board for Public Assistance; and

(b) Within ten (10) days of the Appeal Board for Public Assistance's decision.

(3) A party aggrieved by the Appeal Board for Public Assistance's decision may pursue judicial review of the decision in accordance with KRS 13B.140 and 13B.150.

Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "Correspondence from the Office of Attorney General dated April 5, 2012", April 5, 2012; and

(b) The "Correspondence from the Office of Attorney General dated June 4, 2014", June 4, 2014[~~, is incorporated by reference~~].

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

TERESA C. JAMES, LCSW, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 27, 2015

FILED WITH LRC: April 30, 2015 at 1 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fair hearing procedures used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the fair hearing process used by the cabinet in the administration of SNAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing cabinet procedures for SNAP fair hearings.

(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 fair hearing procedures used by the cabinet in the administration of the SNAP.

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

(a) How the amendment will change this existing administrative regulation: The amendment to the administrative regulation incorporates an exemption to KRS Chapter 13B, administrative hearing requirements, as approved by the Office of the Attorney General to assure the state's compliance with federally prescribed timeframes for SNAP administrative hearings. In addition, this administrative regulation permits an appellant to select a means for notification other than certified mail. The amendment also makes technical corrections in accordance with federal requirements and KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to avoid federal financial penalty for untimely SNAP administrative hearings.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by assuring conformity with federal requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes through conformity with federal requirements pertaining to SNAP administrative hearings.

(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 SNAP recipients and potential applicants. There were 777,300 individuals comprising 373,355 households receiving SNAP benefits in Kentucky during 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 take to comply with this administrative regulation or amendment: There will be no new action required on the part of SNAP applicants/recipients who seek appeal.

(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 cost imposed on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit directly from enhanced timeliness of SNAP administrative hearings and may benefit indirectly from the state maintaining federal resources to support the provisions of SNAP benefits.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and has no initial cost to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and has no fiscal impact on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100 percent federally funded through the United States Department of Agriculture. Program administrative costs are fifty (50) percent federally funded and fifty (50) percent state funded. Funding has been appropriated in the enacted budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The implementation of the amendment to this administrative regulation will not create 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 or directly or indirectly increase any fees

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 273.15

2. State compliance standards. KRS 13B.170, 194A.010(2), 194A.050(1), 205.231(5),

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 273.15

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment to this administrative regulation will impose no stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Justification for the imposition of a stricter standard, or additional or different responsibilities or requirements, is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B.170, 194A.010(2), 194A.050(1), 205.231(5), 7 C.F.R. 271.4, 273.15

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 does not generate revenue and will not generate any revenue for the 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 does not generate revenue and will not generate any revenue for the state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, May 5, 2015)

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

RELATES TO: KRS 164.7871-164.7885, 20 U.S.C. 1087ll
STATUTORY AUTHORITY: KRS 164.748(4), 164.7885(7)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to ***164.7891[~~164.785~~]***. KRS 164.7885(7) requires the authority to promulgate administrative regulations for the administration of the Kentucky Educational Excellence Scholarship Program. This administrative regulation establishes the definitions for 11 KAR Chapter 15.

Section 1. Definitions. (1) "Academic term" is defined in KRS 164.7874(1) and ***13 KAR 2:045[~~13 KAR 2:090~~]***, Section 1(1).
(2) "ACT score" is defined in KRS 164.7874(3).
(3) "Authority" is defined in KRS 164.7874(4).
(4) "Award period" is defined in KRS 164.7874(5).
(5) "Correspondence course" means a home study course that:
(a) Is provided by an educational institution under which the institution provides instructional materials, including examinations on the materials, to students who are not physically attending classes at the institution;
(b) Meets the following requirements:
1. When a student completes a portion of the instructional materials, the student takes the examinations that relate to that portion of the materials, and return the examinations to the institution for grading;
2. The institution provides instruction through the use of video cassettes or video discs in an academic year unless the institution also delivers the instruction on the cassette or disc to students physically attending classes at an institution during the same academic year; and
3. If a course is part correspondence and part residential training, the course shall be considered to be a correspondence course; and
(c) Does not include courses from the Kentucky Commonwealth Virtual University (KCVU).
(6) "Council" is defined in KRS 164.7874***(6)[~~(7)~~]***.
(7) "Cumulative grade point average" means the total grade point average for a postsecondary education student as reported by the postsecondary education institution where the student is currently enrolled.
(8) "Eligible high school student" is defined in KRS 164.7874***(7)[~~(8)~~]***.
(9)[~~(8)~~] "Eligible postsecondary student" is defined in KRS 164.7874***(8)[~~(9)~~]***.
(10)[~~(9)~~] "Eligible program of study" means, for purposes of enrollment in a participating institution, a postsecondary, undergraduate program that:
(a)1. Leads to a certificate, diploma, or associate or baccalaureate degree;
2. Is designated as an equivalent undergraduate program of study by the council in an administrative regulation; or
3. Is a degree program in a field of study that is not available at any participating institution in the Commonwealth but is offered at an out-of-state institution designated by the council as an approved participating institution; and
(b) May include study abroad or away from the main campus if the student pays tuition to, and is given academic credit by, the participating institution for the study, except that a correspondence course shall not be included.
(11)[~~(10)~~] "Full-time student" is defined in KRS 164.7874***(9)[~~(10)~~]***.
(12)[~~(11)~~] "Grade point average" is defined in KRS 164.7874***(10)[~~(11)~~]***.
(13)[~~(12)~~] "High school" is defined in KRS 164.7874***(11)[~~(12)~~]***.
(14)[~~(13)~~] "KEES" ***or "Kentucky Educational Excellence Scholarship"*** is defined in KRS 164.7874***(12)[~~(13)~~]***.
(15)[~~(14)~~] "KEES Program officer" means the official designated on the administrative agreement, pursuant to KRS 164.748(6) and 164.7874***(20)[~~(18)~~]***, to serve as the participating institution's on-campus agent to certify all institutional transactions and activities with respect to the Kentucky Educational Excellence Scholarship Program.
(16)[~~(15)~~]***[~~"Kentucky Educational Excellence Scholarship" is defined in KRS 164.7874(15).~~***
[~~(17)~~][~~(16)~~] "Maximum award amount" ***means the KEES award maximum defined by[~~is defined in~~]*** KRS 164.7874***(14)[~~(17)~~]***.
(17)[~~(18)~~][~~(17)~~] "Participating institution" is defined in KRS 164.7874***(20)[~~(18)~~]***.
(18)[~~(19)~~][~~(18)~~] "Part-time student" is defined in KRS 164.7874***(21)[~~(19)~~]***.
(19)[~~(20)~~][~~(19)~~] "Supplemental award" ***means the KEES supplemental amount defined by[~~is defined in~~]*** KRS 164.7874***(17)[~~(20)~~]***.

LORI PAYNE, Chair
APPROVED BY AGENCY: February 26, 2015
FILED WITH LRC: March 11, 2015 at 9 a.m.
CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

PERSONNEL CABINET
(As Amended at ARRS, May 5, 2015)

101 KAR 2:102. Classified leave general requirements.

RELATES TO: KRS 18A.030, ***18A.095,*** 18A.110, ***18A.140, 18A.145,*** 18A.195, ***18A.990,*** 61.394, ***61.673,*** 344.030, ***29 C.F.R. 825, 29 U.S.C. 8,*** 29 U.S.C. 201 – 219, 2601 – 2654
STATUTORY AUTHORITY: KRS 18A.030***(2)(b)***, 18A.110, ***[~~18A.155, 344.030,~~]*** 29 U.S.C. 201 – 219, 2601 – 2654
NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 18A.030(2)(b) requires the Secretary of Personnel to promulgate administrative regulations, consistent with KRS Chapter 18A and federal standards, for the administration of a personnel system.*** KRS 18A.110(7)(g) requires the secretary***[~~of Personnel~~]***, with the approval of the Governor, to promulgate administrative regulations that govern annual leave, sick leave, special leaves of absence, and other conditions of leave. This administrative regulation establishes the leave requirements for classified employees.

Section 1. Annual Leave. (1) Accrual of annual leave.
(a) Each full-time employee shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180-239 months	1 3/4 days per month; 21 per year
240 months & over	2 leave days per month; 24 per year

(b) A full-time employee shall have worked, or been on paid

leave, other than educational leave with pay, for 100 or more regular hours per month to accrue annual leave.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been rehired, except as provided in paragraph (f) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(f) An employee, who has retired from a position covered by a state retirement system, is receiving retirement benefits, and returns to state service, shall not receive credit for months of service prior to retirement.

(g) A part-time employee shall not be entitled to annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of hours or one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward pursuant to this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave.

(e) An employee shall be able to use annual leave for an absence on a regularly scheduled workday.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain[~~his~~] accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance pursuant to KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous month.

(h) An employee who is eligible for state contributions for health benefits pursuant to KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous pay period.

(i) Annual leave may be carried from one (1) calendar year to the next. If annual leave is carried from one (1) calendar year to the next, the leave shall be calculated as established in the following table[~~provided in this paragraph~~]:

Months of Service	Maximum Amount	37.5 Hour Week Equivalent	40 Hour Week Equivalent
0-59	30 workdays	225 hours	240 hours
60-119 months	37 workdays	277.50 hours	296 hours
120-179 months	45 workdays	337.50 hours	360 hours
180-239 months	52 workdays	390 hours	416 hours
240 months and over	60 workdays	450 hours	480 hours

(j) Leave in excess of the maximum amounts specified in paragraph (i) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(k) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a)1. If an employee is separated by proper resignation or retirement, the employee[~~he~~] shall be paid in a lump sum for accumulated annual leave.

2. The accumulated annual leave for which the employee[~~he~~] is paid shall not exceed the amounts established by subsection (2)(i) of this section.

3. Following payment of annual leave at resignation, any remaining annual leave after the payment of the maximum shall:

a. Not be paid to the employee or converted to sick leave; and

b. Be removed from the balance.

(b) If an employee is laid off, the employee[~~he~~] shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or resigns one (1) day and is employed the next workday, shall retain the[~~his~~] accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual leave.

(e) Upon the death of an employee, the employee's[~~his~~] estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(f) An employee may request in writing that[~~his~~] accumulated annual leave not be paid upon resignation, and that all or part of the amount of[~~his~~] accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. The employee[~~He~~] resigns, or is laid off[~~from his position~~], because of an approved plan of privatization of the services [~~he~~] performed; and

2. The successor employer has agreed to credit the employee[~~him~~] with an equal amount of annual leave.

Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) The total service shall be verified before the leave is credited to the employee's record.

(h) A former employee who has been rehired, except as provided in paragraph (i) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(i) A former employee who is appointed, reinstated, or reemployed, other than a former employee receiving benefits pursuant to a state retirement system, shall be credited with the unused sick leave balance[~~credited to him~~] upon separation.

(j) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave.

(a) An appointing authority shall grant or may require the use of sick leave with or without pay if an employee:

1. Is unable to work due to medical, dental, or optical examination or treatment;

2. Is disabled by illness or injury. If requested by the appointing authority, the employee shall provide a statement from an appropriate medical health professional certifying the employee's inability to perform the employee's[~~his~~] duties for the days or hours

sick leave is requested. If requested by the appointing authority, the employee shall provide a certificate from an appropriate medical health professional certifying the employee's fitness to return to duty before the employee is permitted to return to work;

3. Is required to care for or transport a member of the employee's[~~his~~] immediate family in need of medical attention for a reasonable period of time. If requested by the appointing authority, the employee shall provide a statement from an appropriate medical health professional certifying the employee's need to care for a family member; or

4. Would jeopardize the health of the employee[~~himself~~] or others at the employee's[~~his~~] work station because of a contagious disease or demonstration of behavior that might endanger the employee[~~himself~~] or others.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to the employee's[~~his~~] former position.

(c) An employee eligible for state contributions for life insurance pursuant to the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than holiday or education leave, during any part of the previous month.

(d) An employee who is eligible for state contributions for health benefits pursuant to the provisions of KRS Chapter 18A shall have worked or been paid leave, other than holiday or educational leave, during any part of the previous pay period.

(e) Sick leave shall be used in increments of hours or one-quarter (1/4) hours.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain[~~his~~] accumulated sick leave in the receiving agency.

(g) An employee shall be credited for accumulated sick leave if[~~he is~~] separated by proper resignation, layoff, or retirement.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay, without a change in the employee's personnel status, for the duration of an employee's impairment by injury or illness, if:

1. The leave does not exceed thirty (30) continuous calendar days; and

2. The employee has used or been paid for all accumulated annual, sick, and compensatory leave unless the employee[~~he~~] has requested to retain up to ten (10) days of accumulated sick leave.

(b) An appointing authority shall grant sick leave without pay to an employee who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family, or for the duration of the employee's impairment by illness or injury, for a period not to exceed thirty (30) working days.

(4) Sick leave by personnel action.

(a) If the duration of an employee's impairment by illness or injury exceeds the sick leave without pay allotment of thirty (30) calendar days, including holidays, the appointing authority shall place the employee on sick leave without pay by personnel action.

(b) The appointing authority shall notify the employee in writing that the employee is being placed on sick leave by personnel action.

(c) Sick leave by personnel action shall not exceed one (1) year.

(d) If requested by the appointing authority, the employee shall provide statements during the year from an appropriate medical health professional attesting to the employee's continued inability to perform the essential functions of the employee's[~~his~~] duties with or without reasonable accommodation.

(e) If an employee has given notice of the employee's[~~his~~] ability to resume[~~his~~] duties following sick leave by personnel action, the appointing authority shall return the employee to the original position or to a position for which the employee[~~he~~] is qualified and which resembles the[~~his~~] former position as closely as circumstances permit. The appointing authority shall notify the employee in writing of the following:

1. The effective date of the employee's return;

2. The position to which the employee is being returned; and

3. The employee's salary upon return to work.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and

2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be deemed resigned if the employee[~~he~~]:

1. Has been on one (1) year continuous sick leave by personnel action;

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of leave;

3. Is unable to return to the employee's[~~his~~] former position;

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which the employee[~~he~~] is qualified and is capable of performing its essential functions with or without reasonable accommodation; and

5. Has not been placed by the appointing authority in a vacant position.

(h) Sick leave granted pursuant to this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who is deemed resigned pursuant to paragraph (g) of this subsection shall retain reinstatement privileges that were accrued during service in the classified service.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examinations, and for sick leave without pay.

(c) If the employee is too ill to work, the[~~an~~] employee shall notify the immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination, or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C. 2601 – 2654, and the federal regulations implementing the Act, 29 C.F.R. Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee has:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) An employee shall be entitled to a maximum of twelve (12) weeks of unpaid family and medical leave for the birth, placement, or adoption of the employee's child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory, or sick leave balance, upon the employee's request, the agency shall permit the employee to:

(a) Reserve ten (10) days of accumulated sick leave and be placed on FMLA leave; or

(b) Use accrued paid leave concurrently with FMLA leave.

Section 4. Court Leave. (1) An employee shall be entitled to

court leave during the employee's[~~his~~] scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, administrative agency, or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror or a witness, unless the employee or a member of the employee's[~~his~~] family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during the employee's[~~his~~] normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of the employee's[~~his~~] assigned duties.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.

(b) An employee who is directed to work, or who requests and is authorized to work, in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. Chapter 8, the Kentucky Revised Statutes, and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 through 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. The election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of three (3) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next work week following receipt of the election.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times the regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" pursuant to the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of the regular work schedule.

(e) Compensatory leave shall be accumulated or taken off in one-quarter (1/4) hour increments.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be:

1. 239.99 hours by an employee in a non policy-making position; or

2. 240 hours by an employee in a policy-making position.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain the compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An appointing authority may require an employee who has accrued 200 hours of compensatory leave to take off work using compensatory leave in an amount sufficient to reduce the compensatory leave balance below 200 hours.

(c) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request payment for fifty (50) hours at the regular rate of pay. If the appointing authority or the designee approves the payment, an employee's leave balance shall be reduced accordingly.

(d) An employee who is not in a policy-making position shall be paid for fifty (50) hours at the regular hourly rate of pay, upon accumulating at the end of the pay period, 240 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(e) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, the employee shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of compensatory time that is permitted.

(f) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(g) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of the employee's[~~his~~]:

1. Regular hourly rate of pay; or

2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the[~~Kentucky~~] National Guard shall be relieved from the civil duties, to serve under order or training duty without loss of the regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave, or leave without pay.

(4) If requested by the appointing authority, the employee shall provide a copy of the orders requiring the attendance of the employee before military leave is granted.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for the period of duty in accordance with KRS 61.373. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, four (4) hours, for the purpose of voting.

(2) An employee casting an absentee ballot shall record the leave on the day the employee's vote is cast. An employee shall be regularly scheduled to work on the day the vote is cast in order to receive the leave.

(3) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday.

(4)[~~(3)~~] The absence shall not be charged against leave.

(5)[~~(4)~~] An employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the times the polls are open, up to a maximum of four (4) hours.

Section 8. Funeral and Bereavement Leave. (1) Upon the approval of the appointing authority, an employee who has lost an immediate family member by death may utilize five (5)[~~three (3)~~] days of accrued sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof.

(2) An appointing authority may approve the use of additional sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof, at the request of the employee following the loss of an immediate family member.

(3) For purposes of funeral and bereavement leave, an immediate family member shall include the employee's spouse,

parent, grandparent, child, brother, or sister, or the spouse of any of them, and may include other relatives of close association if approved by the appointing authority.

Section 9. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational, or business school for training in subjects that relate to the employee's work and ***provide[~~will~~]*** benefit ***to*** the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of an allegation of employee misconduct.

(a) Leave shall not exceed sixty (60) working days.

(b) The employee shall be notified in writing by the appointing authority that the employee[~~he~~] is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(c) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files.

(d) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether the employee has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes.

(4) An appointing authority may place an employee on administrative leave with pay upon the employee's receipt of an intent to dismiss letter as authorized by KRS 18A.095(2)(c).

Section 10. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provisions of the Fair Labor Standards Act, 29 U.S.C. Chapter 8; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be deemed resigned.

Section 11. Absences Due to Adverse Weather. (1) An employee, who is not designated for mandatory operations and chooses not to report to work or chooses to leave early ***if there are[~~in the event of~~]*** adverse weather conditions**,** such as tornado, flood, blizzard, or ice storm, shall have the time of the absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is on prearranged annual, compensatory, or sick leave shall charge leave as originally requested.

(3) If operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee shall be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual or compensatory leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual or compensatory leave is available.

(b) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a tornado, flood, ice storm, or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the provisions established in paragraphs (a) and (b) of this subsection shall apply.

(a) An employee who is required to evacuate or who would report to a location that has been shutdown shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act, 29 U.S.C. Chapter 8.

Section 12. Blood Donation Leave. (1) An employee who, during regular working hours, donates whole blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted pursuant to this section shall be used ***when the blood is donated[~~at the time of the donation~~]*** unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave.

(4) An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

Section 13. Incorporation by Reference. (1) "Overtime Compensation Form", May 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: March 13, 2015

FILED WITH LRC: March 13, 2015 at noon

CONTACT PERSON: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

PERSONNEL CABINET
(As Amended at ARRS, May 5, 2015)

101 KAR 2:105. Sick leave sharing procedures.

RELATES TO: KRS 18A.110(1)(h), (7)(g), 18A.196, 18A.197

STATUTORY AUTHORITY: KRS 18A.030(2)***(b)***, 18A.110(1)(h), (7)(g), 18A.197(9)

NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 18A.030(2)(b) requires the Secretary of Personnel to promulgate administrative regulations, consistent with KRS Chapter 18A and federal standards, for the administration of a personnel system. KRS 18A.110(1)(h) and (7)(g) require the secretary to promulgate administrative regulations governing various types of work leave, including sick leave.*** KRS 18A.197(9) requires the secretary***[~~of Personnel~~]*** to promulgate

administrative regulations to implement the sick leave sharing program. This administrative regulation establishes the sick leave sharing procedures.

Section 1. Definitions. (1) "Employee" is defined by KRS 18A.196(1).

(2) "Immediate family" means:

(a) The employee's spouse, mother, father, grandparent, son, or daughter; or

(b) A person of similarly close relationship:

1. Who has resided with the employee for at least thirty (30) days prior to application; or

2. For whom the employee is legally responsible.

(3) "Medically certified illness, injury, impairment, or physical or mental condition" means a disabling medical condition which has rendered or will render the employee completely incapable of performing the essential duties of the[~~his or her~~] job due to:

(a) The employee's personal illness; or

(b) The medically certified necessity that the employee care for an eligible immediate family member.

Section 2. Eligibility to Donate or Receive Sick Leave. (1) An employee shall not qualify to donate or receive sick leave under the sick leave sharing program if the employee:

(a) Is not in active payroll status; or

(b) Has:

1. Resigned;

2. Retired; or

3. Been placed in unpaid leave status by a personnel action.

(2) To request donated sick leave due to a medically certified illness, injury, impairment, or physical or mental condition of the employee or an eligible immediate family member, an employee shall complete a Sick Leave Sharing Application.

(3) To donate sick leave, an employee shall complete a Sick Leave Sharing Donation Form.

Section 3. Procedures and Restrictions. (1) The ten (10) consecutive days of leave required for eligibility shall be leave with or without pay.

(2) Sick leave sharing shall not be authorized for mere convenience or employee preference.

(3) Sick leave shall not be donated to an employee regularly scheduled to work thirty seven and one-half (37.5) hours per week in an amount less than seven and one-half (7.5) hours. Sick leave shall not be donated to an employee regularly scheduled to work forty (40) hours per week in an amount less than eight (8) hours.

(4) If multiple donors donate sick leave to an eligible recipient, agencies shall transfer leave in chronological order of receipt of the donation forms, up to the maximum amount that has been certified to be needed by the recipient.

(5) The applicant for sick leave sharing shall be responsible for filing:

(a) The appropriate medical certificates certifying the medical necessity; and

(b) The Sick Leave Sharing Application.

(6) Donated sick leave shall not be utilized retroactively except to cover the period between the date the request was submitted to the employee's supervisor or agency representative and the date of approval by the appointing authority.

(7) The sick leave sharing recipient shall be responsible for monitoring the amount of sick leave donated and used.

(8) Except as provided by subsection (9) of this section, donated sick leave shall be used:

(a) In the order in which it is donated; and

(b) On consecutive days.

(9) Leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave.

(10) When the recipient of donated leave returns to work, unused donated leave shall be restored to the donors in reverse order of donation, unless the recipient provides medical evidence that continued, periodic medical treatment relating to the original condition for which leave was donated is required.

(11) If a sick leave donor resigns, retires, or is otherwise terminated from state employment before the process of transferring leave to the recipient has begun, the leave shall not be available for use by the recipient.

(12) An appointing authority may require a sick leave recipient to provide an updated medical certificate attesting to the continued need for leave after thirty (30) working days of sick leave.

(13) An employee receiving workers' compensation benefits shall be eligible to receive shared sick leave to maintain a regular level of pay.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Sick Leave Sharing Application", March 2011; and

(b) "Sick Leave Sharing Donation Form", March 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, Third Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Tim Longmeyer, Secretary

APPROVED BY AGENCY: March 13, 2015

FILED WITH LRC: March 13, 2015 at noon

CONTACT PERSON: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3 floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

PERSONNEL CABINET
(As Amended at ARRS, May 5, 2015)

101 KAR 2:106. Annual leave sharing procedures.

RELATES TO: KRS 18A.025(3)(c)1d, 18A.203

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.110(1)(h), ***(7)(g)***[~~(2)~~], 18A.203(9)

NECESSITY, FUNCTION, and CONFORMITY: ***KRS 18A.030(2)(b) requires the Secretary of Personnel to promulgate administrative regulations, consistent with KRS Chapter 18A and federal standards, for the administration of a personnel system. KRS 18A.110(1)(h) and (7)(g) require the secretary to promulgate administrative regulations governing various types of work leave, including annual leave.*** KRS 18A.203(9) requires the secretary***[~~of the Personnel Cabinet~~]*** to promulgate procedural administrative regulations to implement the Annual Leave Sharing Program. This administrative regulation establishes the procedures for the Annual Leave Sharing Program established by KRS 18A.203.

Section 1. Definition. "Employee" is defined by KRS 18A.005(14).

Section 2. Eligibility to Donate or Receive Annual Leave. (1) An employee shall not qualify to donate or receive annual leave under the Annual Leave Sharing Program if the employee:

(a) Is not in active payroll status; or

(b) Has:

1. Resigned;

2. Retired; or

3. Been placed in unpaid leave status by a personnel action.

(2) To request donated annual leave, an employee shall complete an Annual Leave Sharing Application.

(3) To donate annual leave, an employee shall complete an Annual Leave Sharing Donation Form.

Section 3. Procedures and Restrictions. (1) The ten (10) consecutive days of leave required for eligibility by KRS 18A.203 shall be leave with or without pay.

(2) The total amount of shared annual leave that may be received or used by an eligible employee for the purposes specified by this administrative regulation shall be limited to 200 work hours per each qualifying event.

(3) Annual leave sharing shall not be authorized for mere convenience or employee preference.

(4) Annual leave shall not be donated to an employee regularly scheduled to work thirty-seven and one-half (37.5) hours per week in an amount less than seven and one-half (7.5) hours. Annual leave shall not be donated to an employee regularly scheduled to work forty (40) hours per week in an amount less than eight (8) hours.

(5) If multiple donors donate annual leave to an eligible recipient, agencies shall transfer leave in chronological order of receipt of the donation forms, up to the maximum amount that has been certified to be needed by the recipient or 200 work hours, whichever is less.

(6) The applicant for annual leave sharing shall be responsible for filing the Annual Leave Sharing Application.

(7) Donated annual leave shall not be utilized retroactively except to cover the period between the date the request was submitted to the employee's supervisor or agency representative and the date of approval by the appointing authority.

(8) The annual leave sharing recipient shall be responsible for monitoring the amount of annual leave donated and used.

(9) Except as provided by subsection (10) of this section, donated annual leave shall be used:

(a) In the order in which it is donated; and

(b) On consecutive days.

(10) Any leave that an employee accrues while receiving donated annual leave shall be used before donated annual leave.

(11) When the recipient of donated leave returns to work, unused donated leave shall be restored to the donors in reverse order of donation, unless the recipient provides evidence that the original condition for which annual leave was donated will continue.

(12) If an annual leave donor resigns, retires, or is otherwise terminated from state employment before the process of transferring leave to the recipient has begun, the leave shall not be available for use by the recipient.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) " Annual Leave Sharing Application", October 2011; and

(b) Annual Leave Sharing Donation Form, October 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, Third Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Tim Longmeyer, Secretary

APPROVED BY AGENCY: March 13, 2015

FILED WITH LRC: March13, 2015 at noon

CONTACT PERSON: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

PERSONNEL CABINET
(As Amended at ARRS, May 5, 2015)

101 KAR 2:180. Employee performance evaluation system.

RELATES TO: KRS 18A.110

STATUTORY AUTHORITY: KRS 18A.110(1)(i), (7)(j)

NECESSITY, FUNCTION and CONFORMITY: KRS 18A.110(1)(i) and (7)(j) requires the Secretary of the Personnel Cabinet to promulgate comprehensive administrative regulations for classified service employees to establish a uniform system of annual employee evaluations for classified employees. This administrative regulation establishes the uniform employee performance evaluation system.

Section 1. General Provisions. (1) The annual performance period shall be one (1) calendar year beginning on January 1.

(2) Except as provided in subsection (4)(d) of this section, performance evaluations shall be completed no later than January 31[~~thirty (30) calendar days~~] after the end of the annual performance period.

(3) All agencies shall use the Annual Employee Performance Evaluation form.

(4)(a) Except as provided in paragraph (b) or (c) of this subsection, the first line supervisor of an employee ***when[~~at the time~~]*** the evaluation is due shall be the evaluator.

(b) If the first line supervisor has not supervised the employee for at least sixty (60) calendar days during the performance year, the next line supervisor who meets the sixty (60) day requirement shall be the evaluator.

(c) If an employee changes jobs or reports to a different supervisor on or before November 1 of the performance year, the agency shall transfer all performance evaluation documentation for the performance year to the new evaluator for incorporation in the annual evaluation.

(d) If an employee changes jobs or reports to a different supervisor after November 1 of the performance year, the annual evaluation shall be completed by the former supervisor prior to the job change.

(5)(a) Except as provided in paragraph (b) of this subsection, the evaluator shall establish a performance plan for each eligible employee no later than January 31[~~thirty (30) calendar days~~] after the start of the performance period.

(b) If an employee's position or job title changes during the performance year, the evaluator shall establish a new performance plan no later than thirty (30) calendar days after the start of the position or job title change. The new performance plan shall become a part of the original performance year evaluation documentation.

(6) The evaluator shall meet with the employee when completing the performance plan to discuss job duties and expectations.

(7) Performance evaluations shall be in writing. The evaluator shall:

(a) Present and explain all documentation relevant to an employee's performance evaluation;

(b) Discuss both the positive and negative aspects of performance with the employee at the annual evaluation;

(c) Elicit the employee's opinions and concerns; and

(d) Discuss measures to improve or enhance performance with the employee.

(8) The Personnel Cabinet or agency personnel shall provide supervisor evaluation training on the performance evaluation system.

(a) The appointing authority shall require that supervisor evaluation training is completed prior to completing performance planning, interim reviews, and annual evaluations of employees.

(b) The Personnel Cabinet shall monitor and validate compliance with supervisor evaluation training requirements.

(9) An employee shall complete orientation to the performance evaluation system prior to January 1 of the employee's initial performance evaluation period.[~~(10) Except as authorized by the appointing authority, an evaluator shall complete required performance planning, interim reviews, and annual evaluations for each eligible employee. If the appointing authority approves the exception, written justification for the decision shall be placed in the employee's personnel file.~~]

Section 2. Employee Eligibility. Performance evaluations shall be completed for all full-time classified employees with status at the beginning of the performance year who have remained in continuous merit status throughout the performance year.

Section 3. Performance Planning. (1) The performance plan shall specify job responsibilities and expectations in the four (4) categories established in this subsection.

(a) Job tasks.

1. The job tasks category shall identify specific duties and expectations of the position held by the employee.

2. The employee's job duties shall be consistent with the position description.

3. Duties and expectations shall be in writing.

4. The evaluator shall assign points to identified duties and expectations.

(b) Adaptability/initiative.

1. The adaptability/initiative category shall identify job requirements of the agency.

2. The evaluator shall place each requirement under this category in writing and assign points.

(c) Communication/teamwork.

1. The communication/teamwork category shall identify requirements of the agency.

2. The evaluator shall place each requirement under this category in writing and assign points.

(d) Self-management.

1. The self-management category shall identify requirements of the agency relating to workplace standards that shall include:

a. Attendance;

b. Punctuality;

c. Career development;

d. Responsibility; and

e. Dependability.

2. The evaluator shall place each requirement under this category in writing and assign points.

(2)[~~3.~~] The evaluator shall develop the performance plan after consultation with the employee.

(a)[~~a.~~] The employee and evaluator shall certify in writing in the performance planning section of the evaluation form that the employee has met with the evaluator and is aware of the performance plan.

(b)[~~b.~~] The next line supervisor shall certify that he or she has reviewed the duties and expectations of the employee and finds them to be reasonable and appropriate based upon the employee's job classification.

(3)[~~(2)~~] Total points assigned for all four (4) categories shall equal 100 total points. The evaluator shall distribute points among the four (4) categories as follows:

(a) The job tasks category shall have a minimum of fifty (50) points designated; and

(b) The other three (3) categories shall have a minimum of five (5) points designated to each category.

(4)[~~(3)~~] To obtain the point total for each category, points assigned to each job duty within each category shall be multiplied by the numerical rating provided by the evaluator, as described in Section 5(3) of this administrative regulation.

(5)[~~(4)~~] Total points in all four (4) categories shall be added to obtain a final performance evaluation score.

Section 4. Performance Coaching and Feedback. (1) Modification of the performance plan may occur during the performance evaluation period if the changes are consistent with the duties reflected on an employee's position description.

(a) The employee shall be given written notice of changes to the performance plan.

(b) Changes to the performance plan shall be indicated on the evaluation form or on a supplemental sheet attached to the form.

(c) Changes to the performance plan shall be initialed and dated by the evaluator and the employee when changes become effective.

(2) Three (3) interim reviews shall be required during a performance year.

(a) The evaluator shall document the interim reviews.

1. Interim reviews shall not contain a rating.

2. The interim meeting section of the evaluation form shall contain comments by the evaluator for each category established in Section 3(1) of this administrative regulation.

(b) The employee and evaluator shall sign the performance evaluation form to certify that the interim reviews occurred.

(c) For consideration in the annual year evaluation, the employee may attach pertinent comments relating to the interim review within five (5) working days of the interim review meeting.

(d) [~~Except as requested by the appointing authority and authorized by the Secretary of Personnel,~~] The evaluator shall schedule interim reviews to discuss performance January 1 through April 30, May 1 through August 31, and September 1 through December 31.

(e) Interim reviews shall be completed no later than thirty (30) calendar days after the end of each interim review period.

(f) Interim reviews shall document performance to justify the annual performance rating.

Section 5. Performance Evaluations and Ratings. (1) Except as provided in Section 1(4)(d) of this administrative regulation, the evaluator and the employee shall meet no later than January 31[~~thirty (30) calendar days~~] after the performance period ends to discuss the performance ratings.

(2) Eligible employees shall be evaluated in the four (4) categories described in Section 3 of this administrative regulation.

(3) All job duties identified within the categories shall be rated on a scale of one (1) to five (5), with five (5) representing superior performance.

(4) The final performance evaluation shall consist of a defined numerical rating. Point values for the overall performance rating shall be:

(a) Outstanding: 450 to 500 points;

(b) Highly effective: 350 to 449 points;

(c) Good: 250 to 349 points;

(d) Needs Improvement: 150 to 249 points; or

(e) Unacceptable: less than 150 points.

(5) Unresolved disagreements on ratings or any aspect of the performance evaluation shall be reviewed through the reconsideration process established in Section 7 of this administrative regulation.

(6) Signatures of the evaluator, employee, and next line supervisor shall be required on the final evaluation.

(a) The next line supervisor shall sign the evaluation after it is completed, signed, and dated by the evaluator and the employee.

(b) For the purpose of evaluating or managing the performance of the evaluator, the next line supervisor's signature shall certify that he or she is aware of the evaluation and has reviewed it.[~~(c) Exceptions to the requirements established in this subsection may be requested by the appointing authority and shall be subject to the approval of the Secretary of Personnel.~~]

Section 6. Performance Incentives. Annual leave shall be awarded as a performance incentive at the following rates:

(1) Two (2) workdays, not to exceed sixteen (16) hours, for an "Outstanding" rating; or

(2) One (1) workday, not to exceed eight (8) hours, for a "Highly Effective" rating.

Section 7. Reconsideration and Appeal Process. (1) Within five (5) working days of a performance evaluation, an employee may request initial reconsideration of the performance evaluation by the evaluator.

(2) Within five (5) working days of the receipt of the request for reconsideration, the initial reconsideration shall be conducted by the evaluator[~~shall respond to the request in writing~~].

(3) If the employee refuses to sign the form in the employee response section, the evaluation shall not be eligible for reconsideration.

(4) Within five (5) working days after the initial reconsideration by the evaluator, an employee may submit a written request for reconsideration of the evaluation by the next line supervisor. If neither the evaluator nor the next line supervisor responds to the request for reconsideration in the designated time period, the employee may submit a written request to the appointing authority for response to the request for reconsideration and compliance with this section.

(5) The next line supervisor shall:

(a) Obtain written statements from both the employee and the evaluator; or

(b) Meet individually with the employee and the evaluator.

(6) The next line supervisor shall inform both the employee and evaluator in writing of the decision no later than fifteen (15) working days after receipt of the employee's request.

(7) Within sixty (60) calendar days after an employee has received the written decision from the next line supervisor, the employee who has complied with this administrative regulation may appeal a final evaluation which has an overall rating in either of the two (2) lowest overall ratings to the Personnel Board.

Section 8. Evaluation-based Agency Action. If an employee receives an overall rating of unacceptable, the agency shall:

(1) Demote the employee to a position commensurate with the employee's skills and abilities; or

(2) Terminate the employee.

Section 9. ***(1)*** Except as requested ***in writing*** by the appointing authority and authorized by the Secretary of Personnel, all agencies shall comply with the provisions of this administrative regulation. ***An evaluator shall complete required performance planning, interim reviews, and annual evaluations for each eligible employee. If the Secretary of Personnel approves an exception, written justification for the decision shall be placed in the employee's personnel file.***

(2) The exception decision shall be sent, in writing, to the appointing authority within ten (10) days of receiving the request for exception.

Section 10. Incorporation by Reference. (1) The "Annual Employee Performance Evaluation", March 2015[~~November 2011~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, Third Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: March 13, 2015

FILED WITH LRC: March 13, 2015 at noon

CONTACT PERSON: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

PERSONNEL CABINET
(As Amended at ARRS, May 5, 2015)

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

RELATES TO: KRS 18A.030, 18A.110, ***18A.140, 18A.145,*** 18A.195, ***18A.990, 61.373,*** 61.394, 344.030, ***29 C.F.R. 825, 29 U.S.C. 8,*** 29 U.S.C. 201 – 219, 2601 – 2654

STATUTORY AUTHORITY: KRS 18A.030***(2)(b)***, 18A.110***(2), (7)(g)***, 18A.155,***[344.030,]*** 29 U.S.C. 201 – 219, 2601 – 2654

NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 18A.030(2)(b) requires the Secretary of Personnel to promulgate administrative regulations, consistent with KRS Chapter 18A and federal standards, for the administration of a personnel system. KRS 18A.110(2) and 18A.155 require the secretary to promulgate administrative regulations for the unclassified service.*** KRS 18A.110(7)(g) requires the secretary***[of Personnel]***, with the approval of the Governor, to promulgate administrative regulations to govern annual leave, sick leave, special leaves of absence, and other conditions of leave. This administrative regulation establishes the leave requirements for unclassified employees.

Section 1. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180-239 months	1 3/4 days per month; 21 per year
240 months & over	2 leave days per month; 24 per year

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regular hours per month to accrue annual leave.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been rehired, except as provided in paragraph (f) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(f) An employee, who has retired from a position covered by a state retirement system, is receiving retirement benefits, and returns to state service, shall not receive credit for months of service prior to retirement.

(g) A part-time or interim employee shall not be entitled to annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of hours or one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward pursuant to this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave.

(e) An employee shall be able to use annual leave for an absence on a regularly scheduled workday.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance pursuant to[~~the provisions of~~] KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous month.

(h) An employee who is eligible for state contributions for health benefits pursuant to[~~the provisions of~~] KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous pay period.

(i) Annual leave may be carried from one (1) calendar year to the next. If annual leave is carried from one (1) calendar year to the next, leave shall be calculated as established in the following table:

Months of Service	Maximum Amount	37.5 Hour Week Equivalent	40 Hour Week Equivalent
0-59	30 workdays	225 hours	240 hours
60-119 months	37 workdays	277.50 hours	296 hours
120-179 months	45 workdays	337.50 hours	360 hours
180-239 months	52 workdays	390 hours	416 hours
240 months and over	60 workdays	450 hours	480 hours

(j) Leave in excess of the maximum amounts specified in paragraph (i) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(k) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a)1. If an employee is separated by proper resignation or retirement, the employee[~~he~~] shall be paid in a lump sum for accumulated annual leave.

2. The accumulated annual leave for which the employee[~~he~~] is paid shall not exceed the amounts established by subsection (2)(i)

of this section.

3. Following payment of annual leave at resignation, any remaining annual leave after the payment of the maximum shall:

a. Not be paid to the employee or converted to sick leave; and

b. Be removed from the balance.

(b) If an employee is laid off, the employee[~~he~~] shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or resigns or is terminated one (1) day and is employed the next workday, shall retain the[~~his~~] accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual leave.

(e) Upon the death of an employee, the employee's[~~his~~] estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(f) An employee may request in writing that[~~his~~] accumulated annual leave not be paid upon resignation, and that all or part of the amount of[~~his~~] accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. The employee[~~He~~] resigns, or is laid off[~~from his position~~], because of an approved plan of privatization of the services[~~he~~] performed; and

2. The successor employer has agreed to credit the employee[~~him~~] with an equal amount of annual leave.

Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) The total service shall be verified before the leave shall be credited to the employee's record.

(h) A former employee who has been rehired, except as provided in paragraph (i) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(i) A former employee, other than a former employee receiving benefits pursuant to a state retirement system, who is appointed to an unclassified position, shall be credited with the unused sick leave balance upon separation.

(j) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave.

(a) An appointing authority shall grant or may require the use of sick leave with or without pay if an employee:

1. Is unable to work due to medical, dental, or optical examination or treatment;

2. Is disabled by illness or injury. If requested by the appointing authority, the employee shall provide a statement from an appropriate medical health professional certifying the employee's inability to perform the employee's[~~his~~] duties for the days or hours sick leave is requested. If requested by the appointing authority, the employee shall provide a certificate from an appropriate medical health professional certifying the employee's fitness to return to duty before the employee is permitted to return to work;

3. Is required to care for or transport a member of the employee's[~~his~~] immediate family in need of medical attention for a reasonable period of time. If requested by the appointing authority, the employee shall provide a statement from an appropriate medical health professional certifying the employee's need to care for a family member; or

4. Would jeopardize the health of the employee[~~himself~~] or others at the employee's[~~his~~] work station because of a contagious disease or demonstration of behavior that might endanger the employee[~~himself~~] or others.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to the employee's[~~his~~] former position.

(c) An employee eligible for state contributions for life insurance pursuant to the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than holiday or education leave, during any part of the previous month.

(d) An employee who is eligible for state contributions for health benefits pursuant to the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous pay period.

(e) Sick leave shall be used in increments of hours or one-quarter (1/4) hours.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain[~~his~~] accumulated sick leave in the receiving agency.

(g) An employee shall be credited for accumulated sick leave if[~~he is~~] separated by proper resignation, layoff, or retirement.

(h) The duration of an interim employee's appointment shall not be extended by the use or approval for sick leave with or without pay.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay, without a change in the employee's personnel status, for the duration of an employee's impairment by injury or illness, if:

1. The leave does not exceed thirty (30) continuous calendar days; and

2. The employee has used or been paid for all accumulated annual, sick, and compensatory leave unless the employee[~~he~~] has requested to retain up to ten (10) days of accumulated sick leave.

(b) An appointing authority shall grant sick leave without pay to an employee who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family, or for the duration of the employee's impairment by illness or injury, for a period not to exceed thirty (30) working days.

(4) Sick leave by personnel action.

(a) If the duration of an employee's impairment by illness or injury exceeds the sick leave without pay allotment of thirty (30) calendar days, including holidays, the appointing authority shall place the employee on sick leave without pay by personnel action.

(b) The appointing authority shall notify the employee in writing that the employee is being placed on sick leave by personnel action.

(c) Sick leave by personnel action shall not exceed one (1) year.

(d) If requested by the appointing authority, the employee shall provide statements during the year from an appropriate medical health professional attesting to the employee's continued inability to perform the essential functions of the employee's[~~his~~] duties with or without reasonable accommodation.

(e) If an employee has given notice of the employee's[~~his~~] ability to resume [~~his~~] duties following sick leave by personnel action, the appointing authority shall return the employee to the original position or to a position for which the employee[~~he~~] is qualified and which[~~that~~] resembles the[~~his~~] former position as closely as circumstances permit. The appointing authority shall notify the employee in writing of the following:

1. The effective date of the employee's return;

2. The position to which the employee is being returned; and

3. The employee's salary upon return to work.

(f) If reasonable accommodation is requested, the employee

shall:

1. Inform the employer; and

2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be deemed resigned if the employee[~~he~~]:

1. Has been on one (1) year continuous sick leave by personnel action;

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of leave;

3. Is unable to return to the employee's[~~his~~] former position;

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which the employee[~~he~~] is qualified and is capable of performing its essential functions with or without reasonable accommodation; and

5. Has not been placed by the appointing authority in a vacant position.

(h) Sick leave granted pursuant to this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who is deemed resigned pursuant to paragraph (g) of this subsection shall retain reinstatement privileges that were accrued during service in the classified service.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examinations, and for sick leave without pay.

(c) If the employee[~~he~~] is too ill to work, an employee shall notify the[~~his~~] immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination, or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 20 U.S.C. 2601 – 2654, and the federal regulations implementing the Act, 29 C.F.R. Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee has:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) An employee shall be entitled to a maximum of twelve (12) weeks of unpaid family and medical leave for the birth, placement, or adoption of the employee's child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory, or sick leave balance, upon the employee's request, the agency shall permit the employee to:

(a) Reserve ten (10) days of accumulated sick leave and be placed on FMLA leave; or

(b) Use accrued paid leave concurrently with FMLA leave[~~the agency shall not designate the leave as FMLA leave until:~~

~~(a) The employee's leave balance has been exhausted; or~~

~~(b) The employee requests to reserve ten (10) days of accumulated sick leave and be placed on unpaid FMLA leave~~].

Section 4. Court Leave. (1) An employee shall be entitled to court leave during the employee's[~~his~~] scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, administrative agency, or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror or a witness, unless the employee or a member of the employee's[~~his~~] family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during the employee's[~~his~~] normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of the employee's[~~his~~] assigned duties.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.

(b) An employee who is directed to work, or who requests and is authorized to work, in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. Chapter 8, ***KRS Chapter 337[~~the Kentucky Revised Statutes~~]***, and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 through 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. The election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of three (3) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next workweek following receipt of the election.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times the[~~his~~] regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" pursuant to the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of the[~~his~~] regular work schedule.

(e) Compensatory leave shall be accumulated or taken off in one-quarter (1/4) hour increments.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be:

1. 239.99 hours by an employee in a non policy-making position; or

2. 240 hours by an employee in a policy-making position.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain the[~~his~~] compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An appointing authority may require an employee who is not in a policy-making position and has accrued 200 hours of compensatory leave to take off work using compensatory leave in an amount sufficient to reduce the compensatory leave balance below 200 hours.

(c) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request payment[~~that he be paid~~] for fifty (50) hours at the[~~his~~] regular rate of pay. If the appointing authority or the[~~his~~] designee approves the payment, an employee's leave balance shall be reduced accordingly.

(d) An employee who is not in a policy-making position shall be paid for fifty (50) hours at the[~~his~~] regular hourly rate of pay, upon accumulating at the end of the pay period, 240 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(e) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, the employee[~~he~~] shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of compensatory time that is permitted.

(f) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(g) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of the employee's[~~his~~]:

1. Regular hourly rate of pay; or

2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the[~~Kentucky~~] National Guard shall be relieved from the[~~his~~] civil duties, to serve under order on training duty without loss of the[~~his~~] regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave, or leave without pay.

(4) If requested by the appointing authority, the employee shall provide a copy of the orders requiring the attendance of the employee before military leave is granted.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for the period of duty in accordance with KRS 61.373. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, four (4) hours, for the purpose of voting.

(2) An employee casting an absentee ballot shall record the leave on the day the employee's vote is cast. An employee shall be regularly scheduled to work on the day the vote is cast in order to receive the leave.

(3) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday.

(4)[~~(3)~~] The absence shall not be charged against leave.

(5)[~~(4)~~] An employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the times the polls are open, up to a maximum of four (4) hours.

Section 8. Funeral and Bereavement Leave. (1) Upon the approval of the appointing authority, an employee who has lost an immediate family member by death may utilize five (5)[~~three (3)~~] days of accrued sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof.

(2) An appointing authority may approve the use of additional sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof, at the request of the employee following the loss of an immediate family member.

(3) For purposes of funeral and bereavement leave, an immediate family member shall include the employee's spouse, parent, grandparent, child, brother, or sister, or the spouse of any of them, and may include other relatives of close association if approved by the appointing authority.

Section 9. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months or the conclusion of the administration in which the employee is serving, whichever comes first.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational, or business school for training in subjects that relate to the employee's work and will[~~shall~~] benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3)[~~(a)~~] If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of an allegation of employee misconduct.

(a)[~~(b)~~] Leave shall not exceed sixty (60) working days.

(b)[~~(c)~~] The employee shall be notified in writing by the appointing authority that the employee[~~he~~] is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(c)[~~(d)~~] If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files.

(d)[~~(e)~~] The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether the employee[~~he~~] has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes.

Section 10. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the[~~his~~] absence to the[~~his~~] supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provisions of the Fair Labor Standards Act, 29 U.S.C. Chapter 8; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be deemed resigned.

Section 11. Absences Due to Adverse Weather. (1) An employee, who is not designated for mandatory operations and chooses not to report to work or chooses to leave early ***if there are***[~~***in the event of***~~] adverse weather conditions**,** such as tornado, flood, blizzard, or ice storm, shall have the time of the[~~his~~] absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with subsections (3) and (4) of this section.

(2) An employee who is on prearranged annual, compensatory, or sick leave shall charge leave as originally requested.

(3) If operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee shall be given an

opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual or compensatory leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual or compensatory leave is available.

(b) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck.

(5) If catastrophic, life-threatening weather conditions occur, as created by a tornado, flood, ice storm, or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the provisions established in paragraphs (a) and (b) of this subsection shall apply.[~~an employee who is required to:~~]

(a) An employee who is required to evacuate or who would report to a location that has been shut down shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.[~~; and~~]

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act, 29 U.S.C. Chapter 8.

Section 12. Blood Donation Leave. (1) An employee who, during regular working hours, donates whole blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted pursuant to this section shall be used ***when the blood is donated.[~~at the time of the donation~~]*** unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave.

(4) An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

Section 13. Incorporation by Reference. (1) "Overtime Compensation Form", May 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TIM LONGMEYER, Secretary

APPROVED BY AGENCY: March 13, 2015

FILED WITH LRC: March 13, 2015 at noon

CONTACT PERSON: Dinah T. Bevington, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224.

PUBLIC PROTECTION CABINET
Office of Occupations and Professions
Board of Prosthetics, Orthotics, and Pedorthics
(As Amended at ARRS, May 5, 2015)

201 KAR 44:010. Fees.

RELATES TO: KRS 319B.030***, 319B.050, 319B.120***

STATUTORY AUTHORITY: KRS 319B.030(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.030(1)(f) requires the board to promulgate administrative regulations to carry out the provisions of KRS Chapter 319B. KRS 319B.030(1)(f) requires fees for applications, renewals and reinstatements, late renewals and applications for continuing education course approvals and duplicate licenses or replacements. This administrative regulation establishes those fees.

Section 1. Application Fees. The***[~~following~~]*** fees ***established in this section*** shall be paid for applications for the following licenses issued by the board***.[~~:~~]***

(1) The fee for an application as a licensed prosthetist, a licensed orthotist, or dual licensure as a licensed orthotist/prosthetist shall be a $100 nonrefundable application fee and $350[~~$250~~] for the initial license fee***.[~~; and~~]***

(2) The fee for application as a licensed pedorthist shall be a $100 nonrefundable application fee and $300[~~$200~~] for the initial license fee***.[~~; and~~]***

(3) The fee for application as a ***licensed orthotic[~~Certified~~]*** fitter shall be a $100 nonrefundable application fee and $250[~~$150~~] for the initial license fee.

(4) The board shall refund the initial license fee to an applicant who does not qualify or has been denied a license.

Section 2. Renewal and Reinstatement. The***[~~following~~]*** fees ***established in this section*** shall be paid for renewals and reinstatements for licenses issued by the board***.[~~:~~]***

(1) The renewal fee on or before July 1 for a licensed prosthetist, a licensed orthotist, or dual licensure as a licensed orthotist/prosthetist shall be $350[~~$250~~]***.[~~;~~]***

(2) The renewal fee on or before July 1 for a licensed pedorthist shall be $300[~~$200~~]***.[~~dollars; and~~]***

(3) The renewal fee on or before July 1 for a licensed orthotic fitter shall be $250[~~$150~~].

(4) The late renewal fee for all licenses during the grace period starting July 1 and ending January 1 shall be $600[~~$500~~], in addition to the initial license fee as set forth in Section 1 of this administrative regulation.

(5) The reinstatement fee after January 1 of a license suspended or revoked or for failure to submit the statement of compliance for the current year shall be $200[~~$100~~] in addition to the late renewal fee as set forth in subsection (4) above and in addition to the initial license fee in Section 1 of this administrative regulation.

Section 3. Duplicate or Replacement License Fee. The fee for a duplicate license shall be ten (10) dollars.

Section 4. Application for Continuing Education Course Approval. The application fee for continuing education course approval shall be fifty (50) dollars per event.

SIENNA NEWMAN, Chairperson

APPROVED BY AGENCY: February 25, 2015

FILED WITH LRC: March 12, 2015 at noon

CONTACT PERSON: J. Marcus Jones, Board Counsel, Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-6801.

LABOR CABINET
Department of Workplace Standards
(As Amended at ARRS, May 5, 2015)

803 KAR 1:035. Hearing procedure.

RELATES TO: KRS ***13B,*** 337.295, 337.310[~~337.020-337.405~~]

STATUTORY AUTHORITY: KRS ***13B.170,*** 337.295, 337.310

NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 13B.170 authorizes an agency to promulgate administrative regulations that are necessary to carry out the provisions of KRS Chapter 13B, regarding administrative hearings.*** KRS 337.310 authorizes appeal of orders and decisions issued or made by the Commissioner[~~requires the Executive Director~~] of Workplace Standards, Labor Cabinet[~~Department, to decide all questions of~~

~~fact arising~~] under KRS 337.020 to 337.405. KRS[~~Chapter 13A and~~] 337.295 authorizes the commissioner[~~executive director~~] to ***promulgate[issue]*** administrative regulations pertaining to these statutes.[~~The function of~~] This administrative regulation establishes[~~is to set up~~] the procedure to be followed by the Commissioner[~~Executive Director~~] of Workplace Standards in deciding the questions of fact as required by the statute and to insure that the parties to proceedings concerning alleged violations of the statutes are afforded a fair opportunity to present any and all relevant proof on the matter.

Section 1. Procedure. (1) The Commissioner[~~Executive Director~~] of Workplace Standards, or his authorized agent, shall investigate any complaint or routinely inspect records relating to an alleged violation of KRS 337.020 to 337.405.

(2)(a) ***The commissioner, or his authorized agent, shall evaluate all proof submitted and render tentative findings of fact*** if[~~Where~~]**:**

1.a. A settlement cannot be reached between the employer and employee**;** and

b.[if] An investigation reveals that questions of fact are in issue**;** or

2. The complaint or routine inspection gives the Commissioner of Workplace Standards[~~executive director~~], or his authorized agent, good cause to believe that factual issues need to be resolved***[, then the commissioner]***[~~executive director~~]***[, or his authorized agent, shall evaluate all proof submitted and render his tentative findings of fact]***.

(b) The proof to be evaluated by the commissioner[~~executive director~~], or his authorized agent, shall include[~~, but is not limited to~~]:

1. The findings of the investigator;

2.[~~,~~] Sworn affidavits;

3.[~~,~~] Contractual agreements;

4.[~~,~~] Payroll records;[~~,~~] and

5. Other evidence relating to an alleged violation of KRS 337.020 to 337.405.

(c) The commissioner shall cause the tentative findings of fact to be served upon the parties.

(d)1. Service shall be accomplished by mailing a copy of the tentative findings of fact to the party's registered agent for service of process via certified mail.

2. If the party does not have a registered agent for service of process, service of the tentative findings shall be accomplished by certified mail to the party's last known physical address or by personal service.

(3)(a) The party suffering adversely from these tentative findings of facts shall have fifteen (15) days from ***receipt of*** service[~~the issuance~~] of the findings to submit a petition for a fact-finding hearing to the commissioner[~~executive director~~].

(b) The petition shall contain:

1. A brief statement of the petitioner's grounds for believing the tentative findings of fact to be in error; and

2. Any affirmative defense to the findings.

(c) Failure to state the[~~such~~] grounds or defenses shall be cause for the commissioner[~~executive director~~], or his authorized agent, to deny the petitioner a hearing.

(d) ***If[The]*** commissioner[~~executive director~~], or his authorized agent, ***approves the hearing petition, then a hearing date shall be set[shall set a hearing date]*** in order to make final findings of fact concerning the alleged statutory violation.

(e) The parties shall be notified of the hearing date ***in accordance with KRS 13B.050[by return receipt mail at least fifteen (15) days prior to the hearing]***.

(f) If a petition for a fact-finding hearing is not sought or granted, then the tentative findings of fact shall become a final order fifteen (15) days after ***receipt of*** service[~~the issuance~~] of the tentative order.

(4) The commissioner[~~executive director~~], or his authorized agent, shall[~~may~~] conduct the hearing:

(a) In[~~either~~] the Frankfort office[~~or Louisville offices~~] of the Labor Cabinet; or

(b)[~~Department. However,~~]***[With unanimous consent of the parties and the commissioner]***[~~executive director~~]***[, or his authorized agent,]***[~~the hearing may be held~~] At a site in the Commonwealth mutually ***agreed upon by all[agreeable to]*** the parties and the commissioner[~~executive director~~], or his authorized agent.

(5) ***In accordance with KRS 337.310, the hearings shall comply[The hearings shall be conducted in accordance]*** with KRS Chapter 13B[~~not be governed by the rules of evidence prevailing in the courts of the Commonwealth. However, due regard will be had for generally accepted rules of administrative agency hearings in the Commonwealth. A written transcript of the hearing shall be made, unless the parties and the hearing officer agree that the hearing be video taped, in which event the video tape shall serve as record of the proceedings~~].

(6) ***The commissioner, or his authorized agent, shall follow the provisions of KRS 13B.120 in making a decision concerning a final order[Subsequent to the hearing, but within ninety (90)]***[~~thirty (30)~~]***[days of receipt of the hearing record and the recommended order, the Secretary of Labor]***[~~executive director~~]***[, or his authorized agent, shall evaluate the proof and shall:***

(a) Adopt the recommended order of the hearing officer as the agency's order;

(b) Reject or modify the recommended order; or

(c) Remand the matter to the hearing officer for further proceedings as appropriate][~~render his final findings of fact and order, unless otherwise agreed to by the parties~~].

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: January 29, 2015

FILED WITH LRC: January 29, 2015 at 3 p.m.

CONTACT PERSON: E.H. "Chip" Smith, IV, General Counsel, Kentucky Labor Cabinet, 1047 U.S. HWY 127 S, Frankfort, Kentucky 40601, phone 502-564-3281, fax 502-564-5484.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, May 5, 2015)

900 KAR 2:050. Transfer and discharge rights.

RELATES TO: KRS 216.525, 216.555. 216.557, 216.560***, 42 U.S.C. 1395, 1396***[~~194.030(12)(b)~~]

STATUTORY AUTHORITY: KRS 216.515(4),[~~216.525, 216.557, 216.560,~~] 42 C.F.R. ***483.204[483.12]***

NECESSITY, FUNCTION, AND CONFORMITY: 42 C.F.R. ***483.204[483.12]***[~~C.F.R.~~] requires that the state shall ***provide a [have in effect a fair and impartial decision making]*** process for appeals related to involuntary transfer and discharge. This administrative regulation ***establishes[sets forth]*** guidelines for this process for long-term care facilities, including[~~as licensed by 902 KAR 20:300 or those~~] long-term care facilities certified in accordance with 42 C.F.R. 483. This administrative regulation ***also establishes[sets forth]*** the requirements of the Kentucky Nursing Home Reform Act***, KRS Chapter 216,*** as it relates to residents' transfer and discharge rights.

Section 1. Definitions. (1) "Discharge" or "transfer" means:

(a) Relocation of a resident from a long-term care facility to a noninstitutional setting or another health care facility as defined by KRS Chapter 216B; or

(b) Any intrafacility relocation of a resident, except between beds within the same distinct Medicare or Medicaid certified or noncertified part of the facility.

(2) "Facility" means a long-term care facility as defined by KRS 216.510(1)***, except for[excluding]***[~~those facilities licensed as~~] family care homes licensed pursuant to 902 KAR 20:041.

(3) "Resident" means a resident of a facility or any legal representative or individual acting on behalf of the resident.

(4) "Transfer or discharge rights" means those rights of notification and appeal guaranteed in KRS 216.515(4) and (26),

and as outlined in this administrative regulation.

Section 2. Transfer and Discharge Rights. (1) Transfer and discharge requirements. The facility shall[~~must~~] permit each resident to remain in the facility, and ***shall*** not transfer or discharge the resident from the facility unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;[~~or~~]

(b) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;[~~or~~]

(c) The safety of individuals in the facility is endangered;[~~or~~]

(d) The health of individuals in the facility would otherwise be endangered;[~~or~~]

(e) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid**,** or state supplementation) a stay at the facility; or

(f) The facility ceases to operate.

(2) Documentation. Before a facility transfers or discharges a resident under any of the circumstances specified in subsection (1)(a) through[~~or~~] (e) of this section, the reasons for the[~~this~~] transfer or discharge shall be documented in the resident's clinical record. The documentation shall be made by:

(a) The resident's physician ***if[~~when~~]*** transfer or discharge is necessary under subsection (1)(a) or (b) of this section; and

(b) A physician ***if[~~when~~]*** transfer or discharge is necessary under subsection (1)(d) of this section.

(3) Notice before transfer. Before a facility transfers or discharges a resident, the facility shall:

(a) Notify the resident and, if known, a family member or legal representative of the resident, in writing, of the transfer or discharge and the reasons for the relocation in a language and manner they understand;

(b) Record the reasons in the resident's clinical record; and

(c) Include in the notice the items described in subsection (5) of this section.

(4) Timing of the notice.

(a) Except as[~~when~~] specified in paragraph (b) of this subsection, the notice of transfer or discharge required under subsection (3) of this section shall be made by the facility at least thirty (30) days before the resident is transferred or discharged.

(b) Notice may be made as soon as practicable before transfer or discharge ***if[~~when~~]***:

1. An immediate transfer or discharge is required by the resident's urgent medical needs, under subsection (1)(a) of this section; [~~or~~]

2. The resident's health improves sufficiently to allow a more immediate transfer or discharge, under subsection (1)(b) of this section;[~~or~~]

3. The safety of individuals in the facility would be endangered, under subsection (1)(c) of this section;[~~or~~]

4. The health of individuals in the facility would be endangered, under subsection (1)(d) of this section; or

5. The resident has not resided in the facility for thirty (30) days.

(5) Contents of the notice. The written notice specified in subsection (3) of this section shall include the following:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

(c) The location to which the resident is transferred or discharged;

(d) A statement that the resident has the right to appeal the action to the cabinet;

(e) The name, address**,** and telephone number of the state long-term care ombudsman; and

(f) For nursing facility residents with developmental disabilities, or who are mentally ill, the mailing address and telephone number of[~~the Department of~~] Kentucky Protection and Advocacy.

(6) Orientation for transfer or discharge. A facility shall[~~must~~] provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(7) Notice of bed-hold policy and readmission.

(a) Notice before transfer. Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility shall provide written information to the resident and a family member or legal representative that specifies the following:

1. The duration of the bed-hold policy, which shall be requested if available under the Medicaid state plan and provider agreement, during which a resident who receives Medicaid or has a pending application for Medicaid benefits[~~That for residents receiving or who have an application pending for Medicaid, that if available under the Medicaid state plan and provider agreement, bed-hold days shall be requested and the time period to the bed-hold policy under the Medicaid state plan during which the resident~~] is permitted to return and resume residence in the facility;

2. The facility's policies regarding bed-hold periods, which shall[~~must~~] be consistent with paragraph (c) of this subsection, permitting a resident to return; and

3. For residents who do not receive or do not have an application pending for Medicaid, the facility's established policy governing readmission.

(b) Notice upon transfer. Upon[~~At the time of~~] transfer of a resident to a hospital or for therapeutic leave, a long-term care facility shall provide written notice to the resident and a family member or legal representative, which specifies the duration of the bed-hold policy described in paragraph (a) of this subsection.

(c) Permitting resident to return to facility. A long-term care facility shall establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed-hold period under the Medicaid state plan, is notified and readmitted to the facility immediately upon the first availability of a bed in a semiprivate room if the resident:

1. Chooses to be readmitted;[~~and~~]

2. Requires the services provided by the facility; and

3. Is eligible for Medicaid nursing facility services and the facility is certified to participate in Title XVIII***, 42 U.S.C. 1395,*** or Title XIX***, 42 U.S.C. 1396,*** of the Social Security Act.

(8) Equal access to quality care. A facility shall[~~must~~] establish and maintain identical policies and practices regarding transfer, discharge, and the provision of service under the Medicaid state plan for all individuals regardless of source of payment.

Section 3. Appeals Rights. (1) A resident may appeal any discharge.

(2) A resident may appeal a transfer if he or she[~~when he~~] is transferred from:

(a) A certified bed into a noncertified bed; or

(b) A bed in a certified entity to a bed in an entity which is certified as a different provider.

(3) A resident has no appeal rights if he or she[~~when he~~] is moved from a certified bed into another certified bed of the same certification in the same facility.

(4) A resident, or any person acting on behalf of the resident, may request that the cabinet review any proposed transfer or discharge. The cabinet shall investigate the proposed[~~this~~] transfer or discharge to ascertain whether there has been a violation of the resident's transfer or discharge rights.

(5)(a) A resident may appeal any discharge or appealable transfer to the cabinet.

(b) The resident shall[~~must~~] inform the cabinet in writing of his or her intent to appeal within fifteen (15) days from the resident's receipt of notice of the facility's intent to transfer or discharge.

(c) Hearing procedures for appeals ***shall be followed, as established in[~~are set forth at~~]*** 900 KAR 2:060.

(6) Penalties. The cabinet shall enforce the provision of this administrative regulation pursuant to KRS 216.555, 216.557 and 216.560.

MARYELLEN B. MYNEAR, Inspector General
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: March 12, 2015

FILED WITH LRC: March 13, 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(As Amended at ARRS, May 5, 2015)

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)***[~~***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; ***or***

(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)[~~1.~~] 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**:**

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; 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) ***or (c)*** 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:

1.[~~a.~~] Case; and

2.[~~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. ***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 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. ***(1)*** The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(a)[~~(1)~~] 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 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", ***May 2015[~~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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, May 5, 2015)

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 ***subsection[~~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.[~~2.~~] Eligible for reimbursement by Kentucky Medicaid.

(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(4)[~~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.**[~~(1)~~]** 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 ***16, 2015[~~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 1:671.~~]

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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, May 5, 2015)

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

RELATES TO: KRS 205.520, 42 C.F.R. 447.53

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program. KRS 205.520(3) empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes provisions related to Medicaid Program[~~the~~] coverage of organ transplants for Medicaid recipients and related to Department for Medicaid Services' reimbursement regarding organ transplants provided to Medicaid recipients who are not enrolled with a managed care organization.

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

(2) "Emergency" means that a condition or situation requires an emergency service pursuant to 42 C.F.R. 438.114(a).

(3) "Enrollee" means a recipient who is enrolled with a managed care organization.

(4) "Experimental" means that a procedure has not previously been proven effective by the U.S. Food and Drug Administration in treating a patient's health condition.

(5) "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.

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

(7) "Nonemergency" means that a condition or situation does not require an emergency service pursuant to 42 C.F.R. 438.114(a).

(8) "Recipient" is defined by KRS 205.8451(9).

Section 2. Prior Authorization. (1) Prior to coverage of an organ transplant to a recipient who is not an enrollee, the transplant shall have been determined by the department to be:

(a) Medically necessary; and

(b) Clinically appropriate pursuant to the criteria established in 907 KAR 3:130.

(2) The requirements established in subsection (1) of this section shall not apply to an emergency service.

Section 3. General Coverage Criteria. A covered organ transplant shall meet the criteria established in this section. (1) A transplant surgeon's opinion shall conclude that failure to perform the transplant would create a life-threatening situation.

(2) The patient's prognosis shall indicate that there is a reasonable expectation the transplant will be successful and result in prolonged life of quality and dignity.

(3) The hospital where the transplant will take place shall:

(a) Have a staffed and functioning unit designed for and accustomed to performing the planned organ transplant;

(b) Be accredited by the Joint Commission on Accreditation of Healthcare Organizations; and

(c) Be in good standing:

1. If it is an in-state hospital, with the Cabinet for Health and Family Services; or

2. If it is an out-of-state hospital, with that state's licensure authority.

(4) The physician performing the transplant shall be recognized as competent by the medical community.

Section 4. Reimbursement for Organ Transplants. For an organ transplant provided by a:

(1) Hospital to a recipient who is not an enrollee, the department shall reimburse as established in:

(a) 907 KAR 10:825 through September 30, 2015; or

(b) 907 KAR ***10:830[~~10:835~~]*** effective October 1, 2015; or

(2) Physician to a recipient who is not an enrollee, the department shall reimburse in accordance with 907 KAR 3:010.

Section 5. Noncovered Services. The department shall not approve a request for an organ transplant if the requested transplant:

(1) Fails to meet the criteria of Sections 2 or 3 of this administrative regulation; or

(2) Is experimental in nature.

Section 6. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse for an organ transplant according to this administrative regulation.

LISA LEE, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: March 10, 2015

FILED WITH LRC: March 13, 2015

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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and Intellectual Disabilities
Division for Behavioral Health
(As Amended at ARRS, May 5, 2015)

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)~~].

(8) "Training curriculum" means a total package of learning activities designed to achieve the goals of the training program with:

(a) The objective that trainees will acquire the specific knowledge and skills (competencies) needed to perform the duties of an adult peer support specialist; and

(b) Four (4) primary components, including:

1. Content or information to be transmitted, including:

a. Theoretical framework;

b. Conceptual rationale;

c. Best standards of practice;

d. Application to direct practice; and

e. Congruence between and within sections;

2. Organization of the curriculum, including structure, format, and sequencing, incorporating:

a. Concordance with the natural learning process;

b. Design of each section linked to specific learning

objectives, with adequate time provided for each;

c. Linkages between sections;

d. Knowledge and skills that are conceptually related, or that are performed together on the job, are taught together; and

e. Retention and understanding facilitated by principles of sequencing (from simple to complex, from the universal to the exception, and from fundamental to more refined applications) and repetition;

3. Training methods appropriate to adult learners in an applied setting, in each section or topic area, including:

a. Discussion to promote exploration and understanding of the topic;

b. Experiential exercises or simulations; and

c. Presentation of the same concepts using a variety of learning strategies (for example, hearing, seeing, modeling, and then practicing) to ensure that trainees with different learning styles can assimilate the knowledge; and

4. Evaluation methods, including:

a. Trainee knowledge assessment through testing, with achievement of a passing aggregate assessment score of at least seventy (70) percent; and

b. Trainee performance reviews of trainers.

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) ***The department shall, within twenty (20) business days,*****[~~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)~~] ***The department shall*** maintain a record of all approved adult peer support training providers on the department's Web site.***[;]***

(3)[~~(4)~~] ***Providers of approved curricula shall notify the department within twenty (20) business days of a trainee's successful completion of an adult peer support training.***

(4) The department shall 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 *(5)[(4)]* of this section and Section 5 of this administrative regulation.*[; and]***

***(5)[(4)]* The department shall review all requests to waive the training requirement and *shall, within twenty (20) business days[~~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 of**[~~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 *training[~~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 ***shall, within twenty (20) business days[~~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 ***therapist[~~therapy~~]*** associate**[~~working in a CMHC~~]**;

(p) Professional equivalent working within a CMHC;

(q) **Licensed *clinical[~~certified~~]* alcohol *and* drug counselor;**

(r) Licensed *clinical[~~certified~~]* alcohol *and* 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 **of[~~for~~]** 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and Intellectual Disabilities
Division for Behavioral Health
(As Amended at ARRS, May 5, 2015)

908 KAR 2:230. Kentucky family peer support specialist.

RELATES TO: KRS 200.505[~~12.455, 194A.030, 200.501, 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.

(2)[(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.

(10) "Training curriculum" means a total package of learning activities designed to achieve the goals of the training program with:

(a) The objective that trainees will acquire the specific knowledge and skills (competencies) needed to perform the duties of a Kentucky peer support specialist; and

(b) Four (4) primary components, including:

1. Content or information to be transmitted, including:

a. Theoretical framework;

b. Conceptual rationale;

c. Best standards of practice;

d. Application to direct practice; and

e. Congruence between and within sections;

2. Organization of the curriculum, including structure, format, and sequencing, incorporating:

a. Concordance with the natural learning process;

b. Design of each section linked to specific learning objectives, with adequate time provided for each;

c. Linkages between sections;

d. Knowledge and skills that are conceptually related, or that are performed together on the job, are taught together; and

e. Retention and understanding facilitated by principles of sequencing (from simple to complex, from the universal to the exception, and from fundamental to more refined applications) and repetition;

3. Training methods appropriate to adult learners in an applied setting, in each section or topic area, including:

a. Discussion to promote exploration and understanding of the topic;

b. Experiential exercises or simulations; and

c. Presentation of the same concepts using a variety of learning strategies (for example, hearing, seeing, modeling, and then practicing) to ensure that trainees with different learning styles can assimilate the knowledge; and

4. Evaluation methods, including:

a. Trainee knowledge assessment through testing, with achievement of a passing aggregate assessment score of at least seventy (70) percent; and

b. Trainee performance reviews of trainers.

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 ***a[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) ***The department shall, within twenty (20) business days,*** approve ***or deny*** **a[~~the~~]** KFLA training based on a standard **fifteen (15) hour *training*** curriculum ***that is submitted to the department using[~~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) ***The department shall*** 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) ***The department shall, within twenty (20) business days,*** approve ***or deny*** **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 ***training*** 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 ***a*** 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) ***Providers of approved KFPSS and KFLAA curricula shall notify the department within twenty (20) business days of a trainee's successful completion of a training program.***

(5) The department shall 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 *(6)[~~(5)~~]* of this section and Section 5 of this administrative regulation.***[~~; and~~]***

***(6)[~~(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 *training completion or waiver receipt[~~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)[~~(c) 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 ***shall, within twenty (20) business days[~~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 ***therapist[~~therapy~~]*[~~therapist~~]** associate**[~~working in a Community Mental Health Center~~]**;

(p) Professional equivalent working in a ***regional*** community mental health center;

(q) **Licensed *clinical[~~certified~~]* alcohol *and* drug counselor;**

(r) Licensed *clinical[~~certified~~]* alcohol drug *and* counselor associate;

(s) Certified alcohol and drug counselor; or

(t)[~~(r)~~] 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and Intellectual Disabilities
Division for Behavioral Health
(As Amended at ARRS, May 5, 2015)

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 **a[~~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; *and[~~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 ***in a behavioral science as defined in subsection (3) of this section[~~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 DBHDID)~~]**, per month.

(5)[~~(4)~~] "Certification" means successful completion of the training requirements in this administrative regulation as documented by ***notice[~~the receipt of a certificate~~]*** of ***successful*** training completion ***submitted to the department from the training provider***.

(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~~]** ***must[~~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 (DBHDID).

(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.~~

~~(11)~~] "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 ***in accordance with Section 2 of this administrative regulation***;

(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)[~~(16)~~] "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.

(18) "Training curriculum" means a total package of learning activities designed to achieve the goals of the training program with:

(a) The objective that trainees will acquire the specific knowledge and skills (competencies) needed to perform the duties of a targeted case manager; and

(b) Four (4) primary components, including:

1. Content or information to be transmitted, including:

a. Theoretical framework;

b. Conceptual rationale;

c. Best standards of practice;

d. Application to direct practice; and

e. Congruence between and within sections;

2. Organization of the curriculum, including structure, format, and sequencing, incorporating:

a. Concordance with the natural learning process;

b. Design of each section linked to specific learning objectives, with adequate time provided for each;

c. Linkages between sections;

d. Knowledge and skills that are conceptually related, or that are performed together on the job, are taught together; and

e. Retention and understanding facilitated by principles of sequencing (from simple to complex, from the universal to the exception, and from fundamental to more refined applications) and repetition;

3. Training methods appropriate to adult learners in an applied setting, in each section or topic area, including:

a. Discussion to promote exploration and understanding of the topic;

b. Experiential exercises or simulations; and

c. Presentation of the same concepts using a variety of learning strategies (for example, hearing, seeing, modeling, and then practicing) to ensure that trainees with different learning styles can assimilate the knowledge; and

4. Evaluation methods, including:

a. Trainee knowledge assessment through testing, with achievement of a passing aggregate assessment score of at least seventy (70) percent; and

b. Trainee performance reviews of trainers.

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)***1.*** Possess a bachelor of arts or science degree in a behavioral science;

2.[~~(b)~~] **Be a certified alcohol and drug counselor who has a bachelor of arts or science degree;**

3.[~~(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**

4.[~~(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;**

(b)[~~(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;

(c)[~~(f)~~][~~(c) Have~~] Successfully **complete a**[~~completed the~~] department approved targeted case management training within six (6) months of employment as a targeted case manager; and

(d)[~~(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 ***condition[~~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 ***condition[~~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, ***excluding a client receiving[~~with the exception of~~]*** **mobile crisis services, crisis intervention services,** ***or[~~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 ***established by this section.[~~:~~]***

(a) The core components of the targeted case management ***training*** 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.

(c) Providers of approved training curricula shall notify the department within twenty (20) business days of a trainee's successful completion of a targeted case manager training.

(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) ***Within twenty (20) business days,*** 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 *training* 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
(As Amended at ARRS, May 5, 2015)

910 KAR 1:140. Appeal procedures[~~Hearing procedures for area agency on aging contractor selection actions~~].

RELATES TO: KRS Chapter 13B, 205.201, 205.204, 205.460-205.465, 42 U.S.C. ***3021-3030s-2[~~3021-30302-2~~]***, 45 C.F.R. 74 App A, 1321.35 [~~42 U.S.C. 3027(a)(5), 45 C.F.R. 1321~~]

STATUTORY AUTHORITY: KRS 13B.170, 194A.050(1), 42 U.S.C. ***3025(b)(5)(C)(i)[~~3025(b)(5)(c)(i)~~]***, 3026(f)(2)(B), 42 U.S.C. 3027(a)(5)[~~194A.050, 205.204, 42 U.S.C. 3027(a)(5)~~]

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 3027(a)(5) requires that the department afford an opportunity for a hearing upon request to providers and applicants who provide services under 42 U.S.C. 3021-3030s-2, Title III of the Older Americans Act of 1965, as amended in 2006 (Public Law 109-365). KRS 13B.170 authorizes the cabinet to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 13B. This administrative regulation establishes the department's appeals procedures.

Section 1. Definitions.

(1) "Area Agency on Aging and Independent Living" or "AAAIL" means an area agency on aging as defined by 42 U.S.C. 3002(6).

(2) "Area plan" means a plan submitted by an AAAIL to the department that releases funds under contract for the delivery of service within a planning and service area.

(3) "Assistant secretary" means the Assistant Secretary for Administration on Community Living as defined by 42 U.S.C. 3002(7).

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

(5) "Department" means the Department for Aging and Independent Living.

(6) "Department contracting agency" means an agency contracting directly with the department to administer department programs and services not affiliated with 42 U.S.C. ***3021-3030s-2[~~30021-3030s-2~~]***, Title III of the Older Americans Act.

(7) "District" is defined by KRS 205.455(4).

(8) "Local administrative review" means the process for consultation and review of a protest or complaint as defined in subsection (10) of this section.

(9) "Planning and service area" or "PSA" means the multicounty geographical entity in which a given AAAIL is responsible for the delivery of aging services.

(10) "Protest" or "complaint" means a written objection by:

(a) An applicant or provider to a proposed award or award of contract denied by an AAAIL;

(b) A provider to an AAAIL's decision to terminate or not renew its contract to provide services;

(c) An AAAIL to the adverse actions specified in Section 3(1) of this administrative regulation;

(d) A client of a provider or AAAIL in receipt of or non-receipt of services; or

(e) A client in receipt of or non-receipt of services administered directly by the department.

(11) "Provider" means a person or entity that is awarded a contract from an AAAIL to provide services under an approved area plan.

(12) "Receipt of notice" means the date notice is received.

(13) "RFP file" means those documents that are maintained regarding a particular procurement including:

(a) Request for proposal;

(b) Newspaper advertisement;

(c) Proposal received in response to the RFP;

(d) Correspondence pertaining to the RFP;

(e) Review by the AAAIL;

(f) Rating or scoring and selection documents;

(g) Notice of award; and

(h) Contract.

(14) "Secretary" is defined by KRS 194A.005(2).

Section 2. Local Administrative and State Hearing Procedures for AAAIL Contractor Selection. (1)(a) An AAAIL shall send written notice to an applicant or provider for contractor selection by registered or certified mail within seven (7) calendar days of the AAAIL's decision which:

1. Denies the applicant or provider its request to a proposed award or award of contract; or

2. Terminates or does not renew the provider's contract to provide a service.

(b) The notice shall specify:

1. The reason for the adverse action;

2. That the provider or applicant may file with the AAAIL a written protest or complaint within ten (10) calendar days from receipt of notice; and

3. That failure to file the protest or complaint within the ten (10) calendar days shall constitute a waiver of opportunity for a state administrative hearing.

(2)(a) An AAAIL shall develop and submit written local administrative review procedures for contractor selection to the department for approval.

(b) The procedures shall provide that:

1. The district shall not proceed further with the solicitation, award, or termination during the pendency of a local administrative review for contractor selection, except under a contingency plan approved by the department;

2. A request for a state administrative hearing shall not be accepted until all administrative remedies have been exhausted at the local level;

3. The applicant or provider shall have an opportunity to review pertinent evidence upon which the adverse action was based including competing proposals and scoring sheets;

4. A request for reconsideration of an award shall state in writing why the protest is filed and the factual circumstances and issues to be considered during the review;

5. A local administrative review for the applicant or provider shall include the following:

a. An opportunity for the applicant or provider to appear in person before an individual or a group of three (3) persons who can render an impartial decision;

b. An opportunity to present witnesses and documentary evidence;

c. An opportunity to be represented by counsel;

d. An opportunity to cross-examine witnesses; and

e. A written impartial decision describing:

(i) The reasons for the decision;

(ii) The evidence on which the decision is based; and

(iii) A statement explaining the right to request a state administrative hearing if the protest or complaint is not resolved at the local administrative review;

6. An AAAIL shall:

a. Complete a local administrative review for the applicant or provider no later than twenty (20) calendar days after receipt of the applicant's or provider's written protest or complaint; and

b. Within seven (7) calendar days of receipt of the protest or complaint, send a written notice to the applicant or provider by certified mail return receipt requested that specifies:

(i) The date, time, and place for the review; and

(ii) A statement that failure to attend the review shall constitute a waiver of opportunity for a state administrative hearing;

7. If the protest or complaint is not resolved and all administrative remedies have been exhausted, the AAAIL shall send a written response by certified mail return receipt requested to the applicant or provider within seven (7) calendar days of finalizing the local administrative review that includes:

a. The AAAIL's findings and determinations on the issues raised in the protest or complaint; and

b. A statement of the right to request a state administrative hearing with the cabinet; and

8. An AAAIL shall, within ten (10) calendar days of finalizing the review, forward a complete copy of the local administrative review and RFP file relating to a particular procurement to the department.

(3) An applicant or provider may request a state administrative hearing in writing to the department on one (1) or more of the following grounds:

(a) The award does not comply with the applicable request for proposal;

(b) The local administrative review does not comply with the approved procedures of the AAAIL; or

(c) Denial by the AAAIL in whole or in a substantial part of an application to provide services or the AAAIL decision to terminate or not renew the contract to provide services is:

1. Arbitrary or capricious;

2. An abuse of discretion;

3. Biased;

4. The result of a conflict of interest;

5. Not based upon substantial evidence; or

6. Not in compliance with the terms of the contract.

(4) The written request for a state administrative hearing by an applicant or provider shall:

(a) Set forth the grounds and their alleged factual basis;

(b) Be mailed to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621;

(c) Be postmarked not later than thirty (30) calendar days from receipt of the AAAIL's local administrative review findings and determinations; and

(d) Be copied and mailed to the AAAIL that provided the local administrative review.

(5) Failure of the applicant or provider to comply with procedures provided in subsection (4) of this section shall constitute a forfeiture of the opportunity for a state administrative hearing, and the request shall be returned to the applicant or provider with a written explanation.

(6) The department may waive its timeliness requirements provided in subsection (4)(c) of this section and shall notify the parties of the reason for the waiver upon:

(a) Receipt of a written request from a party to waive the timeliness requirements and a determination that good cause or exigent circumstances exist; or

(b) Determination that a waiver is in the best interest of the department.

(7) The department may expedite scheduling and notify the parties in writing of the reason upon determination that:

(a) A reduction in the time frame is in the best interest of the department; or

(b) The rights of the parties at the state administrative hearing are not prejudiced by the reduction.

(8)(a) Upon receipt of the applicant's or provider's request for a state administrative hearing, the department shall determine whether the matter is subject to review on the grounds specified in subsection (3) of this section.

(b) If the matter is not specific to subsection (3) of this section, the department shall inform the applicant or provider in writing by certified mail return receipt requested, with a copy to the AAAIL, within ten (10) calendar days of receipt of the request.

(c) If the matter is specific to subsection (3) of this section, the department shall submit the applicant's or provider's request to the cabinet's Administrative Hearings Branch within three (3) calendar days of its decision.

(9) The procedures for a state administrative hearing shall be in accordance with KRS Chapter 13B.

(10) The final decision of the secretary shall be based on the record of the hearing and may direct that appropriate action be

taken including:

(a) Affirming the action of the AAAIL;

(b) Directing that the award be made to the next most advantageous proposal, taking into consideration price and the evaluation factors set forth in the RFP;

(c) Requiring the AAAIL to re-advertise its RFP; or

(d) Reversing the decision and awarding the contract to the appellant.

(11) The department may approve a contingency plan for delivery of services while the AAAIL takes action to conform to the decision.

(12) If the applicant or provider, AAAIL, department, and other interested parties negotiate a written agreement that resolves the issue which led to the request for a hearing, the department may terminate a formal hearing.

(13) Pursuant to KRS 13B.140(1), an applicant or provider may appeal a final decision to the circuit court within thirty (30) days after the final order of the secretary is mailed or delivered by personal service to the applicant or provider.

Section 3. Hearing Procedures for an AAAIL. (1) The department shall provide an opportunity for a state administrative hearing to an AAAIL if the department proposes the following adverse actions:

(a) Disapproves the AAAIL's area plan or plan amendment as specified in 45 C.F.R. 1321.35(a)(2), except as set forth in 45 C.F.R. 74, App A;

(b) Withdraws the AAAIL's designation as provided in 45 C.F.R. 1321.35(a) or initiates an action outlined in 42 U.S.C. 3025(b)(5)(C)(i);

(c) Denies an application for designation as a planning and service area under 45 C.F.R. 1321.29(b); or

(d) Denies or reduces the AAAIL's payment pursuant to 42 U.S.C. 3026(f)(2)(B).

(2)(a) The department shall send a written notice to the AAAIL by registered or certified mail within seven (7) calendar days of determination of the adverse action.

(b) The notice shall specify:

1. The reasons for the adverse action;

2. A statement of the right to request a state administrative hearing with the cabinet within ten (10) calendar days from receipt of notice; and

3. That failure to file the request within the ten (10) calendar days constitutes a waiver of opportunity for a state administrative hearing.

(3) An AAAIL's written request for a state administrative hearing shall:

(a) Specify the reasons for disputing the department action; and

(b) Be mailed to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(4)(a) Upon receipt of the AAAIL's written request, the department shall determine if the AAAIL's request is subject to review according to the adverse actions outlined in subsection (1) of this section.

(b) If the matter is not applicable to subsection (1) of this section, the department shall inform the AAAIL in writing within ten (10) calendar days of receipt of the request.

(c) If the matter is specific to subsection (1) of this section, the department shall submit the AAAIL's request to the cabinet's administrative hearings branch within three (3) calendar days of its decision.

(5) The procedures for a state administrative hearing shall be in accordance with KRS Chapter 13B.

(6) Final decision shall be rendered by the secretary.

(7) An AAAIL may appeal a final decision to the circuit court within thirty (30) days after the final order of the cabinet is mailed or delivered by personal service to the AAAIL pursuant to KRS 13B.140(1).

(8) If the applicant or provider, AAAIL, department, and other interested parties negotiate a written agreement that resolves the issue which led to the request for a hearing, the department may terminate a formal hearing.

(9) After due process is provided, an AAAIL may bring an appeal to the Assistant Secretary of the Administration for Community Living pursuant to 42 U.S.C. ***3025(b)(5)(C)(iii)[~~3025(5)(c)(iii)~~]***.

Section 4. Hearing Procedures for a Department Contracting Agency. An opportunity for a state administrative hearing for a department contracting agency shall be in accordance with KRS Chapter 13B.

Section 5. Hearing Procedures for a Provider's Client or Applicant Services. (1) A provider shall:

(a) Have written procedures for filing a grievance approved by the AAAIL for a provider's client or applicant; and

(b) Ensure the client or applicant is notified of the provider's policies.

(2) A client or applicant for services may request an administrative review with the AAAIL to resolve the complaint.

(3) The AAAIL shall:

(a) Conduct and complete a local administrative review with the client or applicant no later than twenty (20) calendar days after receipt of the client's or applicant's written protest or complaint; and

(b) Notify the client or applicant within three (3) calendar days of receipt of the client's or applicant's protest or complaint that specifies:

1. The date, time, and place for a local administrative review; and

2. Failure to participate in the review shall constitute a waiver of opportunity for a state administrative hearing.

(4) Within three (3) calendar days of its findings and determinations of the written protest or complaint, the AAAIL shall:

(a) Submit a copy of the results of the local grievance to the DAIL; and

(b) Send a written response of the review to the client:

1. By certified mail return receipt requested;

2. Specifying its findings and determinations of the issues raised in the protest or complaint; and

3. With a statement of the right to a CHFS administrative hearing if the protest or complaint is not resolved.

(5) A written request for a state administrative hearing shall:

(a) Set forth the grounds for the protest or complaint;

(b) Be mailed to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621; and

(c) Be postmarked no later than thirty (30) calendar days from receipt of the local administrative review findings and determinations.

(6) Upon receipt of the client's or applicant's request for a state administrative hearing, the department shall submit the client's or applicant's request to the cabinet's administrative hearings branch within three (3) calendar days.

(7) The procedures for a state administrative hearing shall be in accordance with KRS Chapter 13B.

(8) Final decision shall be rendered by the secretary.

(9) If the applicant or provider, AAAIL, department, and other interested parties negotiate a written agreement that resolves the issue which led to the request for a hearing, the department may terminate a formal hearing.

(10) A client or applicant may appeal a final decision to the circuit court within thirty (30) days after the final order of the cabinet is mailed or delivered by personal service to the client pursuant to KRS 13B.140(1).

Section 6. Hearing Procedures for a Department Contracting Agency's Applicant or Client. (1) A department contracting agency shall:

(a) Have written grievance procedures for a client or applicant; and

(b) Ensure the client or applicant is notified of the contracting agency's grievance policies.

(2) A contracting agency's client or applicant for services may request a state administrative hearing with the cabinet if the protest or complaint is not resolved at the contracting agency's level.

(3) The department contracting agency shall:

(a) Submit a copy of the results of the administrative review with the client or applicant to the department; and

(b) Send a written response of the review to the client:

1. By certified mail return receipt requested;

2. Specifying its findings and determinations of the issues raised in the protest or complaint; and

3. With a statement of the right to a state administrative hearing if the protest or complaint is not resolved.

(4) A department contracting agency's client or applicant shall be subject to the hearing procedures outlined in Section 5(7) through (10) of this administrative regulation.

(5) If the applicant or provider, AAAIL, department, and other interested parties negotiate a written agreement that resolves the issue which led to the request for a hearing, the department may terminate a formal hearing.

(6) A contracting agency's client or applicant may appeal a final decision to the circuit court within thirty (30) days after the final order of the cabinet is mailed or delivered by personal service to the client pursuant to KRS 13B.140(1).[~~42 U.S.C. 3027(a)(5) requires that the Office of Aging Services afford an opportunity for a hearing upon request to providers and applicants to provide services under Title III of the Older Americans Act of 1965, as amended. Accordingly, it is the Office of Aging Services policy to provide an opportunity for a hearing to any applicant to provide services under Title III whose application to provide services under an area plan is denied or any service provider funded under Title III whose contract is terminated or not renewed, except as set forth in 45 C.F.R. Part 74, Subpart M. This administrative regulation establishes procedures to provide a full and fair opportunity to resolve any complaints or protests that may arise in contractor selection actions by area agencies on aging under Title III and to create a complete, clear and accurate record for the formation of decisions regarding those selection actions.~~

~~Section 1. Definitions.~~

~~(1) "AAA" means the area agency on aging under each area development district.~~

~~(2) "Applicant" means a person or entity making application to an area agency to provide services under an approved area plan.~~

~~(3) "Area plan" means a plan submitted by an area agency on aging and approved by the Executive Director, Office of Aging Services, which enables the area agency to administer activities under Title III.~~

~~(4) "Burden of proof" means the duty of going forward, i.e., of producing evidence of a particular matter or fact in issue and the burden of persuasion that a particular matter or fact is true.~~

~~(5) "Days" means calendar days, unless specified.~~

~~(6) "Executive director" means Executive Director of the Office of Aging Services, Cabinet for Health Services.~~

~~(7) "Hearing officer" means the person selected by the Executive Director of the Office of Aging Services, to conduct a hearing and to submit a written report based on that hearing to the executive director.~~

~~(8) "Local administrative review" means the procedure of an area agency for consultation and review with an applicant or provider.~~

~~(9) "Office" means the Office of Aging Services, Cabinet for Health Services.~~

~~(10) "Party" means an area agency, an applicant or provider who has requested a hearing, the person or entity who submitted the proposals in response to the request for proposal (RFP), and a person or entity that is admitted into the proceedings and designated as participant by the hearing officer.~~

~~(11) "Protest" or "complaint" means a written objection by an applicant or provider to a proposed award or the award of a contract, or a written objection by a provider to a decision to terminate or not renew its contract to provide services.~~

~~(12) "Provider" means a person or entity that is awarded a contract from an area agency on aging to provide services under an approved area plan.~~

~~(13) "RFP file" means those documents that are maintained regarding a particular procurement. These documents shall include:~~

~~(a) The request for proposal;~~

~~(b) Advertisements as published in the newspaper;~~

~~(c) Each proposal received in response to the RFP;~~

~~(d) All correspondence pertaining to the RFP;~~

~~(e) The review by the AAA;~~

~~(f) Rating or scoring and selection documents;~~

~~(g) Notice of award; and~~

~~(h) The contract.~~

~~(14) "Title III" means Title III of the Older Americans Act of 1965, as amended, and implementing federal regulations and directives.~~

~~Section 2. Procedures for Local Review. (1) Written notice shall be sent by registered or certified mail within seven (7) days of a decision made by an AAA which denies an applicant its request to provide a service or which terminates a provider's contract to provide a service. The notice shall specify:~~

~~(a) The reason for the adverse action;~~

~~(b) That the provider or applicant has ten (10) days from receipt of notice to file a written complaint with the AAA; and~~

~~(c) That failure to file a complaint in a timely manner shall constitute a waiver of his opportunity for a hearing at the state agency level.~~

~~(2) Each AAA shall develop and set forth in writing office approved fair and adequate local administrative review procedures. These procedures shall:~~

~~(a) Provide that the AAA shall not proceed further with the solicitation, award or termination involved during the pendency of the local administrative review, except under a contingency plan approved by the office;~~

~~(b) Provide that a request for a state agency review shall not be accepted until all administrative remedies have been exhausted at the local level;~~

~~(c) Provide the protecting applicant or provider an opportunity to review pertinent evidence upon which the adverse action was based including:~~

~~1. Competing proposals and scoring sheets;~~

~~2. Requesting reconsideration of an award; and~~

~~3. Stating in writing why the protest is filed and the factual circumstances and issues to be considered during the review.~~

~~(d) Provide that the local administrative review shall include the following:~~

~~1. An opportunity to appear in person before an individual or a group of three (3) persons who can render an impartial decision;~~

~~2. An opportunity to present witnesses and documentary evidence;~~

~~3. An opportunity to be represented by counsel;~~

~~4. An opportunity to cross-examine witnesses; and~~

~~5. A written impartial decision which sets forth:~~

~~a. The reasons for the decision;~~

~~b. The evidence on which decision is based; and~~

~~c. Statement explaining the right to request a state-level hearing.~~

~~(e) Provide that the AAA conduct and complete the local administrative review not later than twenty (20) days after receipt of the written protest and:~~

~~1. Respond in writing by certified mail return receipt requested to the applicant or provider its findings and determinations on the issues raised in the complaint;~~

~~2. Provide notice to the applicant or provider of the right to request a hearing with the office; and~~

~~3. Forward a copy of the local administrative review to the office.~~

~~(f) Provide that subcontractors of an AAA and applicants to be subcontractors shall be:~~

~~1. Provided notice of an afforded an opportunity for a hearing by the AAA; and~~

~~2. Provided an opportunity for appeal to the state-level for review of the transcript.~~

~~Section 3. Procedures for State-level Hearing. (1) Requests and grounds for a hearing.~~

~~(a) If the protest is not resolved by the local administrative~~

~~review the applicant or provider may request in writing a hearing at the state-level on one (1) or more of the following grounds:~~

~~1. There is reason to claim that the award does not comply with the applicable request for proposal;~~

~~2. There is reason to claim that the local administrative review does not comply with the approved procedures of the AAA;~~

~~3. There is a reason to claim that denial by the AAA in whole or in a substantial part of an application to provide services on an action or the part of the AAA concerning termination or nonrenewal of a contract to provide services is:~~

~~a. Arbitrary;~~

~~b. Capricious;~~

~~c. An abuse of discretion;~~

~~d. Biased;~~

~~e. The result of a conflict of interest;~~

~~f. Not based upon substantial evidence; or~~

~~g. Does not comply with the terms of the contract or federal or state law, statute or regulation.~~

~~(b) The written request for a hearing by an applicant or provider shall sets forth the grounds and their alleged factual basis, and shall be mailed to the Executive Director, Office of Aging Services, 275 East Main Street, Frankfort, Kentucky 40621, postmarked not later than ten (10) days from receipt of the local administrative review findings and determinations. A copy of the written request shall be mailed to the appropriate AAA.~~

~~(c) Upon receipt of the copy of the request the AAA shall send the following to the office for the hearing officer:~~

~~1. A complete copy of the local administrative review.~~

~~2. A complete copy of the request for proposal file relating to a particular procurement.~~

~~(2) Failure of the applicant or provider to comply with procedures shall constitute a forfeiture of the opportunity for a state level hearing. The request shall be returned by the executive director with a written explanation. The executive director may waive the timeliness requirements and shall notify the parties of the reason for the waiver upon:~~

~~(a) Receipt of a written request of a party and a determination that good cause or exigent circumstances exist; or~~

~~(b) Determination that waiver is in the best interest of the aging program.~~

~~(3) Each hearing shall be conducted within twenty (20) days of the date the executive director receives a request. The hearing officer shall:~~

~~(a) Notify the parties by mail of the date, time and location of the hearing;~~

~~(b) Provide each party with a copy of the request; and~~

~~(c) May grant an extension or continuance if:~~

~~1. He receives a written request by a party with good cause shown to reschedule; and~~

~~2. That extension or continuance shall not delay service delivery.~~

~~(4) The executive director may expedite the scheduling of events and notify the parties of the reason upon written determination that:~~

~~(a) A reduction in the time frames is in the best interest of the aging program; and~~

~~(b) The rights of the parties at the state level hearing are not prejudiced.~~

~~(5) The decision of the executive director regarding the qualifications of the hearing officer shall be final.~~

~~(a) The hearing officer shall be disqualified if he has a:~~

~~1. Personal bias;~~

~~2. Prejudice with respect to a party; or~~

~~3. Conflict of interest in the matter pending;~~

~~(b) A party may suggest in writing to the executive director grounds for disqualification, prior to the date set for the hearing.~~

~~(6) The parties shall have an opportunity to present their sides of the matter at their expense and subject to the rulings of the hearing officer in a full and fair hearing. Each party has the right to:~~

~~(a) Appear with legal counsel or other representatives;~~

~~(b) Review pertinent evidence on which the decision of the area agency was based;~~

~~(c) Present evidence, both testimonial and documentary;~~

~~(d) Rebut adverse evidence, through cross-examination and other appropriate means, including the presentation of evidence;~~

~~(e) Submit a brief or memorandum setting forth the position of the party and substantiation for it to the hearing officer;~~

~~(f) Present oral argument;~~

~~(g) Have the decision based only upon the evidence introduced into the record of the hearing; and~~

~~(h) Have access to the complete record which consists of the following:~~

~~1. The request for hearing;~~

~~2. A copy of the local administrative review;~~

~~3. A copy of the RFP file;~~

~~4. A transcript of oral testimony and arguments, if a transcript is made;~~

~~5. Documentary evidence and papers filed with the request, and in the proceedings; and~~

~~6. Pre- and posthearing motions including written exceptions.~~

~~(7) The hearing officer shall rule on the admissibility of both testimonial and documentary evidence.~~

~~(a) The hearing officer shall not be bound by courtroom rules of evidence and irrelevant, immaterial, and unduly repetitious or cumulative evidence shall be excluded.~~

~~(b) Notice shall be taken of judicially cognizable facts, decisions of courts or other tribunals, and generally recognized technical and scientific facts. Each party shall be afforded an opportunity to contest these matters.~~

~~(c) Part of the evidence may be received in the form of a deposition, affidavit or stipulation if the interest of the parties will not be substantially prejudiced.~~

~~(d) The hearing officer shall arrange for the separation of witnesses and may exclude a prospective witness or spectator to ensure an orderly and fair proceeding.~~

~~(e) Upon notice to the parties, the hearing officer may seek a more definite and detailed statement of the issue.~~

~~(8) The proceedings in a hearing shall be taped or recorded at a location provided by the executive director. The executive director shall provide a copy of the transcript to a party upon:~~

~~(a) Written request; and~~

~~(b) Payment of a reasonable fee which shall comply with the Kentucky Open Records law.~~

~~(9) When a party fails to appear at a hearing, the hearing officer shall notify the party in writing that a default shall be entered. The defaulting party shall have no more than five (5) days in which to seek a new hearing date which shall be granted only for good cause shown. Upon default, the hearing officer shall:~~

~~(a) Render a decision based on available evidence; or~~

~~(b) Dismiss the case with prejudice to the defaulting party.~~

~~(10) The provider or applicant may submit a written withdrawal of a request for a hearing which shall constitute a waiver of an opportunity for a hearing at the state level on the matters and issues involved in the original request.~~

~~(11) The hearing shall be conducted in an orderly but informal manner.~~

~~(a) The hearing officer shall:~~

~~1. Preside over all proceedings;~~

~~2. Rule on preliminary motions; and~~

~~3. Determine the order of presentation of evidence and other procedural matters.~~

~~(b) The parties shall in advance of the hearing indicate the names of the witnesses and the expected duration of their testimony.~~

~~(c) At the conclusion of the hearing the parties may submit to the hearing officer:~~

~~1. Proposed findings of fact; and~~

~~2. Written exceptions to proposed findings of fact.~~

~~(d) The hearing officer shall rule on each proposed finding and on all motions and objections.~~

~~(e) The burden of proof shall be with the applicant or provider who requested the hearing.~~

~~(f) The standard of proof shall be by a preponderance of evidence.~~

~~(12) Within ten (10) days of the conclusion of the hearing, the hearing officer shall forward to the executive director a complete~~

~~record of the hearing and a written report based on the record. The executive director may extend the time for filing this report upon request of the hearing officer and with good cause shown. The report shall contain:~~

~~(a) Separate findings of fact based on the record;~~

~~(b) Conclusions based on the findings of fact; and~~

~~(c) Recommendations supported by the conclusions.~~

~~(13) Within five (5) days of receipt of the hearing officers report, a party may submit written exceptions to the executive director, but a party shall not be entitled to a further hearing on a matter or issue which was the subject of the hearing.~~

~~(14) Upon review of the report of the hearing officer, and timely filed exceptions, the executive director may remand the case back to the hearing officer for proceedings to assist him in making a decision, which shall:~~

~~(a) Be rendered in writing within twelve (12) days of receipt of the final report of the hearing officer;~~

~~(b) Approve, disapprove or approve with deletions, additions or modifications each finding of fact, conclusion and recommendation in the report.~~

~~(15) The decision of the executive director shall be based on the record of the hearing and may direct appropriate action be taken including:~~

~~(a) Affirming the action of the AAA;~~

~~(b) Directing the award be made to the next most advantageous proposal, taken into consideration price, and the evaluation factors set forth in the RFP; or~~

~~(c) Requiring the AAA to readvertise its RFP.~~

~~(16) The executive director may authorize the executive director to approve a contingency plan for delivery of services while the AAA takes action to conform to the decision.~~

~~(17) The decision of the executive director shall constitute the final administrative review of the matter and issues which were the subject of the hearing. A copy of the decision shall be:~~

~~(a) Mailed or hand-delivered to the parties; and~~

~~(b) Maintained by the executive director with the complete record of the hearing.~~]

DEBORAH S. ANDERSON, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: March 10, 2015

FILED WITH LRC: March 12, 2015 at 3 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Quality Living
(As Amended at ARRS, May 5, 2015)

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

RELATES TO: KRS 205.201, 205.203, 205.455-205.465, 42 U.S.C. 3001 et seq.

STATUTORY AUTHORITY: KRS 194A.050, 205.204(2)

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 3001 et seq., the Older Americans Act of 1965, as amended, authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194A.050 ***requires the secretary for***[~~***authorizes***~~] the Cabinet for Health and Family Services to ***promulgate***[~~***adopt***~~] administrative regulations ***[as]*** necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the Cabinet for Health and Family Services as the state agency to administer the Older Americans Act in Kentucky. ***[The function of]*** This administrative regulation ***establishes***[~~***is to set forth***~~] the standards of operation for the Supportive Services Program in Kentucky***[, in compliance with the statutory requirement of KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter]***.

Section 1. Definitions. (1) "Access" means information and referral services, outreach service and transportation service.

(2)[~~"Adequate proportion" means no less than sixty-five (65) percent of the federal funding allocated by the Older Americans Act of 1965, as amended, excluding administrative funds.~~

~~(3)~~] "Agency" means the area agency on aging, an entity designated by the state to administer, at the local level, the programs funded by the Older Americans Act of 1965, as amended.

(3) "Assessment" means the collection and evaluation of information about a person's situation and functioning to determine the applicant or recipient service level and development of a plan of care utilizing a holistic, person centered approach by a qualified independent care coordinator (ICC).

(4) "Assisted transportation" means a one-way trip to accompany an eligible person who requires assistance for safety or protection to or from his physician, dentist, or other necessary service.

(5) "Case management" means a process, coordinated by a case manager, for linking a client to appropriate, comprehensive, and timely home or community based services as identified in the plan of care by:

(a) Planning;

(b) Referring;

(c) Monitoring;

(d) Advocating; ***and***

(e) Following the timeline of the assessment agency to obtain:

1. Service level; and

2. Development of the plan of care.

(6) "Case management supervisor" means an individual meeting the requirements of Section 5(1) and (2) of this administrative regulation and who shall have four (4) years or more experience as a case manager.

(7) "Case manager" means the individual employee responsible for case management including:

(a) Coordinating services and supports from all agencies involved in providing services required by the plan of care;

(b) Ensuring that all service providers have a working knowledge of the plan of care; and

(c) Ensuring that services are delivered as required.

(8) "Community" means a county designated as either urban or rural in accordance with the most current percentage of population listing from the U.S. Census Bureau.

(9) "District" is defined by KRS 205.455(4).

(10) "Educational or experiential equivalent" means:

(a) Two (2) semesters totaling at least twenty-four (24) hours of course work; and

(b) At least 400 documented hours of experience assisting aging or disabled individuals through:

1. Practicum placement;

2. Clinicals; or

3. Volunteerism.

(11) "Home modification" means the provision of minor home adaptations, additions, or modifications to enable the elderly to live independently or safely or to facilitate mobility, including emergency summons systems.

(12) "Independent care coordinator" or "ICC" means the individual that completes the initial assessment, plan of care, and reassessment.

(13) "Information and assistance" means a service for individuals that provides current information about services available within the community.

(14)[~~(4)~~] "In-home services" means the performance of heavy housecleaning, yard tasks, and other activities needed to assist a functionally impaired elderly person remain in his own home.

(15)[~~following supportive services:~~

~~(a) Homemaker and home health aide;~~

~~(b) Visiting and telephone reassurance;~~

~~(c) Chore maintenance;~~

~~(d) In-home respite; and~~

~~(e) Home repair.~~

~~(5)~~] "Legal assistance" means:

(a) Legal advice and representation by an attorney; or

(b) Counseling or other appropriate assistance by a paralegal or law student under the supervision of an attorney[~~; or~~

~~(c) Counseling or representation by a nonlawyer, where permitted by law, to older individuals with economic or social needs~~].

(16) "Multipurpose senior center" is defined by 42 U.S.C. 3002(36).

(17) "Natural supports" means a non-paid person or community resource who can provide, or has historically provided, assistance to the consumer or, due to the familial relationship, would be expected to provide assistance when capable.

(18)[~~(6)~~] "OAA" means the Older Americans Act of 1965, ***42 U.S.C. 3001 et seq.,*** as amended.

(19) "Outreach" means interventions with individuals initiated by an agency or organization for the purpose of identifying potential clients or their caregivers and encouraging their use of existing services and benefits.

(20) "Planning and service area" is defined by 42 U.S.C.3002(42).

(21) "Rural" means a community with less than 50,000 population as designated by the most current listing from the U.S. Census Bureau.

(22) "Satellite senior center" means a facility that is used to provide services specified in Section 10(3) of this administrative regulation if a multipurpose senior center is not available to provide the services.

(23) "Senior center services" means the provision of activities that foster the health or social well-being of individuals through social interaction and leisure.

(24) "Service level" means the minimum contact required through face-to-face visits and telephone calls by the case manager or social service assistant.

(25) "Social service assistant" means an individual who:

(a) Has at least a high school diploma or equivalent;

(b) Works directly under the direction of the case ***management[~~manager~~]*** supervisor;

(c) Assists the case manager with record keeping, filing, data entry, and phone calls;

(d) Helps determine what type of assistance a client needs;

(e) Assists the client in getting services to carry out the plan of care;

(f) Coordinates services provided to the client;

(g) Assists a client in applying for other services or benefits for which he may qualify; and

(h) Monitors a client to ensure services are provided appropriately.

(26)[~~(7) "Office" means the Office of Aging Services, Cabinet for Health Services.~~

~~(8)~~] "Supportive service provider" means an entity that provides supportive services funded by the OAA[~~,~~] under an approved area plan.

(27) "Telephone reassurance" means providing a wellness check by phone with the agreement of the individual.

(28) "Transportation" means transporting an individual from one (1) location to another.

(29)[~~(9)~~] "Unit of service" means one (1):

(a) [~~One-half (1/2)~~] Hour of direct contact with or on behalf of the participant;

(b) [~~One (1)~~] Contact for the information and referral service;

(c) [~~One (1)~~] Call for the telephone reassurance service;

(d) [~~One (1) mile for the transportation service; and~~

~~(e) For federal reporting purposes, the following:~~

~~1. One (1) visit for the friendly visiting service;~~

~~2. One (1) session for the health promotion and recreation services;~~

~~3. One (1)~~] Contact for the outreach service;

(e)[~~and~~

~~4. One (1)~~] One-way trip for the transportation service; and

(f) Contact for senior center service.

(30) "Urban" means a community with 50,000 or more population as designated by the most current listing from the U.S. Census Bureau.

Section 2. Eligibility. (1) Participants receiving supportive services funded by the OAA shall be sixty (60) years of age or older.

(2) Agencies shall utilize the DAIL-GA-01 Priority Screening Tool[~~establish systems~~] for prioritizing applicants to ensure services are targeted to those in greatest need.

(3) Means tests shall not be allowed to determine eligibility.

Section 3. Service Provider Responsibilities. (1) A service provider contracting with a district to provide supportive services supported in whole or in part from funds received from the cabinet shall:

(a) Provide services[~~shall be provided~~] in accordance with the approved agency area plan which shall ensure the provision of supportive services throughout the geographic area covered under its plan;

(b) Review the provision of supportive services to assure safety and consistency;

(c) Treat the client in a respectful and dignified manner and involve the client and caregiver in the delivery of services;

(d) Permit staff of the cabinet and the district to monitor and evaluate services provided;

(e) Assure that each paid or voluntary staff member meets qualification and training standards established for each specific service by the department;

(f) Maintain a written job description for each paid staff and volunteer position involved in direct service delivery;

(g) Develop and maintain written personnel policies and a wage scale for each job classification;

(h) Designate a supervisor to assure that staff providing in-home services are provided supervision;

(i) Monitor, evaluate, and conduct satisfaction surveys; and

(j) Maintain a record for each client including:

1. Participant name;

2. Address;

3. Phone number;

4. Emergency contact information;

5. Request for services;

6. Verification of eligibility;

7. Services provided; and

8. Monitoring of services provided.

(2) Staff of the provider agency shall not:

(a) Accept personal gratuities from participants or vendors; or

(b) Be involved in any client financial transaction without prior approval from the contracting agency.

(3)[~~an adequate proportion is planned and expended to fund access, in-home and legal assistance services.~~

~~(2) Eligibility of each participant shall be established and personnel who approve services shall be designated.~~

~~(3) Volunteers and paid staff with the same written job description and responsibilities shall meet comparable requirements for training and skills.~~

~~(4) Services shall be provided under the supervision of qualified personnel.~~

~~(5) Services shall be accessible to participants by telephone, home visit, center location or person-to-person contact.~~

~~(6) Center services shall be available on a regularly scheduled basis. Major permanent changes shall have prior approval of the agency and be publicized to participants.~~

~~(7) Staff training shall be as follows:~~

~~(a) New staff shall receive an orientation;~~

~~(b) New staff shall be trained prior to assuming responsibilities or shall receive on-the-job training from qualified agency staff;~~

~~(c) Existing staff shall receive training on job-related topics at a minimum of once per year.~~

~~(8) Staff shall not accept personal gratuities from participants or vendors.~~

~~(9) Staff shall not, without prior approval of the supervisor, pay bills or cash checks for participants.~~

~~(10) Designated staff, who are trained and skilled in assessing and dealing with the needs of the elderly and in the delivery of~~

~~each service, shall be provided.~~

~~(11) There shall be a staff person, qualified by training and experience, responsible for administering each service and supervising assigned staff.~~

~~(12) The following activities shall not be reported as units of service except where required for a specific service:~~

~~(a) Review, update or maintenance of resource or agency files;~~

~~(b) Travel time incurred in the delivery of services;~~

~~(c) Training sessions or staff meetings; or~~

~~(d) Project management.~~

~~(13) A record documenting participant identification data, requests for service, eligibility for services provided and follow-up shall be maintained for each participant.~~

~~(14)~~] A procedure shall be utilized annually for the evaluation of unmet need, the results to be made available to the agency.

(4)[~~(15)~~] The legal assistance provider shall:

(a) Specify how it intends to target services for the needs of low-income minority individuals;

(b) Attempt to provide services to the population of low-income minority individuals in at least the same proportion as the population bears to the older population as a whole;

(c) Provide individual legal casework, legal referral, and legal education to the elderly and training for attorneys in areas of law relevant to the elderly;

(d) Contact institutionalized elderly and inform and educate these individuals about the legal assistance services available;

(e) Specify how it intends to coordinate its efforts with the efforts of the Long-term Care Ombudsman Office;

(f) Meet at least annually with the local ombudsman program;

(g) Submit a written quarterly activities report to the agency, documenting the legal activities and services provided to participants; and

(h) Not divulge[~~as follows:~~

~~1. Aggregate data as requested by the agency shall be provided on the quarterly program performance report, herein incorporated by reference; and~~

~~2.~~] information protected by the attorney-client privilege[~~shall not be divulged~~].

Section 4. Support Services. Services funded by the OAA and administered by the area agencies on aging and independent living shall be provided as established in this section.[~~follows:~~] (1) Except for senior center and access services, the ICC and the individual shall determine the service needs of the individual.

(2)[~~Advocacy shall be action taken on behalf of an older person or group of older persons to secure rights or benefits. Advocacy services shall:~~

~~(a) Include receiving, investigating, and working to resolve disputes or complaints;~~

~~(b) Not include services provided by an attorney or person under the supervision of an attorney;~~

~~(c) Arrange annual public hearings within each area development district to:~~

~~1. Provide public information;~~

~~2. Identify areas of concern; and~~

~~3. Develop plans to address concerns;~~

~~(d) Keep the public informed of available services through other means identified in the area plan; and~~

~~(e) Include assessments as to whether or not provided services are reaching the population most in need.~~

~~(2) Counseling services shall be either singly or in a group and provided in a private, confidential setting to:~~

~~(a) Interview, discuss and actively listen to participants to advise and enable participants and families to resolve problems;~~

~~(b) Relieve temporary stress encountered by participants and families.~~

~~(3) Education services shall:~~

~~(a) Provide formal or informal opportunities for individuals or groups to acquire knowledge, experience or skills and increase awareness;~~

~~(b) Be presented by persons qualified by education or experience, on topics relevant to participant need and interest as identified through staff and participant input;~~

~~(c) Use donated resources for the provision of services if possible; and~~

~~(d) Maintain records which include topics, presenters, location and number of participants.~~

~~(4) Employment services shall include:~~

~~(a) Provision of consultation, job development and other services designed to assist participants in securing paid employment:~~

~~1. Information to participants concerning available employment;~~

~~2. Counseling which may include advise on taking tests, preparing a resume, attitude during an interview, and how to locate potential employers; and~~

~~3. Educating prospective employers;~~

~~(b) Referrals to prospective employers;~~

~~(c) Transportation assistance to participants involved in job search activities; and~~

~~(d) Follow-up activities on participants seeking paid employment.~~

~~(5) Friendly visiting services shall be planned visits to socially or geographically isolated participants:~~

~~(a) To express interest in his welfare by providing companionship and continuing contact with the community;~~

~~(b) Provided by trained staff or trained volunteers who have a staff person identified as supervisor;~~

~~(c) With consideration given for participant preference regarding the person providing service, schedule of times for, and length of service; and~~

~~(d) Using volunteers to provide the service if possible.~~

~~(6) Health promotion services shall develop programs designed to maintain or improve the health and well-being of older persons, including health screening, health promotion and other related activities. Services shall include:~~

~~(a) Assisting participants in securing and utilizing the available health services for attaining and maintaining a favorable condition of health;~~

~~(b) Education on the need for health care;~~

~~(c) Assistance to participants to help them understand health insurance policies; and~~

~~(d) Wellness activities like walking programs, exercise programs and other group activities.~~

~~(7)~~] Information and assistance[~~referral~~] services shall:

(a) Provide information in response to an inquiry regarding opportunities and services available;

(b) Assist in accessing opportunities and services;

(c) Follow-up to determine whether services were received and identified needs were met; and

(d) Utilize current records of appropriate community resources, including local procedures for assessing participant needs and for making referrals to appropriate agencies.

(3)[~~(8)~~] Legal assistance services shall:

(a) Be available for institutionalized older persons and other elderly persons otherwise entitled to legal assistance;

(b) Not be denied because of a person's failure to disclose information about income or resources; and

(c) Assure providers maintain records to include individual client services and group activities, covering topics, presenters, locations and numbers of participants.

(4)[~~(9)~~] Outreach services shall:

(a) Locate or reestablish contact initiated by providers, to identify participants in need of services;

(b) Provide information;

(c) Encourage the use of existing services;

(d) Be provided in the total geographic area served by the agency, in accordance with a plan to identify the elderly and caregivers in the area, with priority given to a rural, low income minority, limited English speaking, or disabled individual; and

(e) Be provided by a worker with current knowledge of services available to the elderly, caregivers, and individuals with disabilities in accordance with an established procedure for worker assistance to the participant in accessing appropriate services, including follow-up to assure needs have been met.

(5) Senior center services shall provide activities which foster

the health or social well-being of an individual through social interaction and the use of leisure time.

(6) Funds shall not constitute more than ten (10) percent of the total OAA Title IIIB allocation and shall be provided:

(a) By staff who are knowledgeable and skilled in the services provided, including a volunteer under the supervision of the center director; and

(b) With consideration for the physical and mental conditions and activity preferences of a participant.

(7)[~~(10) Recreation services shall provide activities which foster the health or social well-being of individuals through social interaction and the satisfying use of leisure time:~~

~~(a) By a person who is knowledgeable and skilled in the recreational activities provided, including a volunteer under the supervision of the center director; and~~

~~(b) With consideration for the physical and mental conditions and activity preferences of the participants.~~

~~(11)~~] Telephone reassurance services shall:

(a) Provide regular telephone contact to or from isolated individuals;

(b) Be provided by a staff who is knowledgeable and skilled in the services provided, including a volunteer under the supervision of the center director;

(c) Include a prearranged schedule for contacting the participant;

(d) Maintain a log of calls documenting:

1. Date of the contact;

2. Length of the call;

3. Summary of the contact;

4. Demographics of the participant;

5. Determination of safety and well-being; and

6. Determination of special assistance needed;

(e) Establish a procedure to be implemented in the event of a non-answered call; and

(f) Include the participant's preference regarding frequency of calls.

(8)[~~1. To determine if they are safe and well;~~

~~2. To determine if they require special assistance; or~~

~~3. To provide psychological reassurance;~~

~~(b) Include a prearranged schedule for contacting the participant, and:~~

~~1. A plan of action for each participant to be implemented in the event of a nonanswered call;~~

~~2. The participant's preference regarding the person providing service; and~~

~~3. A record of calls and length of calls.~~

~~(12)~~] Transportation services shall:

(a) Be provided by a trained individual;

(b) Carry older persons to or from community resources to access or receive needed services;

(c)[~~(b)~~] Comply with federal, state, and local regulations[~~to ensure a safe journey from the point of departure to destination~~]; and

(d)[~~(c)~~] Use vehicles safe and accessible to older persons and properly insured to protect the participants in accordance with state laws.

(9) Assisted transportation services shall be provided:

(a) In accordance with subsection (8) of this section; ***and***

(b) To a person who requires accompaniment for reasons of safety or protection to or from his physician, dentist, or other necessary services as determined by the ICC.

(10) In-home services shall be provided:

(a) By trained staff; and

(b) As determined by the ICC.

Section 5. Case Manager Requirements. (1) A case manager and an ICC shall:

(a)1. Possess a bachelor's degree in a health or human services field from an accredited college or university:

a. With one (1) year experience in health or human services; or

b. The educational or experiential equivalent in the field of aging or physical disabilities;

2. Be a currently licensed RN as defined in KRS ***314.011(5)***[~~314.011(10)~~] who has at least two (2) years of experience as a professional nurse in the field of aging or physical disabilities; or

3. Be a currently licensed LPN as defined in KRS ***314.011(9)***[~~314.011(10)~~] who:

a. Has at least three (3) years of experience in the field of aging or physical disabilities; and

b. Is supervised by an RN who consults and collaborates on changes to the plan of care;

(b) Be a department certified case manager beginning July 1, 2015; and

(c) Be supervised by a case management supervisor.

(2) A master's degree from an accredited college or university may be substituted for the required experience.

(3) Each client shall be assigned a:

(a) Case manager; or

(b) Social service assistant.

(4) A client shall be assessed initially and reassessed at least annually thereafter by an ICC that possesses a bachelor's degree, a master's degree, or is a licensed registered nurse (RN).

(5) After each assessment or reassessment, the ICC shall determine eligibility and service level based on the DAIL-HC 01, Scoring Service Level of each assessed individual.

(6) If the client is ineligible, the case shall be closed and the reason documented in the case record with notification mailed to the client or caregiver.

(7) The case manager shall:

(a) Be responsible for coordinating, arranging, and documenting those services provided by:

1. Any funding source; or

2. A volunteer;

(b) Make a reasonable effort to secure and utilize informal supports for each client;

(c) Document the reasonable effort in the client's case record;

(d) Monitor each client by conducting a home visit according to the assessed service level and through a telephone contact between home visits. Clients shall be contacted at a minimum as follows:

1. Level 1, a home visit shall be conducted every other month;

2. Level 2, a home visit shall be conducted every four (4) months; or

3. Level 3, a home visit shall be conducted every six (6) months; and

(e) Document in the case record each contact made with a client, as specified in paragraph (d) of this subsection.

(8) A district shall employ an ICC to assess the eligibility and needs for each client.

(9) A client assessed at a Level 1 or a Level 2 shall be assigned a case manager.

(10) A client assessed at a Level 3 shall have a case manager or a social service assistant assigned to assist with meeting their needs.

(11) A client shall receive in-home services in accordance with an individualized plan of care developed through participant directed planning which shall:

(a) Relate to an assessed problem;

(b) Identify goals to be achieved;

(c) Identify a scope, duration, and unit of service required;

(d) Identify a source of service;

(e) Include a plan for reassessment; and

(f) Be signed by the client or client's representative and case manager with a copy provided to the client.

(12) Case management services shall not be provided to an individual on a waiting list.

Section 6. Multipurpose Senior Center Selection. (1) An AAAIL shall designate a multipurpose senior center within each urban community of the AAAIL's planning and service area.

(2) If only rural communities are within an AAAIL's planning and service area, the AAAIL shall designate at least one (1) multipurpose senior center in the AAAIL's planning and service area.

(3) Selection of a multipurpose senior center location shall be

based on:
(a) Demographic information concerning the population of older persons in its service area; and
(b) The advice of public and voluntary agencies serving the elderly.
(4) The AAAIL shall specify designation of a multipurpose senior center within its area plan.
(5) The following factors shall be given consideration in choosing a site for the multipurpose senior center:
(a) Demographic information and projections;
(b) Accessibility to the maximum number of people with particular attention to:
1. Low-income older individuals, including low-income minority older individuals;
2. Older individuals with limited English proficiency;
3. Older individuals residing in rural areas; and
4. The number of older individuals at-risk for institutional placement;
(c) Proximity to other services and facilities;
(d) Convenience to public or private transportation or a location within walking distance for participants;
(e) The absence of structural barriers or difficult terrain; and
(f) The safety and security of participants and staff.

Section 7: Multipurpose Senior Center Specifications. (1) A multipurpose senior center shall:
(a) Provide barrier-free access and movement within the facility pursuant to 45 C.F.R. 85.42 and 85.43;
(b) Be clearly identified with a sign;
(c) Make arrangements:
1. For the security of facility equipment, furniture, and files; and
2. To offer activities at other sites in its service area; and
(d) Be free of physical hazards in accordance with the DAIL-MSC-01 Multipurpose Senior Center Site Approval Checklist.
(2) The facility shall be properly maintained and repaired to meet the safety and security of staff and participants.
(3) An existing multipurpose senior center that does not meet the requirements of subsections (1) and (2) of this section shall comply with a corrective action plan administered by the department.
(4) The multipurpose senior center shall have thirty (30) days from receipt of the corrective action plan to comply.
(5) The department may withhold funding if the multipurpose senior center does not comply with the corrective action plan.

Section 8. Multipurpose Senior Center Requirements. (1) Each multipurpose senior center shall have a full time director and paid or volunteer staff to administer the center.
(2) At least one (1) staff person or the director shall be present at the site during hours of operation.
(3) At a minimum, a multipurpose senior center shall be open six (6) hours per day and five (5) days per week.
(4) A multipurpose senior center shall provide the following services:
(a) Nutrition services in accordance with 910 KAR 1:190; and
(b) Support Services including:
1. Transportation;
2. Outreach;
3. Information and assistance; and
4. Other services identified in the planning and service regions area plan.
(5) A multipurpose senior center shall:
(a) Comply with the confidentiality and disclosure of a client as follows:
1. Adhere to the confidentiality and disclosure of client information pursuant to KRS 194A.060 and 5 U.S.C. 552, the Federal Freedom of Information Act;
2. Not disclose client information without the informed consent of the person or legal representative, unless the disclosure is required by a court order or for program monitoring authorized by federal, state, or local monitoring agencies; and
3. Not reveal client information that is protected by attorney-client privilege; and
(b) Refer reports of abuse, neglect, or exploitation to the Department for Community Based Services.

Section 9. Satellite Senior Center Selection. (1) The AAAIL shall designate a satellite senior center within the planning and service area of each rural community if:
(a) A multipurpose senior center is not already located in the county; or
(b) Additional satellite senior centers are needed to provide aging programs to seniors of that area.
(2) The AAAIL shall specify designation of a satellite senior center within its area plan.
(3) A satellite senior center shall meet the multipurpose senior center selection requirements of Section 6(2) of this administrative regulation.

Section 10. Satellite Senior Center Requirements. (1) Each satellite senior center shall have a director who is responsible for the administration of the site.
(2) At least one (1) staff person or the director shall be present at the site during hours of operation.
(3) At a minimum, a satellite senior center shall be open for eight (8) nonconsecutive hours per week.
(4) An AAAIL shall organize and advertise activities, services, and schedules of operation in advance.
(5) A satellite senior center shall:
(a) Unless already established in a multipurpose senior center in the same community, provide access services which shall include:
1. Transportation;
2. Outreach; and
3. Information and referral; and
(b) Adhere to the confidentiality requirements of Section ***8(5)[8(4)]*** of this administrative regulation.
(6) A satellite senior center may provide nutrition services in accordance with 910 KAR 1:190.

Section 11. Approval of a Multipurpose and Satellite Senior Center. (1) Supportive or nutrition services shall be funded at a multipurpose and satellite senior center if the center has been approved by the department.
(2) A multipurpose and satellite senior center shall not become operational until an on-site visit by the department has been completed and approval given by the department.
(3) Prior to approval of a multipurpose and satellite senior center, it shall be inspected by the following:
(a) The local health department for compliance with applicable health codes depending on the types of services provided at the site;
(b) The local fire department for compliance with fire and building safety codes; and
(c) An AAAIL inspection using a:
1. DAIL-MSC-01 Multipurpose Senior Center Checklist; or
2. DAIL-SSC-02 Satellite Senior Center Checklist.

Section 12. Altering Multipurpose or Satellite Senior Center. (1) Prior approval shall be obtained from the department by an AAAIL which intends to:
(a) Close or open a new multipurpose or satellite senior center;
(b) Change the location of the multipurpose or satellite senior center;
(c) Change the method of providing services in a manner that affects availability of ongoing services; or
(d) Reduce the level or number of services.
(2) Justification for the change shall include:
(a) The proposed effective date;
(b) The need or reason;
(c) The number of participants affected;
(d) Whether this change is temporary or permanent;
(e) A cost benefit analysis;
(f) For a change made to an existing multipurpose or satellite senior center, whether this facility was altered, renovated, or constructed with Older Americans Act funds and the date work was

completed;

(g) Whether the AAAIL advisory council recommended this change;

(h) What provisions are proposed to continue services to the participants; and

(i) For a proposed multipurpose or satellite senior center, costs involved in meeting local fire, health, safety, and sanitation regulations.

(3) A request to open a new multipurpose or satellite senior center shall include copies of completed local health department inspections and a completed:

(a)[~~1.~~] DAIL-MSC-01 Multipurpose Senior Center Checklist; or

(b)[~~2.~~] DAIL-SSC-02 Satellite Senior Center Checklist.

(4) If meal preparation at a new multipurpose or satellite senior center is proposed, the multipurpose or satellite senior center shall notify the:

(a) Department;

(b) Local fire department; and

(c) Local health department.

(5) The department shall review the information submitted and determine if an on-site visit is necessary for approval.

(6) In case of altered multipurpose or satellite senior center operations due to damages caused by fire, flood, storm, high winds, tornados, or other safety issues, the department shall be notified within one (1) business day that emergency alterations are necessary by:

(a) Telephone;

(b) Email; or

(c) Fax.

(7) Prior approval shall be obtained from the department on a conditional basis for emergency circumstances with final approval pending:

(a) Written documentation of the proposed change;

(b) Local fire, health, and safety inspections; and

(c) An on-site inspection by the department if the department determines a visit is necessary for final approval.

(8) The AAAIL shall specify alterations of a multipurpose and satellite senior center within its area plan for department approval.

Section 13. Training and Education. An AAAIL shall implement the following training and education programs for multipurpose and satellite senior center providers of service:

(1) An annual program assessment to identify training needs and develop correlating plans;

(2) An identification and review of resources available to meet training needs;

(3) The development of a comprehensive education and training plan;

(4) A search for additional resources to implement the plan;

(5) The coordination of education programs with private, public, governmental, and educational organizations and institutions; and

(6) A plan to implement staff development initiatives.

Section 14. Monitoring. An AAAIL shall:

(1) Monitor and assess services to determine compliance with contract requirements and an approved area plan; and

(2) Submit written evaluation of its findings to DAIL annually[~~(13) Provision of the following supportive services shall be governed by 910 KAR 1:180, homecare program for the elderly:~~

~~(a) Assessment;~~

~~(b) Case management;~~

~~(c) Chore;~~

~~(d) Escort;~~

~~(e) Home health aide;~~

~~(f) Homemaker, home management and homemaker, personal care;~~

~~(g) Home repair; and~~

~~(h) Respite~~].

Section 15. Incorporation[~~5. Material Incorporated~~] by Reference. (1) The following material is incorporated by reference:

(a) "DAIL-GA-01, Priority Screening Tool", November 2014;

(b) "DAIL-MSC-01, Multipurpose Senior Center Checklist", August 2014;

(c) "DAIL-SSC-02, Satellite Senior Center Checklist", August 2014; and

(d) "DAIL-HC 01, Scoring Service Level", April 2014[~~The form necessary for the implementation of the supportive services for the elderly program shall be herein incorporated by reference~~].

(2) This material[~~incorporated by reference~~] may be inspected,[~~and~~] copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living[~~at the Office of Aging Services, CHR Building, 5th Floor~~], 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday,[~~. Office hours are~~] 8 a.m. to 4:30 p.m.

DEBORAH S. ANDERSON, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: March 10, 2015

FILED WITH LRC: March 12, 2015 at 3 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Quality Living
(As Amended at ARRS, May 5, 2015)

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

RELATES TO: KRS 205.201, 209.030(5), 216.535, 216.540-216.543, 42 U.S.C. 3001 et seq.

STATUTORY AUTHORITY: KRS 194A.050, 205.204

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 3001 et seq., the Older Americans Act of 1965, as amended, requires states to establish and operate, either directly or by contract, a long-term care ombudsman program to protect the rights of older individuals. KRS 194A.050 ***requires the secretary for[~~authorizes~~]*** the Cabinet for Health and Family Services to ***promulgate[~~adopt~~]*** administrative regulations***[~~as~~]*** necessary to implement programs mandated by federal law. KRS 205.204 designates the Cabinet for Health and Family Services as the state agency to administer the Older Americans Act in Kentucky.***[~~The function of~~]*** This administrative regulation ***establishes[~~is to implement~~]*** a statewide Long-term Care Ombudsman Program***[~~as required by federal law, and in compliance with the statutory requirement of KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter~~]***.[~~This administrative regulation contains the substance of 905 KAR 8:070 which is repealed.~~]

Section 1. Definitions. (1) "Access" means the right to enter a long-term care facility, meet with the residents, and review the records of a resident.

(2) "Administrator" means any person charged with the general administration or supervision of a long-term care facility without regard to whether the person has an ownership interest in the facility or to whether the person's functions and duties are shared with one (1) or more other persons.

(3) "Case" means each inquiry brought to, or initiated by, the ombudsman on behalf of a resident or group of residents involving one (1) or more complaints and includes an ombudsman investigation or strategy to resolve and follow-up.

(4) "Certification" means the official notification by the Kentucky long-term care ombudsman that local long-term care ombudsman individual staff are qualified and acceptable to function in that capacity.

(5)[~~(4)~~] "Complaint" means an allegation filed by residents or on behalf of residents relating to the health, safety, welfare, and rights of a resident.

(6)[~~(5)~~] "Complaint resolution" means either corrective action taken in regard to an allegation or a determination as to the validity of the allegation.

(7)[~~(6)~~] "Complaint verification" means a determination through investigative means that allegations relating to the health, safety, welfare, and rights of a patient are generally accurate[~~valid~~].

(8) "DAIL" means the Department for Aging and Independent Living.

(9)[~~(7)~~] "Designation" means formal notification by the Kentucky long-term care ombudsman that a district program meets requirements[~~,~~] and shall be considered a subdivision of the state office.

(10)[~~(8)~~] "District ombudsman" means that individual certified by the Kentucky long-term care ombudsman to implement the ombudsman provisions of the approved contract agency[~~area agency on aging~~] plan.

(11) "Educational or experiential equivalent" means:

(a) Two (2) semesters totaling at least twenty-four (24) hours of course work; and

(b) At least 400 documented hours of experience assisting aging or disabled individuals through:

1. Practicum placement;

2. Clinicals; or

3. Volunteerism.

(12)[~~(9)~~] "Evaluation" means periodic analysis and review conducted by the Kentucky long-term care ombudsman[~~,~~] of district, regional, and state ombudsman programs, including quality assurance and outcome measures pertaining to individual and programmatic performance.

(13) "Friendly visitor" means a trained non-certified volunteer who visits residents in long-term care facilities to assist the district long-term care ombudsman program.

(14)[~~(10)~~] "Investigation" means the formal response by a long-term care ombudsman to complaints of issues involving the health, safety, welfare, and rights of a resident.

(15)[~~(11)~~] "Kentucky long-term care ombudsman" means the individual charged with the administration of the Kentucky Long-term Care Ombudsman Program under the provisions of the Older Americans Act of 1965, as amended.

(16) "Long term care facility" is defined by KRS 216.510(1).

(17)[~~(12)~~] "Monitoring" means periodic review[~~conducted by the Office of Aging Services and the area agency on aging~~] measuring ombudsman program's adherence to approved plans, including analysis of non-client specific data relating to program performance.

(18)[~~(13)~~] "Primary client group" means residents of long-term care facilities and those persons making application for admission to long-term care facilities and their families.

(19)[~~(14)~~] "Referral" means the appropriate channeling of information so as to effect a desired outcome[~~of a complaint~~].

(20)[~~(15)~~] "Regional long-term care ombudsman" means ombudsmen who operate directly from the Kentucky Long-term Care Ombudsman Program and whose responsibilities include coordination of a multi-area development district area.

(21)[~~(16) "Unit of service" means one-half (1/2) hour of staff time, paid or volunteer, provided to or on behalf of a client or a group of clients.~~

~~(17) "Unduplicated client" means counting each individual served by the ombudsman program one (1) time within each fiscal year.~~

~~(18)~~] "Volunteer ombudsman" means a certified unpaid[~~nonsalaried~~] individual serving within a district program to assist a district ombudsman.

Section 2. Responsibilities of Kentucky Long-term Care Ombudsman[~~Program~~]. (1) The Kentucky Long-term Care Ombudsman Program shall be administered by a full time ombudsman operated by DAIL or through a contracted entity[~~who shall be assigned to the Office of the Executive Director, Office of Aging Services, Cabinet for Health Services~~].

(2) The Kentucky Long-term Care Ombudsman[~~Program~~] shall be responsible for the:

(a) Design, implementation and management of a statewide uniform system for receiving, investigating, resolving, and reporting complaints on behalf of residents in long-term care facilities and provide ongoing support to assist in the resolution of those complaints;

(b) Investigation of complaints made by or on behalf of residents in long-term care facilities from areas of the state temporarily without local ombudsman programs if a local backup ombudsman is not available;

(c) Development and implementation of policies and procedures for operation of the program, including those related to:

1. Receipt, investigation, and resolution of complaints;

2. Protecting confidentiality of records and identity of complainants;

3. Establishing the right of public access to information regarding conditions in long-term care facilities; and

4. Securing ombudsman access to long-term care facilities, residents, and residents' personal and medical records;[~~.~~]

(d) Development and management of a system for the operation of a statewide network of district programs, including:

1. Designation of district programs through:

a. Reviewing applications for designation of district ombudsman contained in their plans for operating either directly or under subcontract;

b. Providing written confirmation of the designation; and

c. Administration of certification and training requirements;

2. Development of district program operating procedures and reporting requirements; and

3. Establishment of a communications link between the Kentucky long-term care ombudsman[~~state~~] and district programs;[~~.~~]

(e) Establishment and maintenance of program official files and adoption of procedures to protect the confidentiality of those files;

(f) Provision of information and education concerning:

1.[~~regarding~~] Program activities;

2.[~~,~~] The long-term care system; and

3. The rights and concerns of residents and potential residents of long-term care facilities;

(g) Provision of assistance to citizen organizations, consumer groups, and other interested community organizations to enhance the rights of residents in long-term care facilities;

(h) Promotion of the development of citizen organizations at the state and local level to participate in the program;

(i) Use of publicity and outreach efforts directed at long-term care residents and families, network staff, and the general public about the availability of the program to receive and investigate complaints;

(j) Review of complaint, case, and issue data submitted by the district programs and analysis for trends, pattern, and issue identification;

(k) Annual National Ombudsman Reporting System (NORS) report to the Administration on Community Living;[~~state licensing and certifying agency, the Governor, the federal Administration on Aging and the public including:~~

~~1. Operation of the Kentucky Long-term Care Ombudsman Program;~~

~~2. Status of complaints and resolutions;~~

~~3. Conditions in long-term care facilities;~~

~~4. Serious issues of widespread concern; and~~

~~5. Proposals for corrective action at relevant levels of government.~~]

(l)[~~Preparation of progress reports and other required program reports;~~

~~(m)~~] Assistance to the[~~area agencies on aging and~~] district ombudsman[~~programs~~] to establish, develop, and coordinate ombudsman activities;

(m)[~~(n)~~] Development of agreements and working relationships with relevant agencies to encourage their cooperation and assistance with the program at the state and local levels;

(n)[~~(o)~~] Development[~~, in cooperation with the legal services developer,~~] of agreements and working relationships with legal services programs, particularly those funded by the Older Americans Act of 1965, as amended;

(o)[~~(p)~~] Development and provision of training on an ongoing basis for regional and district ombudsman[~~state and local~~] program staff and volunteers;

(p)[~~(q)~~] Identification and development of additional funding

and staffing resources for the long-term care ombudsman program;

(q)[~~(r)~~] Support and promotion of the formation of resident councils in long-term care facilities;

(r)[~~(s)~~] Development and provision of testimony and comment on proposed legislation, ***administrative*** regulations, policies, and rule changes affecting the institutionalized elderly;

(s)[~~(t)~~] Conduction of other activities related to the protection and dignity of residents of long-term care facilities; and

(t)[~~(u)~~] Performance of other activities required by the Administration on Community Living[~~Commissioner on Aging, federal Administration on Aging~~].

Section 3. Responsibilities of the Regional Ombudsman. The regional ombudsman shall be[~~a full-time~~] staff[~~member~~] of, and report directly to, the Kentucky long-term care ombudsman and shall have the following responsibilities:

(1) Receive, investigate, and resolve complaints;

(2) Provide technical assistance and coordination of district programs[~~within the geographic area assigned~~];

(3) Assist in training of volunteers and local program personnel;

(4) Provide information to public agencies regarding problems of long-term care residents;

(5) Abide by established procedures related to reporting and confidentiality; and

(6) Perform other job duties as required by the Kentucky long-term care ombudsman.

Section 4. Designation of District Programs. (1) The Kentucky long-term care ombudsman shall designate district entities throughout the state to operate the long term care ombudsman program.

(2) The district ombudsman program entity shall submit a[~~area agency on aging~~] plan[~~shall contain an ombudsman portion~~] which shall serve as the application for designation of a district ombudsman. The application[~~Information contained~~] shall include:

(a) Definition of program in terms of the following personnel:

1. Program supervisor;

2.[~~Area development district monitor;~~

~~3.~~] Ombudsman advisory council;

3.[~~4.~~] District ombudsman;

4. Friendly visitors; and

5. Volunteer ombudsman;[~~.~~]

(b) Agency to conduct the program;

(c) Ability to receive, investigate, and resolve complaints on behalf of long-term care residents;

(d) Maintenance of a complaint documentation system;

(e) Ability to monitor the development and implementation of laws, policies, and regulations which apply to residential long- term care;

(f) Ability to recruit and provide standardized training for volunteers;

(g) Ability to respond in a timely fashion to requests from the Kentucky Long-term Care Ombudsman Program for statistical data and other information;

(h) Ability to receive training and continuing education from the Kentucky Long-term Care Ombudsman Program;

(i) Ability to assure confidentiality of files;

(j) Ability to inform and educate residents, sponsors, organizations, the long-term care industry, and the general public relative to issues affecting the long-term care system, the ombudsman program, and resident rights and concerns;[~~and~~]

(k) Provision that no individual involved in the appointment of a subdivision of the office and that no officer, employee, or other representative of the office is subject to a conflict of interest; and[~~.~~]

(l) Provision that representatives of the Kentucky Long-term Care Ombudsman Program shall not be liable under state law for the good faith performance of official duties.

[~~(2) The Kentucky Long-term Care Ombudsman Program shall:~~

~~(a) Review applications for designation by area agencies on aging contained in their area plans for operating programs either directly or under subcontract;~~

~~(b) Review applications for designation received independently of the area agency if independently operated ombudsman services are indicated in the area plan; and~~

~~(c) Provide written confirmation of the designation.~~]

(3) Designated ombudsmen shall be representatives of the Kentucky Long-term Care Ombudsman Program and shall be accorded rights and privileges of that office.

Section 5. Responsibilities of the District Ombudsman[~~Program~~]. The district ombudsman[~~program~~] shall:

(1) Provide services[~~under the supervision of qualified personnel~~] as follows:

(a) There shall be a staff person, qualified by training and experience, responsible for administering each service and supervising assigned staff;

(b) There shall be designated staff who are trained and skilled in assessing and dealing with the needs of the elderly and in the delivery of each service;

(c) Volunteers and paid staff with the same responsibilities shall meet comparable requirements for training and skills;

(d) New staff shall receive an orientation and shall be trained and certified prior to assuming responsibilities;

(e) Staff shall attend required training and provide in-service training for staff and volunteers of local programs;

(f) Staff shall not accept personal gifts or money from participants or vendors; and

(g) Staff shall not[~~, without prior approval of the supervisor,~~] pay bills or cash checks for clients or participants;[~~.~~]

(2) Assure services are accessible to older persons by telephone, correspondence, or person-to-person contact;[~~.~~]

(3) Represent residents residing in long-term care facilities within the assigned geographical areas;[~~.~~]

(4) Assure residents' rights are upheld and promote quality care in long-term care facilities;[~~.~~]

(5) Investigate and work to resolve complaints on behalf of long-term care residents;[~~.~~]

(6) Promote community involvement in the program by:

(a) Publicizing the existence and function of the local and state programs;

(b) Advising the public about the availability of current state, local, and federal inspection reports, statements of deficiency, and plans for correction for individual long-term care facilities in the service area;

(c) Organizing and implementing an active volunteer program;

(d) Assisting in the development of resident or family and friends councils;

(e) Sponsoring community education and training programs for long-term care facilities, human service workers, families, and the general public about long-term care and residents' rights issues; and

(f) Promoting citizen involvement in order to ensure regular visitations, especially for those residents without available family or friends; and[~~.~~]

(7) Implement accurate recordkeeping procedures to assure that:

(a) An accurate record shall be maintained on each participant which documents:

1. Participant identification data;

2. Requests for service;

3. Eligibility for services provided;[~~and~~]

4. Follow-up; and

5. Closure;[~~.~~]

(b) Reports for the Kentucky long-term care ombudsman are prepared and submitted in a format and time frame as directed;

(c) Procedures are followed to protect the identity, confidentiality, and privacy of clients; and

(d) Nonclient-specific statistical and financial data is submitted[~~to the area agency on aging~~] as required.

Section 6. Responsibilities of the Volunteer Ombudsman. The volunteer ombudsman shall:

(1) Complete required training, including training and certification requirements for those involved in complaint investigation;

(2) Provide regular visitation of residents in long-term care facilities[~~nursing homes~~];

(3) Adhere to guidelines provided by the Kentucky long-term care ombudsman[~~state~~] and district ombudsmen; and

(4) Complete required paperwork.

Section 7. Ombudsman Advisory Council. (1) The designated district ombudsman program shall have an advisory council whose functions are to:

(a) Review and advise programs on policies and procedures;

(b) Provide ongoing support and leadership; and

(c) Identify and generate funding resources for program viability.

(2) The advisory council shall be comprised as follows:

(a) Members shall be persons with a strong interest in improving the quality of life for the institutionalized elderly and for protecting their rights;

(b) Group size and composition shall be individualized to the needs of the local program but shall not be less than seven (7); and

(c) One-third (1/3) of the members shall be consumers or family members of consumers.

(3) Advisory council members shall not:

(a) Be responsible for certifying or licensing long-term care facilities;

(b) Be a provider of long-term care services or part of an association of providers;

(c) Have any interest or association which may impair the ability of the ombudsman to objectively and independently investigate and resolve complaints;[~~or~~]

(d) Gain economically or receive any compensation from a long-term care facility or association;

(e) Be on the Adult Protective Services Caregiver Misconduct Registry or the Kentucky Nurse Aid Abuse registry; or

(f) Have been found guilty of the following:

1. A violent crime as defined by KRS 439.3401;

2. Abuse, neglect, or exploitation of another person, including assault;

3. Felony theft offense; or

4. Felony drug offense.

Section 8. Qualifications, Certification, and Training of Long-Term Care Ombudsmen. (1)The Kentucky long-term care ombudsman, regional ombudsman, and district long-term care ombudsman shall:

(a) Possess a minimum of a bachelor's degree in a health or human services profession from an accredited college or university with:

1. One (1) year experience in health or human services; or

2. The educational or experiential equivalent in the field of aging or physical disabilities; or

(b) Be a certified regional or district ombudsman with no lapse in certification prior to the effective date of this administrative regulation.

(2) A district, regional, or volunteer ombudsman, and friendly visitor shall have a completed background check conducted prior to hire for the following:

(a) The Adult Protective Services Caregiver Misconduct Registry;

(b) The Kentucky Nurse Aid Abuse registry; and

(c) A criminal record check utilizing the Kentucky Administrative Office of the Courts or the Kentucky Justice Cabinet and not have been found guilty of the following:

1. A violent crime as defined by KRS 439.3401;

2. Abuse, neglect, or exploitation of another person, including assault;

3. Felony theft offense; or

4. Felony drug offense.

(3)[~~provide training as follows:~~

~~(1) Staff and volunteers shall participate in a basic training program designed to give trainees a working knowledge of the ombudsman program and the long-term care system.~~

~~(2)~~] Program sponsors, sub-contract agency[~~area agency on aging~~] directors, and directors of other sponsoring agencies shall receive basic training whenever possible.

(4)[~~(3)~~] The[~~district~~] long-term care ombudsman, program staff, and volunteers shall receive a minimum of twenty-four (24) hours of training, including at least the following areas:

(a) The Older Americans Act of 1965, as amended, and the aging network;

(b) Characteristics, special needs, and problems of the long-term care resident;

(c) Characteristics of long-term care facilities[~~nursing homes~~] including:

1. Numbers of beds;

2. Levels of care;

3. Services; and

4. Costs;[~~.~~]

(d) The long-term care reimbursement system including:

1. Medicaid;

2. Medicare;

3. SSI; and

4. State supplementation;[~~.~~]

(e) The regulation of facilities and the enforcement of regulations;

(f) Complaint investigation and resolution;

(g) Guardianship;

(h) Residents' rights;

(i) Development of residents' councils;

(j) Recruiting, screening, selecting, training, placing, and supporting volunteers; and

(k) Use of public funds.

(5)[~~(4) In addition to the minimum training,~~] District ombudsmen shall attend[~~quarterly~~] training meetings as established by the Kentucky long-term care ombudsman[~~provided~~].

(6) All long-term care ombudsmen and volunteers shall be:

(a) Certified within thirty (30) days of hire or prior to providing services; and

(b) Re-certified every two (2) years prior to the expiration of the current certification.

(7) Certification shall be awarded after submitting certification documentation of:

(a) Verification of completion of minimum training requirements; and

(b) A score of at least eighty (80) percent on the certification examination.

Section 9. Confidentiality. Investigatory files, complaints, responses to complaints and other information related to complaints or investigations maintained by the ombudsman program shall be considered confidential information in accordance with the Older Americans Act of 1965, ***42 U.S.C. 3027(a)(12)(C)[~~Section 307(12)(B) and (D)~~]***. Confidentiality shall be maintained using the following criteria:

(1) Persons who gain access to a resident's[~~residents'~~] records shall not discuss or disclose information in the records or disclose a resident's identity outside of the program.

(2) The Kentucky long-term care ombudsman shall release information only with:[~~without:~~]

(a) Written consent of the resident[~~or complainant~~]; or

(b) A court order to disclose.

(3)[~~(2)~~] Information shall be secured as follows:

(a) Complaint files shall be contained in a locked file cabinet;

(b) Computerized systems shall have secured access codes; and

(c) Computer software containing confidential information shall be stored in a locked file.

(4)[~~(3)~~] The confidentiality and disclosure criteria shall not preclude the ombudsman's use of otherwise confidential information in the files for preparation and disclosure of statistical, case study, and other data[~~,~~] if the ombudsman does not disclose the identity of persons otherwise protected in this section.

Section 10. Rights of Access. (1) Kentucky, regional, volunteer, and district ombudsmen shall have unrestricted access to long-term care facilities:

(a) Without prior notice;

(b) To meet with one (1) or more residents; and

(c) To observe the operation of the facility as it affects the patient.

(2) Volunteer ombudsmen shall have access[~~during normal visiting hours~~] to the:

(a) Residents' dining area;

(b) Residents' living area;

(c) Residents' recreational area;

(d) Lounges; and

(e) Areas open to the general public.

(3) Certified representatives of the Kentucky Long-term Care Ombudsman Program shall have access to a resident's medical and social records:

(a) With permission of the resident or his legal guardian, except as provided for under KRS 209.030***(7)[~~(5)~~]***; or

(b) By court order.

(4) Access shall not include the right to examine the financial records of the facility without the consent of the administrator.

(5) If the ombudsman is denied entry to a long-term care facility, the administrator or operator shall be informed of the statutory authority for access. If entry is still denied, the ombudsman shall inform the Kentucky long-term care ombudsman, the Office of Inspector General, Division of Health Care[~~Licensing and Regulation~~], and secure assistance from local law enforcement officials.

(6) Willful interference, as governed by KRS 216.541(3)[~~216.535(7)~~], with representatives of the Kentucky Long-term Care Ombudsman Program in the performance of official duties shall be unlawful and:

(a) Result in a fine of $100 to $500 for each violation;

(b) Each day the violation continues shall constitute a separate offense.

Section 11. Referrals. (1) The district[~~Kentucky~~] long-term care ombudsman shall refer reports of abuse, neglect, exploitation, or spouse abuse to the Department for Community Based Services, Division of Protection and Permanency,[~~Divisions of Family Services~~] and, if appropriate, the Office of Inspector General, Division of Health Care,[~~Licensing and Regulation~~] for investigation. Referrals under this subsection shall not affect the continuing duty, full freedom, and independence of the ombudsman to:

(a) Insure the continued adequacy and responsiveness of complaint investigation and resolution, monitoring, and data collection systems consistent with the Older Americans Act;

(b) Maintain an independent capacity to investigate and resolve complaints[~~,~~] as governed by Section 13 of this administrative regulation;

(c) Receive and process, on a regular basis, information related to the number, type, and source of complaints, facilities involved, and the manner of complaint resolution; and

(d) Maintain by specific agreement the power, ability, and right to monitor the agency's complaint processing performance and take action necessary to correct and improve deficiencies.

(2) District ombudsmen shall address concerns regarding the investigation or resolution of complaints referred under subsection (1) of this section to the Kentucky long-term care ombudsman.

(3) District ombudsmen shall make referrals to county attorneys, legal aid agencies, and legal assistance offices.

(4) District ombudsman shall report to the Kentucky long-term care ombudsman a referral[~~Referrals~~] to the Office of the Attorney General or any federal agency[~~and the Cabinet for Health Services's Office of Counsel shall be made through the Kentucky long-term care ombudsman~~].

Section 12. Receiving Reports. (1) The Kentucky long-term care ombudsman, regional ombudsmen, district ombudsmen, and persons identified and approved by these ombudsmen shall have the authority to provide intake of a complaint.

(2) The person receiving a report shall obtain as much information as possible, making a reasonable effort to obtain the:

(a) Name and location of the long-term care facility involved;

(b) Name and location of the resident;

(c) Name, address, and telephone number of the person responsible for the resident;

(d) Nature of the complaint as specifically as possible;

(e) Name and location of the alleged perpetrator; and

(f) Identity of the reporting source, though[~~.~~] reports may be made anonymously.

(3) The person receiving the report may contact other agencies or individuals to secure additional information relevant to the investigation.

Section 13. Complaint Investigation. (1) A long-term care facility resident[~~residents~~] shall have the right to:

(a) Voice grievances and recommend changes in policies and services to facility staff and outside representatives of their choice, free from restraint, interference, coercion, discrimination, or reprisal;

(b) Associate and communicate privately with persons of their choice; and

(c) Private meetings with the appropriate long-term care facility inspectors from the Cabinet for Health and Family Services.

(2) A long-term care ombudsman[~~ombudsmen~~] shall investigate and resolve complaints:

(a) Made by or on behalf of an elderly individual[~~individuals~~] who is a resident[~~are residents~~] of a long-term care facility[~~facilities~~] relating to action which may adversely affect the health, safety, welfare, and rights of the resident; ***and***

(b) Made by or on behalf of a nonelderly long-term care facility resident[~~residents~~] if actions will:

1.***a.*** Benefit an elderly resident[~~residents~~] of that long-term care facility or elderly residents of long-term care facilities generally; or

b.[2.] Be the only viable avenue of assistance available to the resident; and

2.[~~3.~~] Not significantly diminish the Long-term Care Ombudsman Program's efforts on behalf of elderly persons.

(3) District and volunteer ombudsmen shall not investigate complaints unless certified by the Kentucky Long-term Care Ombudsman Program.[~~Certification shall be extended after completion of minimum training requirements and attendance at an ombudsman competency conference conducted by the Kentucky Long-term Care Ombudsman Program or, in the case of volunteer ombudsmen, by the district Long-term Care Ombudsman Program.~~]

(4) The Kentucky and regional ombudsmen shall inform the district ombudsmen of on-site investigations conducted in their districts.

(5) The investigation shall be conducted according to the***[~~following~~]*** criteria ***established in this subsection.[~~:~~]***

(a) Investigation shall[~~may~~] include contact with the resident, staff of the long-term care facility, and collateral contacts.

(b) A representative[~~Representatives~~] of the program shall, upon entering the facility, promptly notify the administrator or his designated representative of his[~~their~~] presence.

(c) A representative[~~Representatives~~] of the program shall not enter the living area of a resident[~~residents~~] without identifying himself[~~themselves~~] to the resident.

(6) The investigating ombudsman, with permission of the resident or legal representative, shall take[~~immediate~~] steps to investigate[~~resolve~~] a[~~substantiated~~] complaint and attempt to resolve the complaint to the resident's satisfaction[~~The ombudsman shall consider the resident's choice of remedy. Reasonable avenues of assistance to the complainant, directly or by referral, shall be addressed, and if efforts are unsuccessful, the ombudsman shall so advise the complainant and provide information explaining how to proceed independently~~]. Resolution may include:

(a) Collaborating[~~Persuading~~] or negotiating at the nursing home administrative level to change particular nursing home behavior, pattern, or practice affecting the resident;

(b) Consulting with a resident, relative, or nursing home staff member to resolve a problem;

(c) Effecting positive enforcement action by a regulatory agency;

(d) Proposing regulatory or statutory changes or additions;

(e) Communicating with community groups and professional organizations; and

(f) Encouraging the utilization of legal services assistance[~~by the complainant~~].

(7)[~~Written~~] Documentation shall be completed on complaint investigations and incorporated into the ombudsman data system as follows[~~files~~]:

(a) The documentation entered into the data system[~~DSS 1240 Long-term Care Complaint form, herein incorporated by reference,~~] shall be entered by the fifteenth (15th) of the month for all cases completed the prior month[~~at the conclusion of the investigation~~]; and

(b)[~~A narrative~~] Documentation of the investigation shall include the:

1. Identity of the resident on whom the report is made;

2. Date the face-to-face visit with the resident was completed;

3. Identity of the long-term care facility;

4.[~~3.~~] Complaint;

5.[~~4.~~] Identity of persons interviewed and records or documents reviewed during the course of the investigation;

6.[~~5.~~] Factual information used to support findings and conclusions; and

7.[~~6.~~] Actions taken and services provided.

(8) Resolution shall include documented follow-up and ongoing monitoring of the situation for a reasonable period of time, depending on the complexity of the situation, through contact with the complainant or resident[~~,~~] or,[~~otherwise~~] if appropriate, for the purpose of determining that the causes giving rise to the complaint have not been repeated and have not recurred.

(9) ***In accordance with KRS 216.541(2) and (3),*** retaliation and reprisals by a long-term care facility or other entity against an employee or resident for having filed a complaint or having provided information to the Kentucky Long-term Care Ombudsman Program shall be unlawful and:

(a) Shall result in a fine of $100 to $500 for each violation; and

(b) Each day a violation continues shall constitute a separate offense.

Section 14. Reporting Requirements. The Kentucky long- term care ombudsman program shall maintain a statewide uniform reporting system to collect and analyze information on complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems. (1) The contracted agency providing the district long-term care program[~~area agency on aging~~] shall submit quarterly reports to the Kentucky long-term care ombudsman according to the contractual agreement.[~~following schedule:~~

~~1st quarter~~	~~Oct 1 – Dec 31~~	~~Due January 15~~
~~2nd quarter~~	~~Jan 1 – Mar 31~~	~~Due April 15~~
~~3rd quarter~~	~~Apr 1 – Jun 30~~	~~Due July 15~~
~~4th quarter~~	~~Jul 1 – Sep 30~~	~~Due October 15~~]

(2) The district ombudsman shall submit an annual report to the Kentucky long-term care ombudsman no later than determined in the contractual agreement[~~October 15~~] for inclusion in the annual state ombudsman report.

[~~(3) Copies of the DSS 1240 Long-term Care Complaint form, herein incorporated by reference, shall be submitted by the district or regional ombudsman to the Kentucky long-term care ombudsman to be reviewed and retained in a confidential file. Supporting documentation shall be submitted upon request of the Kentucky long-term care ombudsman.~~

~~(4) The following activities facilitate the delivery of services but shall not be reported as units of service:~~

~~(a) Review, update or maintenance of resource or agency files;~~

~~(b) Travel time incurred in the delivery of the service;~~

~~(c) Training or staff meetings; and~~

~~(d) Project management.~~

~~(5) The following shall be utilized to determine unduplicated client count:~~

~~(a) Persons who directly receive a service from the program, including friendly visiting;~~

~~(b) Persons who reside in a long-term care facility and benefit from services directed at improving quality of life for residents in that facility, even if the resident did not directly receive the service; and~~

~~(c) Persons who participate in training conducted by the ombudsman program and are not a part of the program.~~]

Section 15. Monitoring and Evaluation. (1) District long-term care ombudsman programs shall be monitored annually by the contract agency or the Kentucky long-term care ombudsman according to contract[~~area agency on aging,~~] or, if services are provided directly by the Kentucky long-term care ombudsman[~~area agency on aging~~], by the DAIL[~~Office of Aging Services~~].

(2) Formal evaluations of the district ombudsman program shall be conducted at regular intervals, at least annually, by the Kentucky long-term care ombudsman.

(3) The results of the evaluation, omitting client identifying information, shall be made available to the district long-term care ombudsman contracting agency[~~area agency on aging~~] to be used to plan and implement program changes to meet participant needs.

(4) The Kentucky long-term care ombudsman and district long-term care ombudsman contracting agency shall permit staff of the Cabinet for Health and Family Services, persons acting for the Cabinet for Health and Family Services, or staff designated by appropriate federal agencies to:

(a) Monitor and evaluate programs and activities initiated under the Older Americans Act and other programs for which the department has administrative responsibility; and

(b) Interview clients by persons and agencies listed in this subsection, except if confidentiality requirements are applicable.[~~Section 16. Material Incorporated by Reference.~~

~~(1) Forms necessary for the implementation of the Kentucky Long-term Care Ombudsman Program shall be herein incorporated.~~

~~(2) Material incorporated by reference may be inspected and copied at the Office of Aging Services CHR Building, 5th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.~~]

DEBORAH S. ANDERSON, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: March 10, 2015

FILED WITH LRC: March 12, 2015 at 3 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Operations and Support
(As Amended at ARRS, May 5, 2015)

910 KAR 1:220. General administration, programs for older individuals and persons with disabilities[~~the elderly~~].

RELATES TO: KRS 205.201, 205.203, 205.455-465.31, 205.900(3), 211.470-211.478, 45 C.F.R. 92.25(g)(2), (3), Part 74, Subpart B, 213, 1321, 5 U.S.C. 552, 7501 et seq., 42 U.S.C. 3001 et seq.

STATUTORY AUTHORITY: KRS 194A.050, 205.204(2)

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 3001 et seq., the Older Americans Act of 1965, as amended, authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194A.050 ***requires the secretary for[~~authorizes~~]*** the Cabinet for Health and Family Services to ***promulgate administrative[~~adopt~~]*** regulations***[~~as~~]*** necessary to implement programs mandated by

federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the Cabinet for Health and Family Services as the state agency to administer the Older Americans Act in Kentucky.***[The function of]*** This administrative regulation ***establishes[is to set forth]*** the policies and procedures governing the general administration of the aging and disabilities programs and Older Americans Act in Kentucky***[, in compliance with the statutory requirement of KRS 13A.221 that requires a separate administrative regulation for each topic of general subject matter]***.[This proposed administrative regulation consolidates the provisions of 905 KAR 8:010, 8:040, 8:050, 8:060, and 8:080.]

Section 1. Definitions. (1) "Administration on Community Living" or "ACL" means the federal agency housed within the Office of the Secretary of Health and Human Services which is responsible for the administration of grant awards to state units on aging under Title III of the Older Americans Act.

(2) "Area Agency on Aging and Independent Living" or "AAAIL" means an area agency on aging as defined by 42 U.S.C. 3002(6).

(3) "Area plan" means a plan submitted by an AAAIL to the department that releases funds under contract for the delivery of service within a planning and service area.

(4) "Corrective action" means the written statement of non-compliance issued to a provider for failure to comply with contractual obligations, federal or state regulations, or department policy.

(5) "Corrective action plan" means the written response of the provider to eliminate the non-compliance issues addressed in the written corrective action statement and prevent future non-compliance from occurring.

(6) "Department" or "DAIL" means the Department for Aging and Independent Living.

(7) "Fidelity bond" means a bond indemnifying the recipient against losses resulting from the fraud or lack of integrity, honesty, or fidelity of one (1) or more employees, officers, or other person holding positions of trust.

(8) "Greatest economic need" is defined by 42 U.S.C. 3002(23).

(9) "Greatest social need" is defined by 42 U.S.C. 3002(24).

(10) "In-kind resources" means the value of property or services which benefit a grant-supported project or program and which are contributed by nonfederal third parties without charge to the grantee.

(11) "Planning and service area" or "PSA" means that multicounty geographical entity in which a given AAAIL is responsible for the planning of aging services.

(12) "Program income" means the gross income earned by a provider agency from activities of which part or all of the cost is either borne as a direct cost counted towards meeting a cost sharing or matching requirement of department contracted funds.

(13) "Provider agency" means an entity that provides for the performance of services or performs a specific service under contract.

(14) "Service provider" means the agency under contract with DAIL or a provider agency to provide direct services.

(15) "State plan" means the formal application of the office for federal Title III funds under the Older Americans Act and provides a basis for the expenditures of these funds.

(16) "Target group" means older individuals:

(a) Who are low-income, including low-income minority;

(b) With limited English proficiency;

(c) Residing in rural areas; or

(d) At risk for institutional placement.

Section 2. Responsibilities of the DAIL. The DAIL shall:

(1) Develop the state plan on aging and disability;

(2) Consider the views of older persons and the general public in developing and administering the state plan by:

(a) Receiving public and consumer participation in identifying service needs and establishing funding priorities prior to the submission of the state plan for approval;

(b) Responding to requests of the Institute for Aging for information and submit for its review and comment on proposed plans, budgets, programs, policies, and general initiatives;

(c) Eliciting input from appropriate external sources as opportunities present themselves; or

(d) Reviewing and considering comments received regarding program plans, budgets, policies, and general initiatives and making changes if feasible and in the best interests of those individuals for whom the programs are designed;

(3) Coordinate statewide planning and development of activities and provide technical assistance to provider agencies to ensure effective coordination of programs;

(4) Establish and enforce appropriate procedures for data collection from contract agencies to permit the state to compile and transmit statewide data in a form the commissioner directs on an annual basis;

(5) Conduct, within budget limitations, activities to implement training and education programs which include the following:

(a) Conducting annual assessments to identify training needs and develop correlating plans;

(b) Identifying and reviewing resources available to meet training needs;

(c) Developing a comprehensive education and training plan;

(d) Seeking additional resources to implement the plan;

(e) Effecting interagency coordination for the provision of specialized training;

(f) Facilitating and assisting the efforts of higher education in statewide forums of a gerontological or disability orientation;

(g) Coordinating education programs with private, public, governmental, and educational organizations and institutions;

(h) Providing and coordinating training opportunities for personnel of agencies and programs utilizing department funding;

(i) Providing training to provider agencies on self-evaluation and monitoring; and

(j) Providing training as part of the state training plan including ongoing technical assistance and annual program evaluation;

(6) Participate in appointments to boards and commissions as required by the cabinet;

(7) Review, monitor, evaluate, and comment on federal, state, and local area plans which affect or may affect older individuals and those with disabilities;

(8) Recommend changes in these plans which the department deems appropriate including:

(a) Budgets;

(b) Regulations;

(c) Programs;

(d) Laws;

(e) Levies;

(f) Hearings;

(g) Policies; and

(h) Actions;

(9) Monitor the performance of programs and activities for quality and effectiveness and to determine compliance with contract requirements, approved area plans, and applicable federal and state statutory and regulatory requirements;

(10) Have an adequate number of qualified staff to carry out the functions prescribed in 45 C.F.R. 1321.9 of the Older Americans Act and other program regulations for which the department has administrative responsibility;

(11) Give preference to individuals aged sixty (60) or older, subject to the requirements of merit employment systems of state and local governments;

(12) Assure that the provider agency allots an adequate proportion of its funding for the provision of direct services to eligible participants;

(13) Develop and make known to the provider agency procedures for and conditions under which funding may be suspended;

(14) Comply with the provisions of the Older Americans Act of 1965, as amended;

(15) Designate PSAs in accordance with ***42 U.S.C. 3025(a)(1)(E)[the provisions of Section 305(a)(1)(E) of the Older Americans Act]***;

(16) Designate the AAAIL in each PSA;

(17) Develop and use a federally approved intrastate funding

formula for Older Americans Act of 1965 funding;

(18) Provide area-specific information in a statewide summary of the local needs assessment conducted in each PSA;

(19) Conduct joint meetings with the provider agencies to:

(a) Coordinate statewide planning and development of activities; and

(b) Provide technical assistance to each provider agency to ensure effective procedures for coordination of programs within the PSA;

(20) Notify the contract agencies in writing in advance of the date the joint meeting shall take place;

(21) Solicit input from the contract agency as to the topics to address and discuss at the joint meeting; and

(22) Issue a waiver of program requirements:

(a) In compliance with ***42 U.S.C. 3030c-3[~~Section 316 of the Older Americans Act of 1965 as amended~~]***; or

(b) To develop pilot projects as allowed for state funded programs.

Section 3. Distribution of State and Federal Funding for Aging and Disability Programs. Directly or through contract with a provider agency, funding allocations shall be distributed according to program requirements. (1) The department shall distribute available state and federal funds to the provider agency according to a funding formula determined by the department.

(2) Older Americans Act funding shall be allocated based on the funding formula developed by the department and approved by the ACL.

(3) Funding allocated from funds authorized under the following categories shall be for the purpose of assisting the department to develop or enhance comprehensive and coordinated community-based services throughout the state:

(a) State administration;

(b) Provider agency administration;

(c) Home care;

(d) Personal Care Assistant Program;

(e) Traumatic Brain Injury Trust Fund;

(f) Hart Supported Living Program;

(g) Kentucky Family Caregiver Program;

(h) Brain Injury Behavioral Program;

(i) Senior Community Employment Program;

(j) State long-term care ombudsman, Title III-B and Title VII;

(k) Supportive services, Title III-B;

(l) Congregate meals services, Title III C 1;

(m) Home-delivered meals services, Title III C 2;

(n) Evidence based health promotion services, Title III-D; and

(o) Elder abuse services, if funds are available, Title VII.

(4) Except for the State Long-Term Care Ombudsman and state administration, the department shall award the available Older Americans Act funds according to the federally approved intrastate funding formula:

(a) Determined by the department after consultation with the AAAILs in the state and publication of the formula by the department for review and comment by older persons and the general public; and

(b) Which shall reflect the proportion among the PSA of persons age sixty (60) and over in greatest economic or social need with particular attention to low income minority individuals.

(5) The department shall follow the procedures for and conditions under which funding may be temporarily suspended or terminated according to Section 10 of this administrative regulation.

Section 4. Designation and Withdrawal of Designation of an AAAIL. (1) Each PSA shall have designated by DAIL a public or private nonprofit agency or organization as the AAAIL in accordance with ***42 U.S.C. 3025(c)[~~Section 305(c) of the Older Americans Act~~]***.

(2) The department shall withdraw the AAAIL designation if, after reasonable notice and opportunity for a hearing, the department finds that:

(a) The AAAIL does not meet the requirements set out in subsection (1) of this section or Section 5 of this administrative regulation;

(b) The plan or plan amendment is not approved;

(c) There is substantial failure in the provision or administration of an approved area plan to comply with provisions of the area plan requirements under the Older Americans Act; or

(d) There is a request by the AAAIL.

(3) The department shall initiate the designation withdrawal process of the AAAIL and shall:

(a) Notify the AAAIL of its intent to withdraw designation, citing non-compliance issues and outlining steps to be taken to appeal the intent to withdraw designation in accordance with 910 KAR 1:140; and

(b) Assist in the facilitation of the hearing as set forth in 910 KAR 1:140 if the AAAIL requests a state hearing.

(4) Following the appeal process, the cabinet shall notify the AAAIL in writing of the hearing.

(5) If the department withdraws the AAAIL's designation, it shall:

(a) Notify the administrator of the ACL and the cabinet secretary in writing of its action;

(b) Provide a plan for the continuity of planning and services in the affected PSA; and

(c) Designate a new AAAIL in the PSA.

(6) To ensure continuity of planning and services in a PSA, the DAIL may, for a period of up to 180 days after its final decision to withdraw designation of a AAAIL:

(a) Perform the responsibilities of the AAAIL; or

(b) Assign the responsibilities of the AAAIL to another provider agency in the PSA.

(7) If necessary, the administrator of the ACL may extend for a period of up to an additional 180 days the limit in subsection ***(6)[(4)]*** of this section if the state agency:

(a) Requests an extension; and

(b) Demonstrates to the administrator of the ACL a need for the extension.

Section 5. Responsibilities of the AAAIL. The AAAIL shall be designated by the department in each PSA and shall:

(1) Establish an advisory council as follows:

(a) The area advisory council shall carry out functions which further the AAAIL's mission of developing and coordinating community-based systems of services for older persons in the PSA. The council shall advise the AAAIL relative to:

1. Developing, reviewing, and commenting on the area plan prior to submitting to the department for approval;

2. Conducting public hearings;

3. Representing the interest of older persons; and

4. Reviewing and commenting on community policies, programs, and actions which affect older persons with the intent of assuring maximum coordination and responsiveness to older persons.

(b) The advisory council shall be made up of:

1. More than fifty (50) percent older persons, including minority individuals who are participants or who are eligible to participate in programs under the Older Americans Act;

2. Representatives of older persons;

3. Representatives of health care provider organizations, including providers of veterans' health care if providers of veterans' health care are located in the geographical area served within the PSA;

4. Representatives of supportive services provider organizations;

5. Persons with leadership experience in the private and voluntary sectors;

6. Local elected officials; and

7. The general public;

(2) Include individuals and representatives of community organizations who shall help to enhance the leadership role of the AAAIL in developing community-based systems of services;

(3) Serve as the public advocate for the development for enhancement of comprehensive and coordinated community-based systems of services in each community throughout the PSA;

(4) Monitor, evaluate, and provide comment on policies,

programs, hearings, levies, and community actions which affect older persons and persons with disabilities;

(5) Solicit comments from the public on the needs of older persons, and persons with disabilities having procedures for receiving community and consumer participation in the planning and service delivery process in conformance with 45 C.F.R. 1321.57(c) and 1321.61(b);

(6) Represent the interests of older persons and persons with disabilities to local-level and executive branch officials and public and private agencies or organizations;

(7) Consult with and support the Commonwealth's long-term care ombudsman program;

(8) Undertake ongoing activities designed to facilitate the coordination of area plans and activities with other public and private organizations;

(9) Promote new or expanded benefits and opportunities for older persons and persons with disabilities;

(10) Undertake a leadership role in assisting communities throughout the PSA to target resources from appropriate sources to:

(a) Meet the needs of the target group; and

(b) Recommend the location of services and specialization in the types of services most needed by the above-referenced group;

(11) Prohibit means testing for services funded through Older Americans Act funds;

(12) Prepare and develop for a PSA an area plan as determined by the department and in accordance with ***42 U.S.C. 3026[~~Section 306 of the Older Americans Act of 1965~~]***:

(a) By the annually established deadline;

(b) Which shall include:

1. A mission and vision statement;
2. Planning and service area geographics;
3. A profile of regional demographics;
4. Funding sources for the AAAIL;
5. Services offered within the PSA;
6. Partnerships and associations;
7. A capacity assessment;
8. A capacity building plan;
9. Public hearings;
10. Service usage;
11. Participants of aging programs feedback and satisfaction;
12. Coordination and collaborations;
13. Outreach and expansion;
14. Community opportunities;
15. Intake and referral;
16. Financial management and fund development;
17. AAAIL advisory council membership;
18. AAAIL administrative staffing plan;
19. AAAIL direct staffing plan;
20. A provider agency staffing plan;
21. Long Term Care Ombudsman advisory council membership;
22. A provider site list;
23. Performance plans;
24. Waivers and special program approvals;
25. Provider approvals;
26. Assurances;
27. A financial plan and outputs; and
28. Other information requested in advance by the department; and

(c) Each area plan shall be subject to amendment by the AAAIL upon request of the department;

(13) Provide area-specific information of the local needs assessment conducted in the PSA;

(14) Specify in writing to the department how the AAAIL intends to satisfy the needs of the target group served through the contract in proportion to the population served;

(15) Within budget limitations, implement education and training programs that respond to the needs of older individuals, the disabled, service providers, and other groups which include:

(a) Conducting annual assessments to identify training needs and develop correlating plans;

(b) Identifying, reviewing, and pursuing resources available to meet training needs;

(c) Developing a comprehensive education and training plan;

(d) Coordinating interagency collaboration for the provision of specialized training;

(e) Facilitating and assisting the efforts of higher education in statewide forums related to the aging and disabled populations;

(f) Conducting and coordinating education and training related to the aging and disabled population and programs for area advisory councils and the general community;

(g) Specifying the training requirements of the service providers; and

(h) Planning and implementing staff development initiatives; and

(16) Conduct periodic evaluations of, and public hearings on, activities carried out in the PSA.

Section 6. Public Hearings. (1)The department shall, if appropriate, utilize public hearings as one (1) method of obtaining both proactive and reactive community and consumer participation in prioritizing and evaluating activities and projects carried out under the state plan.

(2) If public hearings are utilized, the department shall:

(a) Schedule a minimum of one (1) public hearing annually for the purpose of evaluating activities and projects carried out in the state plan;

(b) Specify the inclusion of an evaluation of the state plan's effectiveness in reaching the target population;

(c) If appropriate, schedule public hearings for the purpose of receiving community and consumer participation in the development and implementation of service activities;

(d) Require of the AAAIL a timely conducted public hearing prior to the consideration of a request of the department for a waiver from a service provision responsibility required in the area plan; and

(e) Schedule, advertise, and conduct public hearings it deems appropriate in a manner designed to encourage, enhance, and facilitate community and consumer participation.

(3) The department shall consider the views of older persons and the general public in developing and administering the state plan and shall:

(a) Utilize methods which include public hearings in receiving public and consumer participation in identifying service needs and establishing funding priorities prior to the submission of the state plan for federal approval;

(b) Advertise the date, time, location, and purpose of each public hearing with the local media in the PSA in and for which the hearing is being held;

(c) Elicit input from appropriate external sources as opportunities present themselves;

(d) Require AAAILs to develop procedures for receiving community and consumer participation in the planning and service delivery process in conformance with 45 C.F.R. 1321.57(c) and 1321.61(b); and

(e) Review and consider comments received regarding program plans, budgets, policies, and general initiatives and make changes if feasible and in the best interests of those individuals for whom the programs are designed.

Section 7. Responsibilities of a Provider Agency. (1) A provider agency shall:

(a) Adhere to the contractual agreement, state and federal regulations, and department policy;

(b) Provide for each employee providing services funded through the department a comprehensive training course that shall be:

1. Monitored by the provider agency through record review; and
2. Reviewed or monitored by the DAIL through records maintained by the provider agency; and

(c) Verify participant or applicant eligibility for DAIL funded programs only once even though the participant may receive multiple services through state or federal funding sources.

(2) Participant records shall include the following information:

(a) The participant's age or birth date if age is an eligibility requirement;

(b) Documentation of the method used to verify the reported age;

(c) The staff involved in the verification process;

(d) Other eligibility determinants; and

(e) Verification of other eligibility determinants.

(3)The provider agency shall conduct monitoring and evaluation of services and shall:

(a) Permit staff of the Cabinet for Health and Family Services, persons acting for the cabinet, and staff designated by appropriate federal agencies to monitor and evaluate programs and activities performed and administered by the provider agency and subcontractors for which the department has administrative responsibility;

(b) Respond to monitoring reports including submission of a corrective action plan;

(c) Be responsible for fiscal or program exceptions established by evaluation, monitoring, or audit and promptly settle monitoring, fiscal, and program audit exceptions by:

1. Making direct payment;

2. Accepting reduction of future reimbursement; or

3. Other methods approved by the Cabinet for Health and Family Services;

(d) Furnish appropriate technical assistance to, and conduct an annual evaluation of, the effectiveness of program outcomes;

(e) Assess services to determine compliance with contractual agreement and with applicable federal and state requirements;

(f) Submit written corrective action or recommendations regarding on-site monitoring visits and reports to the service providers as applicable;

(g) Require the service provider to have provision for the interview of clients by persons and agencies listed in paragraph (a) of this subsection and the provider agency, except if confidentiality requirements are applicable; and

(h) Review subcontractors' forms and procedures and forward a copy of the information to the DAIL prior to the implementation of the contract for final approval, if applicable.

(4) Each provider agency shall have a policy for denial, suspension, or reduction of services to eligible persons, which shall:

(a) Be maintained on file at the provider agency and be accessible for monitoring purposes;

(b) Specify, at a minimum, that if services for a client or participant are denied, suspended, or reduced, one (1) of the following situations shall be present and documented:

1. Funds are no longer available or are reduced;

2. The service level is no longer needed;

3. Prioritization and needs determination indicate that the client no longer meets the criteria established for receiving services;

4. The client refuses to follow the service plan or plan of care; or

5. The client or family member has exhibited abusive, intimidating, or threatening behavior and the client or representative is unable or unwilling to comply with a corrective action plan; and

(c) Include notification to a client of the right to request an appeal based on the denial, suspension, or reduction of services to an eligible person as listed in paragraph (b)2. through 5. of this subsection in accordance with 910 KAR 1:140.

(5) A provider agency shall adhere to the procurement requirements as follows:

(a) Promote open and free competition among qualified competitors;

(b) Not restrict or eliminate competition by placing unreasonable or unnecessary requirements on potential bidders;

(c) Establish procurement procedures which take into account the federal, state, and local requirements and include:

1. A method for resolving protests, disputes, and claims;

2. A written code or standards of conduct;

3. A review process to avoid unnecessary purchases or duplicative items;

4. Affirmative action standards that encourage contracting with minority-owned small businesses;

5. A method for procurement; and

6. Evaluation and selection criteria; and

(d) Formally advertise programs and services.

(6) If the provider agency chooses to utilize noncompetitive negotiations, it shall:

(a) Clearly document and maintain on file that:

1. Only one (1) responsible provider is available, capable, and qualified to provide the service; and

2. By using noncompetitive negotiations, open and free competition shall not be restricted;

(b) Maintain records sufficient to detail the significant history of the procurement; and

(c) Provide, upon request and prior to subcontracting, copies to the department supporting noncompetitive negotiations.

(7) A provider agency shall comply with the program reporting requirements of the contractual agreement or the following as applicable:

(a) A quarterly program performance report shall be submitted to the department fifteen (15) calendar days after each quarter***[in accordance with format and instructions provided by the department]***;

(b) An annual program performance report shall be submitted to the department for the federal fiscal year October 1 - September 30***[in accordance with format and instructions provided by the department]***;

(c) Homecare reporting and entry into the statewide data system shall be in accordance with 910 KAR 1:180;

(d) A monthly meal count report for Title III and Homecare shall be submitted to the department by the contractual deadline; and

(e) Title V reporting and entering into the statewide data system shall be in accordance with 910 KAR 1:200.

(8) The provider agency conducting assessments shall complete an assessment within seven (7) calendar days of referral unless:

(a) Funding is not available to provide a service; and

(b) The individual is placed on the waiting list.

(9) The provider agency shall assure that a written uniform system is in place for maintenance of waiting lists and shall follow these guidelines:

(a) Each waiting list for services shall be reported to the department as part of the quarterly program performance report;

(b) The waiting list shall be updated monthly and a new DAIL-GA-01 Priority Screening Tool completed if there is a change in needs;

(c) The system shall be based on a method to prioritize applicants;

(d) An applicant shall be advised of the procedures and method of facilitating the waiting list and provided with the written procedures upon request;

(e) An applicant who is determined to be potentially eligible based on screening information gathered by the designated agency staff may be placed on a waiting list; and

(f) Once funding is available for a service, the individual on the waiting list with the highest priority screening score on the DAIL-GA-01 Priority Screening Tool shall be assessed within seven (7) calendar days.

(10) Each provider agency may use its own definition of equipment as long as it includes tangible personal property having a useful life of at least one (1) year and a unit cost of $500 or more.

(a) Equipment records shall be current and shall contain at least the following information:

1. Description of the item;

2. Serial number;

3. Source of funds used to purchase the item;

4. Percentage per source and program of the cost;

5. Acquisition cost and date;

6. Unit cost;

7. Location, use, and condition of the equipment;

8. Information on the disposition of the item; and

9. The replacement schedule of the equipment being replaced, if applicable.

(b) There shall be a system to prevent loss, damage, or theft.

(c) There shall be adequate maintenance procedures to keep equipment in good condition.

(d) Purchase of equipment with a unit cost of $500 or more shall require prior approval from the DAIL.

(e) Replaced equipment may be:

1. Traded in; or

2. Sold and the proceeds applied to the acquisition cost.

(f) Equipment with a unit cost of $1,000 or more shall be disposed of, not replaced, and the granting agency may require transfer of the equipment and title to an eligible party.

(g) Equipment may be sold if approved by the granting agency.

(h) If equipment is sold, the federal share of the proceeds may be applied to the program as program income but if the federal share is not applied to the program as program income, the federal share, less selling expenses, shall be returned to the federal government or an eligible nonfederal party named by the DAIL.

(i) The provider agency shall agree to the transfer of equipment and supplies with a value of less than $1,000 to a new provider if:

1. A new provider is selected:

a. As a result of competition; or

b. Due to a contract being terminated; and

2. The transfer is made within thirty (30) days from the date of receipt of notice from the department made by:

a. Certified mail; or

b. Return receipt requested.

(j) Equipment and supplies shall be transferred to the DAIL if no new provider has been secured.

Section 8. Record Check. (1) An applicant for employment or a volunteer with direct client contact shall authorize the provider agency to conduct a records check through the following:

(a) A criminal record check through the Kentucky Justice Cabinet, Administrative Office of the Courts, or a national criminal record check;

(b) The Central Registry;

(c) The Adult Protective Services Caregiver Misconduct Registry; ***and[~~or~~]***

(d) The Nurse Aid Abuse Registry.

(2) An applicant or volunteer with a criminal record may be employed only with the approval of the executive director of the provider agency if the individual has not been found guilty of the following:

(a) A violent crime as defined by KRS 439.3401;

(b) Abuse, neglect, or exploitation of another person, including assault;

(c) Felony theft offense; or

(d) Felony drug offense.

Section 9. Corrective Action. (1) The department shall issue corrective action if a provider agency is not fulfilling its contract or is non-compliant with program requirements. Upon identification of the deficiency, the department shall:

(a) Notify the provider agency of the requirement to submit a written corrective action plan within the time frame specified by the department;

(b) Review for approval or revision the corrective action plan submitted by the provider agency which shall include:

1. How the deficiency will be corrected;

2. Steps to ensure the deficiency will not reoccur; and

3. The timeline for full compliance;

(c) Monitor to ensure the corrective action plan was initiated and completed to resolve the deficiency; and

(d) Notify other licensing or regulatory agencies if the deficiency exists within their jurisdiction.

(2) A provider agency shall submit documentation to confirm the deficiency was resolved.

(3) If the provider agency continues to be in noncompliance, the department staff shall:

(a) Notify the provider agency of the continuing problem or deficiency;

(b) Advise the commissioner of the DAIL of the problem and make a recommendation for action; and

(c) Notify the provider agency of the action that shall be taken by the department based on continued non-compliance.

Section 10. Suspension of Funding or Termination of Contract. (1) The department may temporarily suspend operations or terminate the contract award in whole or in part if the provider agency or service provider fails to adhere to the following:

(a) Contract award stipulations;

(b) Federal and state laws and regulations;

(c) Department policies and procedures;

(d) A department approved corrective action plan; or

(e) Performance goals and deliverables.

(2) To suspend operations or terminate a contract, the department shall, thirty (30) days prior to the effective date:

(a) Notify the provider agency in writing of the action being taken;

(b) Provide the provider agency with the reason for the action;

(c) Specify the conditions of the suspension;

(d) Inform of the effective date of the suspension; and

(e) Inform the provider agency of the right to appeal the decision.

(3) The department shall grant to a provider agency whose funding has been suspended in whole or in part or whose contract has been terminated as a result, an opportunity for a hearing in accordance with the provision set forth in 910 KAR 1:140.

(4) The department may:

(a) Temporarily withhold cash payments pending an approved corrective action plan by the provider agency or pending a decision by the department to terminate the contract;

(b) Disallow both the use of funds and any applicable matching funds for all or part of the cost not in compliance;

(c) Wholly or partly suspend or terminate the contract award;

(d) Withhold future awards; or

(e) Exercise any other remedies that may be legally available.

(5) The department may impose additional requirements for provider agencies for the following:

(a) History of poor performance;

(b) Financial instability;

(c) A management system that does not meet the prescribed standards; or

(d) Not conforming to the terms and conditions of previous contract awards.

(6) Costs to a provider agency resulting from obligations incurred during the suspension or after termination of a contract award shall not be allowable unless the department:

(a) Expressly authorizes them in the notice of suspension or termination of contract award; or

(b) Subsequently determines the expenses:

1. Are necessary and not reasonably avoidable;

2. Result from obligations which were properly incurred by the provider agency before the effective date of the suspension or termination;

3. Are not in anticipation of the suspension or termination and in the case of a termination are non-cancellable; and

4. Would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(7) In suspending operations or terminating a contract, the department shall:

(a) Determine the amount of unearned state and federal funds the provider agency has on hand and interest earned, if any;

(b) Request a return of funds for all unearned or unallowable funds received by the provider agency from the department; and

(c) Designate a new provider agency to ensure there is no break in the provision of services to consumers.

(8) Upon suspension or termination, the provider agency shall be required to submit all financial, programmatic, and other reports pursuant to the terms and conditions of the contract.

(9) If the suspension of operations continues for three (3) consecutive months in a budget year:

(a) Funding of operations shall be terminated;

(b) Monetary assistance from the department shall cease in whole or in part under a contract at a time prior to the date of completion; and

(c) The department shall follow the requirements of subsection (4) of this section.

(10) The department may, at its discretion, reinstate the suspended operations if it determines that the provider agency has come into compliance with the contract, federal and state regulations, and department policies.

(11) The department shall reimburse the provider agency according to the terms and conditions of the contract for allowable program activities and cost upon reinstatement of operations.

(12) Operations may resume:

(a) Immediately upon notification; or

(b) Within the time period as designated by the department.

(13) Costs accrued for program operations while a program is suspended shall not be reimbursed.

(14) The obligational authority unearned at suspension shall become available for earning by the project at the previously established matching ratio.

(15) Termination of operational obligation or authority shall result in:

(a) Withdrawal of AAAIL designation that shall comply with subsection (13) of this section; or

(b) Withdrawal of a contract for services.

(16) The department shall withdraw the AAAIL designation or contract if, after reasonable notice and opportunity for a hearing, the department finds that:

(a) The AAAIL or provider agency does not meet the requirements set out in Section 5 or Section 7 of this administrative regulation;

(b) The plan or plan amendment is not approved;

(c) There is substantial failure in the provision or administration of an approved area plan to comply with provisions of the area plan requirements under the Older Americans Act; or

(d) There is a request by the provider agency.

(17) If the department withdraws the AAAILs designation or contract, it shall:

(a) Notify the administrator of the ACL and the CHFS secretary in writing of its action;

(b) Provide a plan for the continuity of planning and services in the affected PSA; and

(c) Designate a new AAAIL or provider agency in the PSA.

(18) To ensure continuity of planning and services in a PSA, the DAIL may, for a period of up to 180 days after its final decision to withdraw designation of an AAAIL or contract with a provider agency:

(a) Perform the responsibilities of the AAAIL or provider agency; or

(b) Assign the responsibilities of the AAAIL or provider to another agency in the PSA.

(19) If necessary, the administrator of the ACL may extend an additional 180 days if the state agency:

(a) Requests an extension; and

(b) Demonstrates to the administrator of the ACL a need for the extension.

Section 11. Incorporation by Reference. (1) The "DAIL-GA-01 Priority Screening Tool", November 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.[~~"Area development district" means one (1) of the fifteen (15) regional planning and development agencies with which the Office of Aging Services contracts for the local delivery of aging services.~~

~~(2) "Area agency on aging" means that local agency designated under the provisions of Title III of the Older Americans Act to administer funds received under that title for a given planning and service area.~~

~~(3) "Administration on Aging" means that federal agency housed within the Office of the Secretary of Health and Human Services which is responsible for the administration of grant awards to state units on aging under Title III of the Older Americans Act.~~

~~(4) "Area plan" means the plan submitted by an area agency on aging for the approval of the Office of Aging Services which releases funds under contract for the delivery of services within the planning and service area.~~

~~(5) "Fidelity bond" means a bond indemnifying the recipient against losses resulting from the fraud or lack of integrity, honesty, or fidelity of one (1) or more employees, officers or other person holding positions of trust.~~

~~(6) "In-kind resources" means the value of property or services which benefit a grant-supported project or program and which are contributed by nonfederal third parties without charge to the grantee.~~

~~(7) "Local cash match" means cash donated to pay costs of centers or sites or services.~~

~~(8) "Office" means the Office of Aging Services.~~

~~(9) "Planning and service area" means that multicounty geographical entity in which a given area agency on aging is responsible for the delivery of aging services.~~

~~(10) "Program income" means the gross income earned by a contractor from activities part or all of the cost of which is either borne as a direct cost by federal funds or counted as a direct cost towards meeting a cost sharing or matching requirement of federal funds.~~

~~(11) "State plan" means the formal application of the office for federal Title III funds under the Older Americans Act and provides a basis for the expenditures of these funds.~~

~~Section 2. The Office of Aging Services shall distribute federal and state funds for aging programs through contract allocation under authorization of:~~

~~(1) Title III of the Older Americans Act, which shall be distributed by formula:~~

~~(a) Funds authorized under the following categories shall be for the purpose of assisting the office and the area agencies on aging to develop or enhance for older persons, comprehensive and coordinated community-based services throughout the state:~~

~~1. State administration;~~

~~2. AAA - administration;~~

~~3. State long-term care ombudsman, Title III-B;~~

~~4. Supportive services, Title III-B;~~

~~5. Congregate meals services, Title III C 1;~~

~~6. Home-delivered meals services, Title III C 2;~~

~~7. In-home services, Title III-D;~~

~~8. Special needs services, if funds are available, Title III E;~~

~~9. Elder abuse services, if funds are available, Title III G;~~

~~10. Preventive health services, if funds are available, Title III F;~~

~~11. Outreach services, if funds are available.~~

~~(b) Except for the Office of the Long-Term Care Ombudsman and state administration, the office shall award the available funds to designated area agencies on aging according to the intrastate funding formula determined by the office after consultation with the area agencies on aging in the state and publication of the formula by the office for review and comment by older persons and the general public.~~

~~(2) The Acts of the General Assembly, Kentucky Homecare Program, as amended, and a grant from the United States Department of Health and Human Services, the office shall distribute available state and federal funds to area development districts according to a funding formula determined by the office. The contracting agency may provide services directly, subcontract for all or part of the services, provide the services through other funding sources or through volunteer efforts. Regardless of the method, the contracting agency shall assure availability of the following services based on approved definitions under the homecare program:~~

~~(a) Assessment;~~

~~(b) Case management;~~

~~(c) Chore;~~

~~(d) Escort;~~

~~(e) Home-delivered meals;~~

~~(f) Home health aide;~~

~~(g) Homemaker and home management;~~

~~(h) Homemaker personal care;~~

~~(i) Home repair;~~

~~(j) Respite.~~

~~(3) Title V of the Older Americans Act, the office shall distribute federal funds made available by the United States Department of Labor for the provision of useful part-time employment to low-income persons, fifty-five (55) years of age or older. The office shall allocate funds made available to designated agencies according to number of employment slots in each area. Designated agencies shall administer these funds either directly or by contract.~~

~~(4) Funds authorized under other federal and state programs shall be for the purpose of assisting the office to develop or enhance for older persons, comprehensive and coordinated community-based services throughout the planning and service areas. The office shall allocate funds made available to designated area agencies on aging according to need and population, through contracts with area development districts. Designated agencies shall administer these funds either directly or by contract.~~

~~Section 3. Responsibilities of the Office.~~

~~(1) Advisory councils. The office shall:~~

~~(a) Utilize the Institute for Aging as one (1) of the methods to obtain citizen participation;~~

~~(b) Cooperate with the Council for Social Services as appropriate in accordance with its mandate; and~~

~~(c) Participate on the Long-Term Care Coordinating Council and provide input in the area of long-term care for the elderly.~~

~~(2) The office shall advocate for older persons in the Commonwealth pursuant to the Older Americans Act regulation 45 C.F.R. 1321.13 and shall:~~

~~(a) Review, monitor, evaluate and comment on federal, state and local plans, budgets, regulations, programs, laws, levies, hearings, policies and actions which affect or may affect older individuals and recommend changes in these which the office deems appropriate;~~

~~(b) Provide technical assistance to agencies, organizations, associations or individuals representing older persons;~~

~~(c) Review and comment, upon request, on applications to state and federal agencies for assistance relating to meeting the needs of older persons;~~

~~(d) Conduct public hearings on the needs of older persons;~~

~~(e) Represent the interests of older persons before appropriate legislative, executive branch and regulatory bodies in the Commonwealth;~~

~~(f) Establish and operate the long-term care ombudsman program in accordance with the provisions of Section 307(12)(A) of the Older Americans Act; and~~

~~(g) Require area agencies on aging to indicate in area plans advocacy activities in which they shall engage on behalf of the elderly.~~

~~(3) The office shall encourage the appointment of older Kentuckians to boards and commissions in state and local governments in an effort to actively involve these individuals in the development of services and programs for the elderly. The office shall conduct the following activities in meeting this responsibility:~~

~~(a) Work with citizens advocate groups participating on boards and commissions;~~

~~(b) Assist agencies and organizations seeking appointees by identifying potential older people to serve on boards or commissions and referring them to the appropriate agencies or individuals;~~

~~(c) Obtain information from agencies and organizations on qualifications for selection to boards or commissions, periods of service, and appointment dates; and~~

~~(d) Transmit information on qualifications for membership or participation, period of service, and appointment and expiration dates to senior citizen organizations, service providers, and area agencies on aging for the future appointment of older people to boards and commissions.~~

~~(4) Area agencies on aging designation and funding.~~

~~(a) The Office of Aging Services shall designate planning and service areas (PSAs) in accordance with the provisions of Section 305(a)(1)(E) of the Older Americans Act and shall consider:~~

~~1. The geographical distribution of individuals age sixty (60) and older in the Commonwealth;~~

~~2. The incidence of the need for supportive services, nutrition services, multipurpose senior centers and legal assistance;~~

~~3. The distribution of older individuals who have the greatest social need with particular attention to low-income minority individuals residing in these areas;~~

~~4. The distribution of older Indians residing in these areas;~~

~~5. The distribution of resources available to provide services or centers;~~

~~6. The boundaries of existing areas within the Commonwealth which were drawn for the planning or administration of supportive services programs;~~

~~7. The location of general purpose local government within the Commonwealth with regard to its PSA-wide service delivery capability; and~~

~~8. Other factors deemed relevant.~~

~~(b) In designating within each planning and service area (PSA) a public or private nonprofit agency or organization as the area agency on aging the office shall:~~

~~1. Designate in accordance with Section 305(b)(5)(C) of the Older Americans Act according to the following:~~

~~a. An established office of aging which is operating within a designated planning and service area and has a PSA-wide service capability;~~

~~b. An office or agency of a unit of general purpose local government, which is designated to function only for the purpose of serving as an area agency on aging by the chief elected official of the unit;~~

~~c. An office or agency designated by the appropriate chief elected officials of combinations of units of general purpose local government to act only on behalf of a combination for this purpose; or~~

~~d. A public or nonprofit private agency in a planning and service area or a separate organizational unit within the agency which is under the supervision or direction for this purpose of the designated state agency and which can and shall engage only in the planning or provision of a broad range of supportive services, or nutrition services within the planning and service area.~~

~~2. If designating a new area agency on aging, give right of first refusal to a unit of general purpose local government; and~~

~~3. Give preference, if the unit of general purpose local government declines designation, to an established office on aging in conformity with Section 305(c)(5) of the Older Americans Act.~~

~~(c) The office shall develop and make known to the area agencies on aging procedures for and conditions under which area plan funding may be suspended. The following shall be applied:~~

~~1. The suspension of funding authority to an area agency on aging by the state agency temporarily suspends federal assistance under the area plan pending corrective action by the area agency on aging or pending a decision by the office to terminate the contract;~~

~~2. If conditions warrant, the office may suspend area plan operations in whole or in part. The conditions shall result from the area agency on aging's failure to comply with contract award stipulations, standards or conditions;~~

~~3. To suspend area plan operations, the office shall notify the area agency on aging in writing of the action being taken, the reason for the action and the conditions of the suspension. This notice shall be given at least thirty (30) days prior to the effective date of suspension and shall note the right of the area agency on aging to appeal the decision and the procedures to be followed for an appeal;~~

~~4. The office shall grant to an area agency on aging whose area plan has been suspended in whole or in part an opportunity for a hearing in accordance with the provisions set forth in Section 15 of this administrative regulation;~~

~~5. The office may, at its discretion, allow federal financial participation in necessary and proper costs which the area agency on aging may not reasonably avoid during the period of suspension;~~

~~6. In suspending area plan operations, the office shall determine the amount of unearned Title III funds the area agency on aging has on hand. The anticipated length of suspension, the~~

~~extent of area plan operations suspended, and the amount of funds balance on hand shall determine whether the office shall require the balance to be returned;~~

~~7. The office may, at its discretion, reinstate the suspended area plan operations if it determines that conditions warrant;~~

~~8. Federal participation in reinstated area plan operations may resume immediately upon reinstatement, but not for costs accrued for those area plan operations while they were suspended. The obligational authority unearned at suspension again becomes available for earning by the project at the previously established matching ratio; and~~

~~9. If the suspension of area plan operations continues for three (3) consecutive months in a budget year, federal funding of area plan operations is automatically terminated.~~

~~(d) The termination of funding means the cancellation of state or federal assistance, in whole or in part, under a contract at a time prior to the date of completion.~~

~~1. The office may terminate state or federal support for an area plan prior to the end of an approved budget year or project period if:~~

~~a. The area development district violates the conditions under which the contract was approved;~~

~~b. Program performance is inadequate; or~~

~~c. Nonfederal resources are not available.~~

~~2. If the office terminates funding for an area plan, the office shall:~~

~~a. Notify the area development district in writing of the actions being taken and the reasons for the action. This notice shall be given at least thirty (30) days prior to the effective date of termination;~~

~~b. Specify reports to be completed;~~

~~c. Notify the area agency on aging of the right to appeal; and~~

~~d. The procedure to be followed for appeal.~~

~~3. The office shall grant to the area development district whose area plan has been terminated in whole or in part an opportunity for a hearing.~~

~~4. The office or the area development district may terminate the contract in whole, or in part, if both parties agree that the continuation of the project may not produce beneficial results commensurate with the further expenditure of funds. The two (2) parties shall agree upon the termination conditions, including the effective date and, if partial termination, the portion to be terminated. The area development district shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Office of Aging Services shall allow full credit to the area development district for the federal share of the noncancellable obligations, properly incurred by the area development district prior to termination.~~

~~5. A termination of area plan obligation or authority which leads to withdrawal of designation shall comply with paragraph (e) of this subsection.~~

~~(e) The office shall withdraw the area agency on aging designation if, after reasonable notice and opportunity for a hearing, the office finds that:~~

~~1. The area agency on aging does not meet the requirements set out in paragraph (b)1 through 3 of this subsection;~~

~~2. The plan or plan amendment is not approved;~~

~~3. There is substantial failure in the provision or administration of an approved area plan to comply with provisions of the area plan requirements under the Older Americans Act; or~~

~~4. There is a request by the area development district.~~

~~(f) If the office withdraws the area agency on aging's designation, it shall:~~

~~1. Notify the commissioner of the administration on aging in writing of its action;~~

~~2. Provide a plan for the continuity of services in the affected planning and service area; and~~

~~3. Designate a new area agency on aging in the planning and service area in a timely manner.~~

~~(g) If necessary to ensure continuity of services in a planning and service area, the Office of Aging Services may, for a period of up to 180 days after its final decision to withdraw designation of an area agency on aging:~~

~~1. Perform the responsibilities of the area agency on aging; or~~

~~2. Assign the responsibilities of the area agency on aging to another agency in the planning and service area.~~

~~(h) If necessary the commissioner of the administration on aging may extend for a period of up to an additional 180 days the limit in paragraph (e) 3 of this subsection if the state agency:~~

~~1. Requests an extension; and~~

~~2. Demonstrates to the commissioner of the administration on aging a need for the extension.~~

~~(i) The office shall initiate the designation withdrawal process and shall:~~

~~1. Notify the area agency on aging of intent to withdraw designation, citing influencing factors and outlining steps to be taken in appeal of the intent;~~

~~2. Extend to the area agency on aging a minimum of thirty (30) days in which to respond;~~

~~3. Following the area agency on aging's response, if appropriate, the office may require of the area agency on aging the submission within an additional thirty (30) days a corrective action plan which may avert withdrawal of designation;~~

~~4. If the area agency on aging requests a state hearing, the office shall assist in the facilitation of the hearing; and~~

~~5. Following the appeal process, the office shall notify the area agency on aging in writing of the hearing.~~

~~(j) Close-out procedures for the grant. If federal support for an area plan is terminated, the following shall apply:~~

~~1. The area agency on aging shall immediately refund to the office unencumbered balance of cash advanced to the area agency on aging;~~

~~2. The area agency on aging shall complete and submit to the office, within sixty (60) days after the date of completion or termination, a final program and financial report and other financial or performance reports required as a condition of the grant;~~

~~3. The office shall make a settlement for the upward or downward adjustments to the federal share of costs after these reports are received;~~

~~4. The area agency on aging shall dispose of equipment and supplies purchased with Title III funds in accordance with established policies of the Cabinet for Health Services. Funds realized from the sale of this equipment or supplies shall be an adjustment in program costs;~~

~~5. If a final audit has not been performed prior to close-out of the grant, the office shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit; and~~

~~6. The area agency on aging shall provide for the close-out of all subcontracted service providers in accordance with the Cabinet for Health Services policies.~~

~~(5) The office shall coordinate and, as appropriate, enter into agreements with departments within the Cabinet for Health Services, Corrections Cabinet, Justice Cabinet, Administrative Office of the Courts, Public Advocacy, the Kentucky Department of Agriculture, Department of Transportation, and other state offices, study groups, and councils in the planning for and provision of health and supportive services to the elderly and to appropriately utilize funding sources. The office shall encourage area agencies on aging in advocacy roles to undertake activities on a regular basis which are designed to facilitate the coordination of plans and activities with other public and private agencies and organizations.~~

~~(6) The office shall conduct, within budget limitations, activities to implement training and education programs which include the following:~~

~~(a) Conduct annual assessments to informally identify training needs and develop correlating plans;~~

~~(b) Identify and review resources available to meet training needs;~~

~~(c) Develop a comprehensive education and training plan;~~

~~(d) Seek additional resources to implement the plan;~~

~~(e) Effect interagency coordination for the provision of specialized training;~~

~~(f) Facilitate and assist the efforts of higher education in statewide forums of a gerontological orientation;~~

~~(g) Coordinate education programs with private, public, governmental and educational organizations and institutions;~~

~~(h) Provide and coordinate training opportunities for personnel of agencies and programs utilizing aging services' funding;~~

~~(i) Provide training to area agencies and local programs on self-evaluation and monitoring; and~~

~~(j) Provide training as part of the state training plan including ongoing technical assistance and annual program evaluation.~~

~~(7) The office shall include assurances in the state plan that preference is given to older persons in greatest social or economic need in the provision of services under the plan and shall utilize the following methods for preference to older persons with the greatest economic or social need and low-income minority:~~

~~(a) After consultation with the area agency on aging, develop and use an intrastate funding formula which shall reflect the proportion among the planning and service areas of persons age sixty (60) and over in greatest economic or social need with particular attention to low-income minority individuals;~~

~~(b) Seek input from area agencies on aging and service providers in the development of methods for giving preference;~~

~~(c) Review priorities for services and needs assessment data in order to determine the specific types of services most needed by the target population;~~

~~(d) Encourage the location and access to senior centers and services in geographic areas which contain known populations of older persons with greatest economic or social need;~~

~~(e) Encourage local coordination efforts with those agencies or organizations which provide services or entitlements to the target population; and~~

~~(f) Monitor and evaluate area agencies on aging to ensure services are targeted to meet the needs of older persons with the greatest economic or social need, with particular attention to low-income minority individuals.~~

~~(8) In compliance with 45 C.F.R. 1321.17(f)(9), the office shall:~~

~~(a) Have and employ appropriate procedures for data collection from area agencies on aging to permit the state to compile and transmit statewide data requested by the commissioner on aging in a form the commissioner directs on an annual basis.~~

~~(b) Establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems, with provision for submission of this data to the agency of the state responsible for licensing or certifying long-term care facilities in the state and to the commissioner on aging on an annual basis.~~

~~(c) Require each area agency on aging to assure that providers of services shall provide the area agency on aging in a timely manner with statistical and other information which the area agency on aging requires to meet its planning, coordination, evaluation and reporting requirements.~~

~~(d) Not request, nor shall an area agency on aging request, for the purpose of Older Americans Act reporting, information or data from providers which is not pertinent to services furnished pursuant to the Older Americans Act or a payment made for these services.~~

~~(9) Each fiscal year the office in order to meet the required nonfederal share applicable to its allotments under Title III of the Older Americans Act, shall expend under the state plan for both services and administration at least the average amount of state funds it expended under the plan for the three (3) previous fiscal years. Funds made available under Title III Part D shall be in addition to, and shall not be used to supplant, funds that are or may be expended under a federal, state, or local law by a state or unit of general purpose local government, including area agencies on aging which have in their planning and services areas existing services which primarily serve older individuals who are victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction, and the families of these victims.~~

~~(10) The office shall monitor the performance of programs and activities initiated under the Older Americans Act for quality and effectiveness and shall monitor other programs for which the office has administrative responsibility.~~

~~(a) In compliance with the monitoring and evaluation responsibilities the office shall:~~

~~1. Monitor and assess services as approved in area plans to determine compliance with contract requirements, approved area plans, and with applicable federal and state statutory requirements;~~

~~2. Conduct annual or more frequently, if indicated on-site monitoring visits to the area development districts;~~

~~3. Conduct on-site visits to assess and approve potential new service delivery sites;~~

~~4. Monitor, through on-site visits, the implementation of new programs;~~

~~5. Conduct on-site visits if problems occur to assess and make recommendations for improvement and to bring the program into compliance with the contract;~~

~~6. Conduct on-site follow-up visits, as appropriate, to assure that the plan of correction has been implemented;~~

~~7. Conduct monitoring through the review and analysis of reports submitted to the office by the area agencies on aging;~~

~~8. Submit written evaluation of findings with recommendations regarding on-site monitoring visits to the area development district;~~

~~9. Submit written evaluation of findings and recommendations regarding review and analysis of reports to the area development districts, if indicated; and~~

~~10. Provide training to area agencies on aging and local programs on self-evaluation and monitoring.~~

~~(b) The office shall take corrective action if a contractor is not fulfilling its contract.~~

~~1. Upon identification of the deficiency, the office shall:~~

~~a. Notify the contractor, describing the precise nature of the problem, identify the corrective action desired and the time frame in which the action shall be taken or the problem shall be resolved. The contractor shall submit a written corrective action plan as specified by the office. If the contractor deficiencies appear to endanger or seriously affect the health or welfare of participants or staff, corrective measures shall be taken immediately;~~

~~b. Monitor and follow up, to assure that action was taken and the problem or deficiency resolved. The contractor shall submit documentation to confirm the problem or deficiency was resolved; and~~

~~c. Notify other licensing or regulatory agencies if the problems are within their jurisdiction.~~

~~2. If the contractor continues to be in noncompliance, the following procedures shall be implemented:~~

~~a. The office shall notify the contractor of the continuing problem or deficiency and the action to be taken.~~

~~b. The office shall advise the Executive Director of the Office of Aging Services of the problem and make a recommendation for the Cabinet for Health Services action.~~

~~c. The contractor shall be advised of the actions that shall be taken if noncompliance continues. Actions include but are not limited to the following: renegotiation of the contract, employment of financial sanctions or cancellation of the contract.~~

~~(11) The needs assessment and program analysis shall provide another means of coordination of needs and services, and shall provide area-specific information and a statewide summary. Persons age sixty (60) and over who are frail, homebound by reason by illness or incapacitating disability, or otherwise isolated shall be given priority in the delivery of services. Activities which shall be conducted to evaluate and determine the needs, specific groups within the aging population, and services which shall be addressed or receive top priority include the following:~~

~~(a) Review and analyze the findings of the needs assessment and other surveys and documents that provide information regarding the needs of the elderly;~~

~~(b) Compile and analyze data obtained from area and local program plans;~~

~~(c) Conduct public hearings and compile and analyze data obtained;~~

~~(d) Review and analyze census and other data which reflect the status of the elderly;~~

~~(e) Gather and analyze client data from the homecare program and other applicable information systems;~~

~~(f) Analyze program performance reports;~~

~~(g) Analyze financial reports;~~

~~(h) Conduct literature search;~~

~~(i) Distribute needs assessment information related to the delivery or planning of services to the elderly; and~~

~~(j) Establish statewide service priorities based on the needs assessment.~~

~~(12) The office, as the state unit on aging, shall have an adequate number of qualified staff to carry out the functions prescribed in 45 C.F.R. 1321.9 of the Older Americans Act regulations and other programs for which the office has administrative responsibility and shall, subject to the requirements of merit employment systems of state and local governments, give preference to individuals aged sixty (60) or older for staff positions in state and area agencies on aging for which individuals qualify.~~

~~(13) The office shall, if appropriate, utilize public hearings as one (1) method of obtaining both proactive and reactive community and consumer participation in prioritizing and evaluating activities and projects carried out under the state plan. The office shall:~~

~~(a) Schedule a minimum of one (1) public hearing annually for the purpose of evaluating activities and projects carried out in the state plan;~~

~~(b) Specify the inclusion of an evaluation of the state plan's effectiveness in reaching older individuals with the greatest economic or social needs, with particular attention to low-income minority individuals;~~

~~(c) If appropriate, schedule public hearings for the purpose of receiving community and consumer participation in the development and implementation of service activities;~~

~~(d) Require of the area agency on aging a timely conducted public hearing prior to the consideration of a request of the office for a waiver from a service provision responsibility required in the area plan; and~~

~~(e) Schedule, advertise and conduct public hearings it deems appropriate in a manner designed to encourage, enhance and facilitate community and consumer participation.~~

~~(14) The office shall consider the views of older persons and the general public in developing and administering the state plan and shall:~~

~~(a) Utilize methods which may include but are not limited to public hearings, in receiving public and consumer participation in identifying service needs and establishing funding priorities prior to the submission of the state plan for federal approval;~~

~~(b) If appropriate, advertise the date, time, location and purpose of each public hearing in at least one (1) major newspaper in the planning and service area in and for which the hearing is being held;~~

~~(c) Respond to requests of the Institute for Aging for information and submit for its review and comment proposed plans, budgets, programs, policies and general initiatives;~~

~~(d) Elicit input from appropriate external sources as opportunities present themselves;~~

~~(e) Require area agencies on aging to develop procedures for receiving community and consumer participation in the planning and service delivery process in conformance with 45 C.F.R. 1321.57(c) and 1321.61 (b); and~~

~~(f) Review and consider comments received regarding program plans, budgets, policies and general initiatives, and make changes if feasible and in the best interests of those individuals for whom the programs are designed.~~

~~(15) Required services.~~

~~(a) The office shall assure that the area agency on aging allots an adequate proportion of its funding under Title III-B, excluding amounts waived or used for administration, for the provision of the following categories of services:~~

~~1. Services associated with access to services for transportation, outreach, and information and referral;~~

~~2. In-home services for homemaker, home health aide, visiting and telephone reassurance, chore maintenance, supportive services for families of elderly victims of Alzheimer's disease and related disorders; and~~

~~3. Legal assistance.~~

~~(b) If the office proposes to grant a waiver to an area agency on aging:~~

~~1. The office shall publish the intention to grant a waiver together with the justification for the waiver at least thirty (30) days prior to the effective date of the decision to grant the waiver;~~

~~2. An individual or service provider from the area with respect to which the proposed waiver applies may request a hearing before the state agency on the request for waiver; and~~

~~3. The office shall afford the individual or service provider an opportunity for a hearing within the thirty (30) day period prior to the effective date of the decision to grant the waiver.~~

~~(c) If the office grants a waiver of the requirement the following information shall be provided to the commissioner, administration on aging (AOA):~~

~~1. A report regarding the waiver that details the demonstration made by the area agency on aging to obtain the waiver;~~

~~2. A copy of the record of the public hearing conducted which indicates the notification of the interested parties and the testimony of these individuals; and~~

~~3. A copy of the record of a public hearing conducted by the office for an individual or service provider from the area to which the waiver applies.~~

~~(16) A waiver of the office administration and program requirements based on federal or state laws and regulations shall be allowed by the office only if there is federal or state statutory provision to grant a waiver.~~

~~(17) The office shall conduct joint meetings with the area agencies on aging (AAAs). The office, as the state unit on aging, is mandated to coordinate statewide planning and development of activities, and provide technical assistance to each area agency on aging to ensure effective procedures for coordination of programs within the planning and service area and shall:~~

~~(a) Notify the area agencies on aging in writing in advance of the date the joint meeting shall take place.~~

~~(b) Solicit input from the area agencies on aging as to the topics and concerns to address and discuss at the joint meeting.~~

~~Section 4. Area Agencies on Aging Responsibilities.~~

~~(1) Each area agency on aging shall establish an advisory council as follows:~~

~~(a) Functions of council. The area advisory council shall carry out advisory functions which further the area agency's mission of developing and coordinating community-based systems of services for older persons in the planning and service area. The council shall advise the agency relative to:~~

~~1. Developing and administering the area plan;~~

~~2. Conducting public hearings;~~

~~3. Representing the interest of older persons; and~~

~~4. Reviewing and commenting on community policies, programs and actions which affect older persons with the intent of assuring maximum coordination and responsiveness to older persons.~~

~~(b) Composition of council. The council shall include individuals and representatives of community organizations who shall help to enhance the leadership role of the area agency in developing community-based systems of services. The advisory council shall be made up of:~~

~~1. More than fifty (50) percent older persons, including minority individuals who are participants or who are eligible to participate in programs under the Older Americans Act;~~

~~2. Representatives of older persons;~~

~~3. Representatives of health care provider organizations, including providers of veterans' health care if providers of veterans' health care are located in the geographical area development district;~~

~~4. Representatives of supportive services providers organizations;~~

~~5. Persons with leadership experience in the private and voluntary sectors;~~

~~6. Local elected officials; and~~

~~7. The general public.~~

~~(c) Review by advisory council. The area agency on aging shall submit the area plan and amendments for review and comment to the advisory council before transmittal to the office for approval.~~

~~(2) Area agencies on aging shall be required to serve as the public advocate for the development or enhancement of~~

~~comprehensive and coordinated community-based systems of services in each community throughout the planning and service area. The area agency on aging shall:~~

~~(a) Monitor, evaluate, and provide comment on policies, programs, hearings, levies, and community actions which affect older persons;~~

~~(b) Solicit comments from the public on the needs of older persons;~~

~~(c) Represent the interests of older persons to local-level and executive branch officials, public and private agencies or organizations;~~

~~(d) Consult with and support the Commonwealth's long-term care ombudsman program;~~

~~(e) Undertake on a regular basis activities designed to facilitate the coordination of plans and activities with other public and private organizations, including units of general purpose local government, with responsibilities affecting older persons in the planning and service area to promote new or expanded benefits and opportunities for older persons;~~

~~(f) Undertake a leadership role in assisting communities throughout the planning and service area to target resources from appropriate sources to:~~

~~1. Meet the needs of older persons with greatest economic or social need, with particular attention to low-income minority individuals; and~~

~~2. Influence the location of services and specialization in the types of services most needed by the above-referenced group; and~~

~~(g) Prohibit grantees or contractors from employing a means test for services funded from the area agency on aging.~~

~~(3) The area agency on aging shall ensure that service providers verify eligibility of those individuals participating in the Title III programs utilizing the Title III Age Verification and Eligibility form, except for those individuals utilizing only ombudsman, legal, outreach, and information and referral services.~~

~~(a) Prior to the implementation of the contract, the area agency on aging shall review with the Title III subcontractors their procedures for documenting participant age or other eligibility determinants.~~

~~(b) Subcontractors' records shall include the following information:~~

~~1. The participant's age or birth date;~~

~~2. The method of verifying the reported age;~~

~~3. The staff involved in the verification process;~~

~~4. Other eligibility determinants; and~~

~~5. Verification of other eligibility determinants.~~

~~(c) The area agency on aging shall approve the subcontractor's form and procedures, if other than the state form, and forward a copy of the information to the Office of Aging Services, prior to the implementation of the contract, for final approval.~~

~~(d) Require verification of eligibility only once even though the participant may receive both supportive and nutrition services.~~

~~(e) Not require verification of eligibility to be updated each fiscal year if the subcontractor maintains the participant's central file or if a new subcontractor makes arrangements for the transfer of the verification information.~~

~~(f) Participants who receive services from different subcontractors need verify eligibility only once under the following conditions:~~

~~1. The area agency on aging designates a subcontractor as the primary agency responsible for verifying eligibility and for maintaining and filing the verification information;~~

~~2. Other subcontractors may contact the primary agency to confirm that eligibility has been verified. The primary agency may send to the requesting subcontractor a copy of the eligibility verification, which is filed in the record, or may give the information verbally. Verbal confirmation of eligibility shall be documented in the participant's record. The record shall include data specified in paragraph (b)1 through 5 of this subsection.~~

~~(4) The area agency on aging shall be the leader relative to aging issues on behalf of older persons in the planning and service area. The agency shall proactively carry out, under the leadership and direction of the Office of Aging Services, a wide range of functions related to the development or enhancement of comprehensive and coordinated community-based systems in, or serving, each community in the planning and service area.~~

~~(a) A comprehensive and coordinated community-based system shall:~~

~~1. Have a visible focal point of contact for anyone to go or call for help, information or referral on an aging issue;~~

~~2. Provide a range of options;~~

~~3. Assure that these options are readily accessible to older persons; the independent, semidependent and totally dependent, no matter what their income;~~

~~4. Include a commitment of public, private, voluntary and personal resources committed to supporting the system;~~

~~5. Involve collaborative decision-making among public, private, voluntary, religious and fraternal organizations and older people in the community;~~

~~6. Offer special help or targeted resources for the most vulnerable older persons, those in danger of losing their independence;~~

~~7. Provide effective referral from agency to agency to assure that information or assistance is received no matter how contact is made in the community;~~

~~8. Evidence sufficient flexibility to respond with appropriate individualized assistance, especially for the vulnerable older person;~~

~~9. Have a unique character which is tailored to the specific nature of the community; and~~

~~10. Be directed by leaders in the community who have the respect, capacity, and authority necessary to convene interested persons, assess needs, design solutions, track overall success, stimulate change and plan community responses for the present and for the future.~~

~~(b) For the purpose of assuring access to information and services for older persons, the area agency on aging shall work with community leadership in the planning and service area to designate one (1) or more focal points on aging in each community, as appropriate. The area agency on aging shall:~~

~~1. List designated focal points in the area plan;~~

~~2. Define "community" as it relates to population served by a given focal point; the definition shall be approved by the office;~~

~~3. Give special consideration to developing and designating multipurpose senior centers as focal points;~~

~~4. Assure that services financed under the Older Americans Act, in or on behalf of the community shall be either based at, linked to or coordinated with the focal points;~~

~~5. Assure access from the focal points to services financed under the Older Americans Act;~~

~~6. Work with or work to assure that community leadership works with other applicable agencies and institutions in the community to achieve maximum comprehensive arrayal of, coordination with or access to other services and opportunities for the elderly from the focal points; and~~

~~7. Refrain from engaging in an activity which is inconsistent with its statutory mission prescribed in the Older Americans Act or policies prescribed by the state under regulation 45 C.F.R. 1321.11.~~

~~(5) Each area agency on aging shall provide for adequate and qualified staff to perform its functions and shall:~~

~~(a) Function organizationally as prescribed under designation provision of Section 305(b)(5)(C) of the Older Americans Act;~~

~~(b) Have on file for review a staffing plan that identifies the number and types of staff assigned to carry out area agency on aging responsibilities and functions;~~

~~(c) Indicate in the area plan staffing patterns and relationships if the area agency on aging is housed under an umbrella organization; and~~

~~(d) Respond to corrective action initiatives and general information requests of the office if issues arise concerning staffing practices.~~

~~(6) Each designated area agency on aging shall prepare and develop, for a specified planning and service area, a plan of duration as determined by the office. Each plan shall be subject to amendment by the area agency on aging upon request of the office and shall include:~~

~~(a) Procedures for delivery, through a comprehensive and coordinated system, of an array of supportive, nutrition and other services as may be prescribed under federal, state and local programs and policies;~~

~~(b) Description of arrangements with local providers to ensure the delivery of these services and identification of the service providers;~~

~~(c) Assurances that categorical service allotments shall be expended in the manner prescribed by policy of the Office of Aging Services;~~

~~(d) Designation, if feasible, of multipurpose senior centers as community focal points for comprehensive service delivery;~~

~~(e) Procedures for establishment and maintenance of information and referral services to assure access to services;~~

~~(f) Procedures for ensuring preferential consideration in the provision of services to older individuals with greatest economic or social needs, targeting low-income minority individuals, in compliance with all federal and state statutory and regulatory provisions and Office of Aging Services policy;~~

~~(g) Procedures for identifying for each previous fiscal year the number of low-income minority older individuals in the planning and service area and for describing methods used to satisfy their service needs;~~

~~(h) Procedures for outreach efforts which assure service access by eligible individuals and which target the rural, disabled and low-income minority elderly and those general population older persons with greatest social need;~~

~~(i) Procedures for conducting periodic evaluation of and public hearings on activities carried out under the area plan;~~

~~(j) Procedures for providing technical assistance to service providers and focal points and for an annual evaluation of the effectiveness of outreach;~~

~~(k) Procedures for receiving the views of service recipients;~~

~~(l) Procedures for serving as the advocate and focal point for the elderly within the community;~~

~~(m) Procedures, if needed, for the provision by existing organizations of day care for adults and respite for their families;~~

~~(n) Procedures for establishing an advisory council of older individuals, including minority elderly and program participants, representatives of older individuals, local elected officials, providers of veterans health care and the general public, to advise routinely on the development and administration of the area plan and the operations for which it provides;~~

~~(o) Procedures for developing and publishing methods by which services, particularly those identified through state policy as access services, are prioritized;~~

~~(p) Procedures for effective and efficient coordination of programs and services operated or delivered in accordance with all state and federal statutory and regulatory provisions;~~

~~(q) Procedures for facilitating the coordination of community-based long-term care services emphasizing the development of client-centered case management;~~

~~(r) Procedures for determining the service needs of abused, neglected and exploited older individuals, and for identifying public and private nonprofit entities involved in prevention, identification and treatment of these individuals;~~

~~(s) Procedures which facilitate the involvement of long-term care providers in coordination of community-based long-term care services and for working to ensure community awareness of and involvement in addressing the needs of residents of long-term care facilities;~~

~~(t) Procedures which facilitate the coordination of access services with community activities which benefit victims of Alzheimer's disease and the families of these victims;~~

~~(u) Procedures which facilitate the coordination of area agency-funded mental health services with those provided by other community organizations;~~

~~(v) Procedures for conducting outreach activities, if feasible, to identify eligible older Indians and ensure access to services;~~

~~(w) Procedures for compiling and disseminating in the planning and service area enrollment policies and course-study information of institutions of higher education specifically related to older individuals;~~

~~(x) Procedures for conducting outreach activities to identify older individuals eligible for supplemental security income, Medicaid and food stamp benefits; for informing them of eligibility requirements; and for assisting them in accessing those benefits;~~

~~(y) Assurances that funds received under Title III shall be expended in accordance with applicable state and federal statutory and regulatory provisions and with Office of Aging Services' policy; and~~

~~(z) Assurances that, if applicable, operation of the district long-term care ombudsman program shall be in accordance with state and federal statutory and regulatory provisions and with Office of Aging Services' policy.~~

~~(7) Each area agency on aging shall have a plan for denial, suspension or reduction of services to eligible persons. Each plan shall be maintained on file at the area agency on aging and shall be accessible for monitoring purposes. The plan shall specify, at a minimum:~~

~~(a) That if services for a client or participant are denied, suspended or reduced, one (1) of the following situations shall be present and documented:~~

~~1. Funds are no longer available or are reduced;~~

~~2. The service level is no longer needed;~~

~~3. Prioritization and needs determination indicate the client no longer meets the criteria established for receiving services; or~~

~~(b) The office shall receive written notice of actions other than those listed in paragraph (a)1 through 3 of this subsection which may result in the denial of access to a program to an eligible participant.~~

~~(8) The area agencies on aging shall implement, within budget limitations, education and training programs that respond to the needs of senior citizens, service providers and other groups as needs are identified and funding sources become available. Activities which shall be conducted by the area agency on aging to implement training and education programs include the following:~~

~~(a) Conduct annual assessments to informally identify training needs and develop correlating plans;~~

~~(b) Identify and review resources available to meet training needs;~~

~~(c) Develop a comprehensive education and training plan;~~

~~(d) Seek additional resources to implement the plan;~~

~~(e) Effect interagency coordination for the provision of specialized training;~~

~~(f) Facilitate and assist the efforts of higher education in statewide forums of a gerontological orientation;~~

~~(g) Conduct and coordinate specific training on aging programs districtwide;~~

~~(h) Coordinate education programs with private, public, governmental and educational organizations and institutions;~~

~~(i) Conduct training for area advisory councils;~~

~~(j) Specify the training requirements of the service providers;~~

~~(k) May enter into contracts through the area development districts with providers of education and training services which can demonstrate the experience or capacity to provide these services, except that these contract authority shall be effective for a fiscal year only to the extent, or in amounts as are provided in appropriate Acts; and~~

~~(l) Plan and implement staff development initiatives.~~

~~(9) Each area development district may use its own definition of equipment as long as it includes tangible personal property having a useful life of at least one (1) year and a unit cost of $500 or more.~~

~~(a) Equipment records shall be current and shall contain at least the following information:~~

~~1. Description of the item;~~

~~2. Serial number;~~

~~3. Source of funds used to purchase the item;~~

~~4. Federal share (percent) of the cost;~~

~~5. Acquisition cost and date;~~

~~6. Unit cost;~~

~~7. Location, use and condition of the equipment and date this equipment was obtained;~~

~~8. Information on the disposition of the item.~~

~~(b) There shall be a system to prevent loss, damage, or theft~~

~~and adequate maintenance procedures to keep equipment in good condition.~~

~~(c) Purchase of equipment with a unit cost of $500 or more requires prior approval from the Office of Aging Services.~~

~~(d) Equipment which is replaced may be traded in, or may be sold and the proceeds applied to the acquisition cost. If equipment with a unit cost of $1,000 or more is to be disposed of, not replaced, the granting agency has the right to require transfer of the equipment and title to an eligible party. If approved by the granting agency, the equipment may be sold with the federal share of the proceeds applied to the program as program income. If the federal share is not applied to the program as program income, the federal share, less selling expenses, shall be returned to the federal government or an eligible nonfederal party named by the cabinet's Office of Aging Services.~~

~~(e) The area development district shall agree to the transfer of items of equipment and supplies with a value of less than $1,000 to a new provider, if a new provider is selected as a result of competition, or if a contract is terminated by the provider or the cabinet, and a new provider is secured. This equipment and supplies shall be transferred to the cabinet's Office of Aging Services if no new provider has been secured. If there is a termination of a contract or a selection of a new provider, the transfer shall be made within thirty (30) days from the date of receipt of notice from the office, this notice to be by certified mail, return receipt requested.~~

~~(10) Area agency on aging responsibilities for monitoring and evaluation shall:~~

~~(a) Permit staff of the Cabinet for Health Services, persons acting for the Cabinet for Health Services, and staff designated by appropriate federal agencies to monitor and evaluate programs and activities initiated under the Older Americans Act and other programs for which the office has administrative responsibility;~~

~~(b) Respond to monitoring reports prepared by the office by submission of and compliance with a corrective action plan based on monitoring findings;~~

~~(c) Be responsible for fiscal or program exceptions established by evaluation, monitoring or audit and promptly settle monitoring, fiscal and program audit exceptions by making direct payment, or reduction of future reimbursement, or by other methods approved by the Cabinet for Health Services;~~

~~(d) Furnish appropriate technical assistance to providers of supportive services, nutrition services, or multipurpose senior centers in the planning and service area covered by the area plan and conduct an annual evaluation of the effectiveness of outreach;~~

~~(e) Conduct periodic evaluations of, and public hearings on, activities carried out under the area plan;~~

~~(f) Monitor, evaluate, and, if appropriate, comment on the policies, programs, hearings, levies, and community actions which affect older persons;~~

~~(g) Monitor and assess services as approved in area plans to determine compliance with contract requirements, approved area plans, and with applicable federal and state statutory requirements;~~

~~(h) Submit written evaluation of findings with recommendations regarding on-site monitoring visits and reports to the service providers;~~

~~(i) Require the service provider to permit staff of the Cabinet for Health Services, persons acting for the Cabinet for Health Services, and staff designated by appropriate federal agencies to monitor and evaluate programs and activities initiated under the Older Americans Act and other programs for which the office has administrative responsibility; and~~

~~(j) Require the service provider to have provision for interview of clients by persons and agencies listed in paragraph (i) of this subsection, and the area agency on aging, except if confidentiality requirements are applicable.~~

~~(11) The area development districts shall adhere to the procurement requirements contained in the references and shall:~~

~~(a) Promote open and free competition among qualified competitors.~~

~~(b) Not restrict or eliminate competition by placing unreasonable or unnecessary requirements on potential bidders.~~

~~(c) Establish procurement procedures which take into account the requirements of OMB Circular A-102 and other federal, state and local requirements. Procedures shall include:~~

~~1. Method for resolving protests, disputes and claims;~~

~~2. Written code or standards of conduct;~~

~~3. Review process to avoid unnecessary purchases or duplicative items;~~

~~4. Affirmative action standards which encourage contracting with minority-owned, small businesses;~~

~~5. Methods for procurement; and~~

~~6. Evaluation and selection criteria.~~

~~(d) Efforts shall be made by the area development districts to formally advertise programs and services. If the area development districts choose to utilize noncompetitive negotiations, they shall clearly document, and maintain on file, that only one (1) responsible provider is available, capable and qualified to provide the service; and that by using noncompetitive negotiations, open and free competition shall not be restricted. Area development districts shall maintain records sufficient to detail the significant history of the procurement. In addition to maintaining these documents on file, the area development districts shall provide, upon request, copies to the office, prior to subcontracting, supporting noncompetitive negotiations.~~

~~(12) Area agencies on aging shall conduct public hearings on area plans prior to their submission to the office. Amendments to area plans determined by the office to be nonadministrative in nature shall also be subject to public hearings. Area agencies on aging shall comply with the following provisions in scheduling public hearings:~~

~~(a) The selected hearing site shall be that most readily accessible to residents in the planning and service area.~~

~~(b) Notice of the hearing date, time and location shall be advertised in the area media at least ten (10) days prior to the hearing.~~

~~(c) A copy of the area plan or amendment shall be available for public review during the ten (10) working day period prior to the scheduled public hearing and the opportunity for review publicly advertised.~~

~~(d) A verbal presentation on the plan or amendment shall be given at the public hearing and written summaries of the plan or amendment made available for distribution. Area agency staff shall be present to respond to questions from the audience, which shall be encouraged.~~

~~(e) The area agency shall elicit from the audience both verbal and written recommendations and extend for a period of up to two (2) weeks the opportunity to submit comments.~~

~~(f) Written suggestions and summaries of verbal comments shall be kept on file by the area agency on aging for the duration of the plan.~~

~~(13) The area agencies on aging shall comply with the following program reporting requirements of the office:~~

~~(a) A quarterly program performance report shall be submitted to the office fifteen (15) calendar days after each quarter in accordance with format and instructions provided by the office.~~

~~(b) An annual program performance report shall be submitted to the office for the federal fiscal year October 1 - September 30 in accordance with format and instructions provided by the office.~~

~~(c) A homecare quarterly report shall be submitted to the office in accordance with format and instructions provided by the office.~~

~~(d) A monthly meal count report for Title III and homecare shall be submitted to the office by the 15th of each month following the month reported.~~

~~(e) The statewide computerized reporting system shall be utilized to collect information on homecare services in accordance with the homecare reporting instructions. This system shall be utilized and maintained in accordance with instructions and format provided by the office.~~

~~(f) Title V progress reports shall be submitted to the office fifteen (15) to twenty (20) calendar days after the end of each quarter in accordance with format and instructions provided by the office.~~

~~1. Title V monthly narrative reports shall be submitted on local administration, job development, enrollee activities, orientation, on-the-job training, coordination and cooperation between agencies,~~

~~outstanding activities, or problem areas.~~

~~2. Information on individual Title V enrollees shall be submitted at least annually or as various enrollee activities occur. Information shall include program certification or income eligibility, physical examination, client intake, job description, and evaluation activities.~~

~~(g) Special reports shall be required by the office as periodically specified. These reports may include but are not limited to:~~

~~1. Evaluations of outreach activities. In accordance with the Older Americans Act, Section 306(a)(6)(P), area agencies on aging shall conduct evaluations of outreach activities as prescribed by guidelines received from the Administration on Aging.~~

~~2. Evaluation of unmet need. In accordance with the Older Americans Act regulations, Section 1321.52, the office shall submit objectively collected and statistically valid data with evaluative conclusions concerning the unmet need for supportive services, nutrition services, and multipurpose senior centers gathered pursuant to Section 307(a)(3)(A) of the Older Americans Act to the Administration on Aging. The evaluations shall consider services in these categories regardless of the source of funding for the services. This information shall conform to guidance issued by the administration on aging.~~

~~(14) The area agency on aging shall assure that a written uniform system is in place for maintenance of waiting lists and shall follow these guidelines:~~

~~(a) Each waiting list for services shall be reported to the office as part of the quarterly program performance report.~~

~~(b) The waiting list for homecare services shall be updated monthly and shall include persons awaiting assessment, those assessed, and those for whom additional services are needed.~~

~~(c) The system shall be based on either a first-come, first-served basis or an approved objective method to prioritize applicants.~~

~~(d) Applicants shall be advised and presented with the written procedures and method of facilitating the waiting list.~~

~~(e) Applicants who are determined to be potentially eligible based on prescreening information gathered by the case manager may be placed on a waiting list.~~

~~Section 5. Service Provider Responsibilities. (1) Each service provider shall specify in writing to the area development district how the provider intends to satisfy the needs of low-income minority individuals in the area served. The provider shall provide services to low-income minority individuals at least in proportion to the numbers of low-income minority older persons in the population served by the provider.~~

~~(2) The service provider shall provide the area agency on aging with statistical and other information which enables the area agency on aging to conform with state-required planning, coordination, evaluation and reporting provisions.~~

~~(3) The service provider shall provide for each homemaker providing services funded through the office a comprehensive training course designed by the office.~~

~~Section 6. Participant Responsibilities. (1) To receive services from a program or service administered by the office, the participant shall:~~

~~(a) Sign an application for services within thirty (30) days of receiving services or if the client is unable for physical or mental reasons to consent and has a legal guardian, caregiver, spouse or other proxy, the application shall be signed by that person.~~

~~(b) Signify the following voluntarily by signing the application:~~

~~1. Verification of income, if questionable except for Title III, which prohibits a means test;~~

~~2. Release of information to specified agencies;~~

~~3. Access by the cabinet and the area development district to the participant's records for monitoring purposes; and~~

~~4. Understanding by the participant of "participant responsibilities".~~

~~(2) If either party feels that an offense has occurred, recourse shall be sought through the mediation, grievance, or complaint procedures established by the provider, the area development district or the office.~~

~~(3) Participant services shall not be suspended by a provider agency until the case manager, center director or agency director has determined that the provisions of the care plan cannot be met due to the behavior of the participant or family. Services may be suspended if the service provider or case manager deems that a worker shall be at imminent risk or danger. The provider agency shall report suspension of services immediately to the area agency on aging who shall investigate the suspension and make a final determination.~~

~~(4) A written report which documents the grounds requiring suspension, attempts to resolve the situation and written notice that the client may file a grievance under fair hearing procedures shall be forwarded to the area development district or to the office if the area development district provides case management directly.~~

~~(5) If conflicts or disagreements occur involving either staff or participants regarding mutual respect, the following steps shall be followed:~~

~~(a) A verbal warning to the staff or participant for the first conflict;~~

~~(b) A written warning for a second conflict;~~

~~(c) Suspension;~~

~~(d) In situations of suspension as described in subsection (3) of this section, a written report which documents the grounds requiring suspension, attempts to resolve the situation and written notice that the client may file a grievance under the fair hearing procedures shall be forwarded to the area development district or to the Office of Aging Services if the area development district provides case management directly; and~~

~~(e) Detailed written records shall be maintained for the service provider.~~

~~(6) The following shall be excluded from subsections (1) through (5) of this section:~~

~~(a) Residents and family members who receive services under the long-term care ombudsman program.~~

~~(b) Participants and providers of intake and referral, outreach and legal assistance.~~

~~(c) Congregate services provided in or arranged by a senior citizens center, nutrition site or other provider. Senior centers, nutrition sites, day care or other congregate programs may develop and display conspicuously a policy of mutual respect as appropriate for the congregate location.~~

~~Section 7. Confidentiality and Disclosure. (1) Client information obtained by the office or its contractors from an older person shall not be disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or legal representative unless the disclosure is required by court order, or for program monitoring by authorized federal, state or local monitoring agencies.~~

~~(2) The office, the area agencies on aging, and the service providers shall refer reports of abuse, neglect, exploitation or spouse abuse received to Adult Stability and Safety, Department for Community-Based Services.~~

~~(3) The office shall not be required to disclose those types of information or documents that are exempt from disclosure by a federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.~~

~~(4) The office or an area agency on aging shall not require a provider of legal assistance to reveal information that is protected by attorney-client privilege.~~

~~(5) Each area agency on aging shall have written confidentiality procedures.~~

~~Section 8. Center and Nutrition Site Operation. The office shall set minimum requirements for the types of service sites. Title III-B or Title III-C services shall be funded at a site only if the site has been approved by the office. A site shall not become operational until an on-site visit by the office has been completed and express approval given by the office, except for emergency situations.~~

~~(1) The following criteria shall apply to the types of service sites:~~

~~(a) Services shall comply with the standard service definitions~~

~~as governed by 910 KAR 1:170, Support services for the elderly.~~

~~(b) Prior to approval of any Title III-B or III-C site, it shall be inspected by the following:~~

~~1. Local health department for compliance with applicable health codes. These codes shall vary depending on the types of services provided at the site;~~

~~2. Local fire department for compliance with fire and building safety codes; and~~

~~3. Office shall conduct on-site visits for compliance with Section 307(a)(8) of the Older Americans Act.~~

~~(c) Sites shall be located as near as possible to the target group of individuals.~~

~~(d) Sites shall comply with the confidentiality and disclosure requirements.~~

~~(e) Sites shall be clearly identified to the public with a sign.~~

~~(f) Location of the facility.~~

~~1. The selection of a site for a center shall be based on information on older people in its service area and on the advice of public and voluntary agencies serving the elderly. The following factors shall be given consideration in choosing a site:~~

~~a. Demographic information and projections;~~

~~b. Accessibility to the maximum number of people who are socially or economically deprived;~~

~~c. Proximity to other services and facilities;~~

~~d. Convenience to public or private transportation or location within comfortable walking distance for participants;~~

~~e. Free of structural barriers or difficult terrain; and~~

~~f. Safety and security of participants and staff.~~

~~2. A center shall take necessary actions to create for handicapped older people barrier-free access and movement within the facility in conformance with the requirements of Section 504 of the Rehabilitation Act of 1973.~~

~~3. Arrangements shall be made for security of facility equipment, furniture, and files.~~

~~4. If appropriate, the facility shall make arrangements to offer activities and services at other locations in its service area.~~

~~5. If feasible, the location shall be a place the people in the service area feel free to attend and participate.~~

~~(g) Safety requirements of local, state, and federal laws shall be met.~~

~~1. The center shall be free of physical hazards.~~

~~2. Signs shall be visible for exits, entrances, and other areas of importance.~~

~~3. Bathrooms and kitchens shall include safety features appropriate to their special uses.~~

~~4. Procedures for fire safety shall be adopted, including fire drills, inspection, and maintenance of fire extinguishers, periodic inspection and training by fire department personnel.~~

~~5. Procedures for disaster other than fire shall be developed and posted.~~

~~6. The facility shall be properly maintained and repaired as appropriate.~~

~~(h) Existing service sites that do not meet the above requirements shall comply with a corrective action plan administered by the office.~~

~~(2) Nutrition site requirements.~~

~~(a) Each nutrition site shall have an individual, either volunteer or paid staff, who is responsible for the administration of the site. At least one (1) staff person shall be present at the site during hours of operation.~~

~~(b) Minimum services which shall be available at a nutrition site are:~~

~~1. At least one (1) hot meal shall be provided two (2) or more days a week.~~

~~2. Arrangements for outreach services shall be in place. These services may be funded by III-B or III-C.~~

~~3. Information and referral shall be available through the nutrition site.~~

~~4. Nutrition education shall be available through the nutrition site.~~

~~(c) An optional service may be home-delivered meals.~~

~~(d) The total number of participants to be served shall be adequate to justify the cost of operating the site.~~

~~(e) Meals may be either prepared on site, catered, or prepared in a central kitchen.~~

~~(3) Senior service site requirements.~~

~~(a) Each senior service site shall have an individual, either paid or volunteer staff, who is responsible for the administration of the site. At least one (1) staff person shall be present at the site during hours of operation.~~

~~(b) At a minimum, services shall be provided on a regularly scheduled basis, and be in operation two (2) or more days per week.~~

~~(c) The total number of participants to be served shall be adequate to justify the cost of operating the site.~~

~~(d) Minimum services which shall be available at this site:~~

~~1. Outreach activities, in addition to one (1) or more services, shall be provided;~~

~~2. Congregate meals shall not be provided at this site; and~~

~~3. Information and referral shall be available through the senior service site.~~

~~(4) Senior center requirements.~~

~~(a) Each senior center shall have an individual, either paid or volunteer staff who is responsible for the administration of the center. At least one (1) staff person shall be present at the site during hours of operation.~~

~~(b) The senior center shall be open at least four (4) hours a day, three (3) or more days per week.~~

~~(c) The total number of participants to be served shall be adequate to justify the cost of operating this center.~~

~~(d) Minimum services which shall be available at this center:~~

~~1. Services which are available at a nutrition site, with emphasis on outreach activities; and~~

~~2. At least one (1) additional supportive service shall be provided at this center.~~

~~(5) Multipurpose senior citizens center responsibilities.~~

~~(a) Each multipurpose senior citizens center shall have a full-time center director and an adequate number of qualified full-time or part-time staff to administer the center and provide quality service.~~

~~(b) At a minimum, a multipurpose senior citizens center shall be open six (6) hours per day and five (5) days per week.~~

~~(c) The total number of participants to be served shall be adequate to justify the cost of operating this center.~~

~~(d) Minimum services which shall be available at a multipurpose senior citizens center:~~

~~1. The services which are available at a nutrition site with emphasis on mandated outreach services;~~

~~2. At least one (1) component service shall be provided in each of the following categories:~~

~~a. Access services which includes transportation, outreach and information and referral;~~

~~b. In-home services which includes homemaker, home health aide, telephone, visiting reassurance and chore maintenance;~~

~~c. Other services which may be provided include services to residents of care-providing facilities, health-related services, volunteer activities, placement, individual and group activities and other services as defined by the office standard service definitions.~~

~~(6) Altering center operations.~~

~~(a) Prior approval shall be obtained from the office by an area agency on aging which intends to:~~

~~1. Close a center or open a new senior center;~~

~~2. Change the hours or days of operation;~~

~~3. Change the location of the center;~~

~~4. Change the method of providing services in a manner that affects availability of ongoing services;~~

~~5. Substantially reduce the level or number of services.~~

~~(b) Justification for the change shall include:~~

~~1. The proposed effective date of this change;~~

~~2. Need or reason for the change;~~

~~3. The number of participants affected by this particular change or action;~~

~~4. Whether this change is temporary or permanent; explanation;~~

~~5. The cost benefit;~~

~~6. If a change is being made to an existing center, whether this~~

~~facility was altered, renovated or constructed with Older Americans Act funds; date work was completed;~~

~~7. Whether the area agency on aging advisory council recommended this change;~~

~~8. What provisions are proposed to continue services to these participants; and~~

~~9. For a proposed new center, costs involved in meeting local fire, health, safety and sanitation regulations.~~

~~(c) A request to open a new center shall include copies of the completed health and fire department inspection forms and completed Title III site and focal point pages, if applicable.~~

~~(d) If meal preparation at a new center is proposed, notify the office and the local fire and health departments.~~

~~(e) The office shall review the information submitted and if necessary or feasible conduct an on-site visit before a determination is made.~~

~~(f) In case of altered center operations due to damages caused by fires, floods, storms, high winds, and tornadoes, the Office of Aging Services shall be notified by telephone that emergency alterations are necessary. Prior approval shall be obtained by telephone from the Office of Aging Services on a conditional basis under emergency circumstances with final approval pending written documentation of the proposed change; local fire, health and safety inspections, and an on-site visit by the office.~~

~~Section 9. Sectarian Use of a Facility. With respect to the acquisition (in fee simple or by lease for ten (10) years or more), alteration, or renovation of existing facilities, or the construction of new facilities, the office shall assure that Title III funds shall not be used for sectarian instruction or to provide a facility for religious worship. The prohibition does not preclude the use of a facility owned by a religious organization for the delivery of services to the elderly.~~

~~Section 10. Contracts. (1) The office shall designate planning and service areas in the state and shall make a contract under an approved area plan with one (1) area agency (area development district) in each planning and service area for the purpose of building comprehensive systems for older persons throughout the state. The area development district, in turn, shall contract with service providers to perform certain specified functions. Each contract negotiated shall contain at least the following:~~

~~(a) A complete detailed description of services to be provided by the contractor;~~

~~(b) A complete description of other responsibilities of the contractor including: records retention, reporting requirements, cost-sharing, and compliance with applicable assurances, laws, and regulations;~~

~~(c) A complete description of the cabinet's responsibilities and commitments to the contractor including: technical assistance which shall be provided and activities which the cabinet shall perform in order for the contractor to meet its obligations;~~

~~(d) A complete description of the basis for reimbursement to the contractor for services rendered including:~~

~~1. Rates;~~

~~2. Frequency of billing;~~

~~3. Invoice requirements;~~

~~4. Office site for invoices to be submitted; and~~

~~5. A budget if applicable;~~

~~(e) Assurances regarding the rights of cabinet personnel or designees; state or federal officials or auditors; or independent auditors to inspect records and monitor service delivery of the contractor relative to evaluation and audits;~~

~~(f) A requirement that the contractor accepts responsibility for an audit exceptions arising from its failure to comply with the terms of the contract including regulations applicable to federally-funded activities;~~

~~(g) A final invoice for services rendered under the contract shall be submitted to and received by the Office of Aging Services no later than thirty (30) days following the expiration date of the contract, unless a written request for waiver of this deadline is submitted by the contractor and approved by the Office of Aging Services fifteen (15) days prior to the expiration date and accompanied by a signed statement from the contractor that it is the final invoice and that no further billings shall be sent to the Office of Aging Services relative to cost for services provided under the agreement; and~~

~~(h) A clause that either party shall have the right to terminate the contract upon thirty (30) days written notice served on the other by registered or certified mail.~~

~~(2) A certified public accountant shall be engaged by an area development district to make independent audits of the area development district's financial and other records for the period for which the contract is in effect.~~

~~(a) The certified public accountant engaged by the area development district shall make an independent audit of the area development district's financial and other records for the period for which the contract is in effect, and submit an original of the audit to the Kentucky Department of Local Governments and a copy of the audit to the office properly certified by the certified public accountant, not later than ninety (90) days after the end of the period or upon completion of an organization-wide audit conducted in accordance with OMB A-128 and the Single Audit Act of 1984, Pub.L. 98-502. The engagement letter between the area development district and its certified public accountant shall contain the following clauses:~~

~~1. The auditor shall, in accordance with generally accepted auditing standards, examine the agency's final expenditure reports as required and issue a report on the examination. Specifically included within the scope of this examination are the following audit procedures:~~

~~a. The auditor shall familiarize himself with the agency's approved cost allocation plan as submitted to the Kentucky Department of Local Government or to the area development district if provider agency is a subcontractor of the area development district and verify that the agency used the correct accounting methodology to derive the expenditures presented on the above-mentioned final expenditure reports;~~

~~b. The audit report shall contain a supplemental schedule that consolidates individual subcontractor's final expenditure reports into a total expenditure report for each major service program. While the auditor may disclaim an opinion on this supplemental schedule, he shall verify its mathematical accuracy;~~

~~c. The auditor shall familiarize himself with applicable requirements as set forth in the Office of Aging Services' aging policies, contract requirements, and applicable federal requirements. Deviations from these requirements which, in the judgment of the independent auditor, relate to substantive program or financial matters, shall be furnished directly by the auditor to the Kentucky Office of Aging Services.~~

~~(b) The cabinet, Kentucky Auditor of Public Accounts, U.S. Department of Health and Human Services, U.S. General Accounting Office, and other appropriate federal agencies retain the right to audit and review the area development district's records and accounts for a period of three (3) years from the date of the last payment received for the contract period, or until audited and audit exceptions are resolved; and~~

~~(c) The final audited fiscal report, reconciled with the audit, shall be submitted not later than ninety (90) days after the ending date of the contract, or upon completion of an organization-wide audit conducted in accordance with OMB A-128 and the Single Audit Act of 1984, Pub.L. 98-502, or, if termination or cancellation occurs, not later than sixty (60) days after notice of the termination or cancellation. The cabinet has the right to deny payment for a fiscal report that does not comply with this provision.~~

~~(3) The office shall authorize the carry over of federal funds on a case-by-case basis. Area agencies on aging shall submit a narrative request for permission to carry over federal funds explaining the reason for a fund surplus and the intended use of these funds. Under Title III of the Older Americans Act, carry-over federal funds shall be matched with fifteen (15) percent local funds and no state general funds shall be carried over. Program income shall be expended in the same year in which it is collected. Each area agency on aging shall be advised to plan, administer and monitor its programs in a manner which assures that funds are utilized in the year in which they are allocated.~~

~~(4) The contractor shall certify that it shall not violate a conflict of interest statute or other applicable statute or principle by the performance of the contract.~~

~~(5) Contributions.~~

~~(a) Contributions or donations, as pertains to Title III programs, made by participants and other contributors shall be considered program income and shall be utilized to expand services provided under the Older Americans Act. Each service provider shall have an established method for providing the opportunity for participants to voluntarily contribute to the estimated cost of services rendered. Participants may be provided information to assist them in determining the amount, if any, of an individual contribution. If the participant is unable to contribute, that person shall not be denied services for failure to contribute. A means test shall not be used.~~

~~(b) Confidentiality of contributions from participants and other contributors shall be assured. Collection of contributions shall be done in a discreet manner. No written acknowledgement of the amount of contributions shall be issued except upon request of the person making the contribution when the contribution is made. Participants desiring a record of their contributions shall be encouraged to use checks if making contributions. To insure against loss, mishandling or theft of contributions, the following procedures shall be followed:~~

~~1. Two (2) persons, a participant and a staff person, shall be selected at each site to be responsible for counting and recording contributions daily;~~

~~2. Provision shall be made for safe-keeping of money from the date of collection until the provider arranges for transfer of funds. This shall be a locked box placed in a safe or a secure cabinet, file closet, or daily deposit; and~~

~~3. Funds shall be verified and collected at least weekly by the service provider.~~

~~(6) In-kind contributions shall be allowed to be used for the purpose of meeting the match if state funds, available local cash, and program income are not enough to provide the match required to obtain maximum federal funds.~~

~~(a) The subcontractor shall provide to the area agencies on aging certified statements of donated items;~~

~~(b) Match verification requirements shall be completed by the service provider and submitted to the area agency on aging if applicable; and~~

~~(c) The Cabinet for Health Services shall retain the right to request a review of these documents.~~

~~(7) In accordance with the contract, the contractor or area development district shall have a properly executed fidelity bond. The bond shall be sufficient to cover maximum sums handled quarterly under the contract with the Office of Aging Services; and a copy shall be provided to the Office of Aging Services no later than sixty (60) days from the effective date of the contract. Bonds required shall be obtained from companies holding certificates of authority as acceptable sureties.~~

~~(8) Matching requirements.~~

~~(a) The area agency on aging shall meet the matching requirements through allowable costs and third party in-kind contributions, program income or cash. Match may be cash or in-kind. Match, whether it is cash or in-kind, shall meet the following requirements:~~

~~1. It shall not be supported with federal funds;~~

~~2. It shall be an allowable cost;~~

~~3. It shall be included in the accounting records and audit; and~~

~~4. It shall not be used to match other federal program.~~

~~(b) Certification of the appropriate match amount shall be submitted to the Office of Aging Services by the area agency on aging on a quarterly basis. The match requirement shall be met by category by the end of each quarter of the fiscal year. The procedure for certifying match shall be as follows:~~

~~1. The area agency on aging monthly financial reports shall indicate the amount of match collected and applied during the month;~~

~~2. At the end of the quarter, the financial report shall indicate the total amount of funds necessary to meet the match requirement, by category, for the quarter; and~~

~~3. Requests for reimbursement shall reflect the amount of federal and state funds that is due based on expenditures and match. The Office of Aging Services shall not penalize contractors in terms of reimbursement of federal and state funds during the first two (2) months of the quarter if the required match is not documented on the report. The required amount of match shall be documented at the end of each quarter. Adjustments, decreases if necessary, in payment shall be made at this time.~~

~~(9) Program income shall pertain to revenue received by service agencies under contract or subcontract with the office to conduct programs and provide services which are paid for either fully or partially with federal or matching funds. Program income includes participant contributions, proceeds from the sale of equipment or property, and rental fees. Program income shall be spent during the same fiscal year it is collected and shall be used to further the objectives of the aging program. The cost principles applicable to federal funds also apply to program income. Program-related income, under Title III, shall be used in either the additive alternative in 45 C.F.R. 92.25(g)(2) or the cost-sharing or matching alternative in 45 C.F.R. 92.25(g)(3) or a combination of the two (2). The deduction alternative described in 45 C.F.R. 92.25(g)(1) shall not be permitted.~~

~~(10) The area development district and subcontractors shall maintain records pertaining to the contract for a period of not less than three (3) years after the matters pertaining to the contract are resolved in accordance with applicable federal and state laws, regulations and policies.~~

~~(11) The area development district may enter into subcontracts only upon receipt of a final contract with the Cabinet for Health Services. To conduct activities or services on its behalf, the area development district may enter into subcontracts, and amendments thereof, with profit-making corporations with prior approval of the Cabinet for Health Services. Recipients of awards shall be incorporated to safeguard the interest of the cabinet, the area agency on aging, the recipient of the award itself, the individuals involved in the delivery of services, and the individuals participating in the program, unless award is made to an individual under a personal service contract.~~

~~(a) The area development district shall execute a formal subcontract for those activities and services to be conducted by an agency or organization other than the area development district. The subcontract shall contain sufficient program and fiscal information to assure that the activities and services under an approved plan shall be conducted in conformity with the Older Americans Act. Once a subcontract has been executed by an area development district to carry out a service or activity under an approved plan, the subcontract shall be forwarded within thirty (30) days to the office and made part of the approved area plan.~~

~~(b) If the unit cost rate of a fixed rate subcontract is increased, a subcontract amendment reflecting the increase shall require prior review by the area agency on aging advisory council, approval by the area development district board and approval of the office.~~

~~(12) The office shall require prior approval of transfers of funds allocated to area development districts. With respect to Title III funds, the following shall apply:~~

~~(a) The area agency on aging may elect, in its area plan to transfer a portion of the funds for use as the area agency on aging considers appropriate to meet the needs of the area served;~~

~~(b) The area agency on aging may elect to transfer between allotments up to a percentage, set by the office, of an agency's separate allotments for congregate and home-delivered nutrition services;~~

~~(c) The area agency on aging may elect to transfer not more than a percentage, set by the office, of the funds allotted for a fiscal year between programs under part B and part C of Title III, for use as the agency considers appropriate;~~

~~(d) Title III funds shall not be transferred from Part B, C1, C2 after approval of the original budget by the office; and~~

~~(e) If the area agency on aging proposes to transfer more than the above percentages from one (1) allotment to another, the request shall be submitted to the office by March 1 of each approaching fiscal year and shall be by written request with justification for each transfer.~~

~~Section 11. Medication Assistance. Providers other than licensed home health agencies may allow staff to assist participants in medication usage. Assistance shall be provided only by staff who have received training in medication assistance and only to individuals whose care plans include this service.~~

~~(1) The assessor or case manager shall:~~

~~(a) Conduct an assessment of the individual to determine the presence of sensory or functional impairment which may indicate problems with taking medication.~~

~~(b) Collect information from the client on medications, including prescriptions and over-the-counter drugs and the following:~~

~~1. Name and dosage of the medication;~~

~~2. Purpose of the medication;~~

~~3. The amount of the medication ordered;~~

~~4. Amount to be taken each time and when;~~

~~5. The physician's name.~~

~~(c) Prepare a list of medications prescribed including the times at which they shall be taken.~~

~~(d) If a client is using over-the-counter medications or home remedies, contact the client's physician or pharmacist to secure approval for their continued use.~~

~~(2) The provider shall:~~

~~(a) Set up a schedule to be followed daily. After each medication has been taken, the provider shall check it off. Refer to the schedule and remind the client if medicine is due.~~

~~(b) Assure that the correct medication is given by checking the prescription label before giving the medicine bottle to the client.~~

~~(c) Assure that the method of taking the medication is followed.~~

~~(d) Explain to the client the importance of taking prescription or over-the-counter medication as directed.~~

~~(e) Place certain medications within the client's reach so that the client can place these tablets under the tongue the moment chest pain occurs.~~

~~(f) Put away sleep and pain medications after each use. Sleeping pills and other addicting drugs shall be used only as ordered by the doctor.~~

~~(g) Review the evening medication schedule with the client, being sure the client knows the method and time to take medications if no assistance can be given, leaving the medications within easy reach of the client and encouraging the client to take nighttime doses in a well-lit room.~~

~~(h) If the client has questions about the medications, encourage the client to consult his doctor.~~

~~Section 12. Volunteers. Each area agency on aging shall develop mechanisms for volunteer recruitment and training. The office shall coordinate with the foster grandparent program, retired senior volunteer program, senior centers, and other agencies or organizations in the provision of meaningful volunteer services. The office shall review proposals for continuation of volunteer programs, comment to the respective agencies, and submit letters of support upon request of the applicant agencies.~~

~~Section 13. Records Check. In the programs administered by the office, applicants for employment and volunteers with direct client contact shall be requested to authorize the release of police records to the area development district using a request for police record search. An applicant or volunteer with a criminal record may be employed only with the approval of the executive director of the area development district. It shall not be a condition of employment for the applicant to authorize the release of police records. It shall not be a condition of participant eligibility in the Title V program for the applicant to authorize the release of police records. Title V participants applying to be employed by the area development district or service provider in direct ongoing program responsibilities shall authorize the release of police records.~~

~~Section 14. State Plan. The office shall develop and submit for federal approval and funding a state plan for the delivery of services to the elderly in accordance with the provisions of Section 307 of the Older Americans Act and which advances the state agency mission as set forth under 45 C.F.R. 1321.7. Administration of the state plan shall be subject to the federal legislative and regulatory provisions and Office of Aging Services policies.~~

~~(1) The state plan shall include:~~

~~(a) Identification of the single state agency that has been designated to develop and administer the plan;~~

~~(b) Statewide program objectives to implement the requirements under Title III of the Older Americans Act and subsequent objectives established through the rulemaking process;~~

~~(c) A resource allocation plan indicating the proposed use of all Title III funds directly administered by the state agency, and the distribution of Title III funds to each planning and service area;~~

~~(d) Identification of the geographic boundaries of each planning and service area and of area agencies on aging designated for each planning and service area;~~

~~(e) Provision of prior federal fiscal year information relating to low-income minority and rural older individuals as required by Sections 307(a)(23) and (29) of the Older Americans Act;~~

~~(f) Assurances and provisions required in Sections 305 and 307 of the Act and requirements under 45 C.F.R. 1321.5-1231.75; and~~

~~(g) Assurances as prescribed by the Commissioner of the U.S. Administration on Aging.~~

~~(2) The office shall provide for amendments to the state plan on aging services in accordance with the provisions of 45 C.F.R. 1321.19. The state plan shall be amended to:~~

~~(a) Reflect new or revised federal statutes or regulations.~~

~~(b) Reflect a material change in any law, organization, policy or state agency operation.~~

~~(c) Reflect information required annually by Sections 307(a)(23) and (29) of the Older Americans Act.~~

~~(3) The office shall submit for prior approval of the commissioner of the Administration on Aging proposed amendments to the state plan required under 45 C.F.R. 1321.17(a) or (f); and shall notify the commissioner of changes of provisions under 45 C.F.R. 1321.17(b) through (d).~~

~~(4) The office shall exercise the right of appeal and request for hearing on federal disapproval of state plan on aging services under the provisions of Sections 307(c) and 207(d) of the Older Americans Act which are subject to the provisions of 45 C.F.R. Part 213.~~

~~Section 15. Hearing Procedures for Area Agency on Aging. (1) The office shall provide an opportunity for a hearing to area agencies on aging if the office proposes the following adverse actions:~~

~~(a) Disapproves the area plan or plan amendment submitted by the area agency as specified in 45 C.F.R. 1321;~~

~~(b) Withdraws the area agency on aging's designation as provided in 45 C.F.R. 1321; or~~

~~(c) Denies an application for designation as a planning and service area under 45 C.F.R. 1321.~~

~~(2) If a complaint is filed, the area agency on aging shall be afforded:~~

~~(a) An opportunity to review pertinent evidence on which the adverse action was based;~~

~~(b) An opportunity to appear in person before a group which shall render an impartial decision to refute the basis for the decision;~~

~~(c) An opportunity to be represented by counsel;~~

~~(d) An opportunity to present witnesses and documentary evidence;~~

~~(e) An opportunity to cross-examine witnesses; and~~

~~(f) A written impartial decision which sets forth:~~

~~1. The reasons for the decision;~~

~~2. The evidence on which the decision is based; and~~

~~3. A statement explaining the complainant's rights to appeal.~~

~~(3) Complaints filed by area agencies on aging shall be as follows:~~

~~(a) Area agencies on aging shall file a written request for a hearing with the Executive Director, Office of Aging Services, within thirty (30) days following its receipt of the notice of the adverse action. The request shall contain reasons for the appeal.~~

~~(b) If a request for a hearing is received, the Executive~~

~~Director, Office of Aging Services, shall:~~

~~1. Appoint a hearing officer and provide written notification of the appointment to the interested parties;~~

~~2. Notify the area agency on aging of the date, time and location of the hearing;~~

~~3. Make arrangements for official recording of the hearing and retain the official transcript, if transcribed, of testimony and other material submitted. Interested parties may obtain transcripts of hearings upon request to the Office of Aging Services and upon payment at rates that do not exceed the actual cost. An expense shall be borne by persons requesting the transcript;~~

~~(c) The Office of Aging Services may terminate formal hearing procedures if the office and area agency on aging, and other interested parties participating in the hearing, negotiate a written agreement that resolves the issue which led to the hearing.~~

~~(d) It is the responsibility of the hearing officer to conduct a fair and impartial hearing, avoid delay, and maintain order. In so doing, he has authority that includes but is not limited to:~~

~~1. Regulating the course of the hearing;~~

~~2. Regulating the participation and conduct of parties, amicus curiae, and others at the hearing;~~

~~3. Ruling on procedural matters and, if necessary, issuing protective orders or other relief to a party against whom discovery is sought;~~

~~4. Taking an action authorized by the regulations;~~

~~5. Administering oaths and affirmations;~~

~~6. Examining witnesses;~~

~~7. Receiving or excluding evidence;~~

~~8. Ruling on or limiting evidence or discovery; and~~

~~9. Recommending a final decision.~~

~~(e) The final decision on an area agency on aging appeal to the Office of Aging Services shall be rendered by the Executive Director, Office of Aging Services. The decision of the executive director shall contain information from the federal regulations 45 C.F.R. 1321 regarding appeal rights.~~

~~(f) The Office of Aging Services shall complete the hearing within eighty (80) days of the date the request for hearing was received by the state agency. The state agency shall issue the hearing decision within ten (10) working days after the hearing is completed.~~

~~Section 16. Hearing Procedures for Title III Subcontractors or Applicants to be Subcontractors. Subcontractors or applicants to be subcontractors of area agencies on aging shall be provided an opportunity for a hearing whose application to provide services under an area plan is denied or a service provider funded under Title III whose subcontract is terminated or not renewed except as provided in 45 C.F.R. Part 74 Subpart B.~~

~~(1) The procedure for complaints lodged by service providers or applicants to provide services who are subcontractors shall be as follows:~~

~~(a) The service provider or unsuccessful applicant to provide services shall contact the contracting agency to try to work out a satisfactory solution.~~

~~(b) If a complaint is filed, the complainant shall comply with the contracting agency's hearing procedures which shall include the following provisions:~~

~~1. A service provider or unsuccessful applicant to provide services aggrieved by an adverse action of a contracting agency shall, within ten (10) working days from receipt of notice of the adverse action, file a written complaint with the agency;~~

~~2. The contracting agency shall notify all parties of interest that a complaint has been filed and determine a time and place for the hearing;~~

~~3. An opportunity to review pertinent evidence on which the adverse action was based;~~

~~4. An opportunity to appear in person before an individual or a group of three (3) persons which can render an impartial decision to refute the basis for the decision;~~

~~5. An opportunity to be represented by counsel;~~

~~6. An opportunity to present witnesses and documentary evidence;~~

~~7. An opportunity to cross-examine all witnesses; and~~

~~8. A written impartial decision within ten (10) days of receipt of complaint which sets forth:~~

~~a. The reasons for the decision;~~

~~b. The evidence on which the decision is based; and~~

~~c. A statement explaining the complainant's rights to appeal.~~

~~(2) If the complainant is not satisfied with the decision of the contracting agency, the complainant shall file a notice of appeal within five (5) working days of the adverse action to the area development district and the area development district board of directors shall be responsible for the provision of a full evidentiary hearing within twenty (20) days of receipt of written notice of the complaint in order to render a final impartial decision. It shall be the responsibility of the area development district to provide an official transcript of the hearing at the final local appeal level to include all testimony, a copy of findings of fact, conclusions of law and final order, along with other evidence and exhibits submitted for the record. An impartial decision shall be made as soon as practicable or within ten (10) working days.~~

~~(3) The hearing shall be limited to those issues included in the original complaint. Only those issues shall be addressed unless issues have been added, modified, or deleted through written agreement of the involved parties.~~

~~(4) The complainant may drop the complaint if satisfied with the response of the area development district. If the complainant is not satisfied, the complainant may appeal to the Office of Aging Services for a state-level review within five (5) working days from the time the decision is received.~~

~~(5) Upon receipt of the request, the hearing officer appointed by Office of Aging Services shall request the transcript of the hearing before the area development district board of directors and notify interested parties that the appeal has been filed. Upon proper motion of any interested party, the hearing officer may dismiss an appeal if it was not timely filed, or remand the appeal to the area development district board of directors if the appellant did not exhaust his administrative remedies at the local level.~~

~~(6) The hearing officer shall make a determination of the issues based on the transcript of the hearing before the area development district board of directors. New evidence shall not be introduced during the appeal to the Office of Aging Services unless it is determined by the hearing officer that additional evidence is necessary in order to make a decision.~~

~~(7) The hearing officer shall forward his recommended decision to the Executive Director, Office of Aging Services, within ten (10) days of receipt of appeal. The final decision shall be rendered by the Executive Director, Office of Aging Services, within ten (10) working days after receipt of hearing officer's recommendation. The decision of the Executive Director of the Office of Aging Services shall be the final order.~~

~~Section 17. Material Incorporated by Reference.~~

~~(1) Forms necessary for the implementation of the general administration of programs for the elderly are being incorporated by reference.~~

~~(2) Material incorporated by reference may be inspected and copied at the Office of Aging Services, CHR Building, 5th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.~~]

DEBORAH S. ANDERSON, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: March 10, 2015

FILED WITH LRC: March 12, 2015 at 3 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

NONE

PROPOSED AMENDMENTS

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)

200 KAR 14:011. Qualified Investments.

RELATES TO: KRS 42.500(9)-(14), 42.520, 42.525, 17 C.F.R. 270.2a-7, 15 U.S.C. 80a, 26 U.S.C. 1-9834

STATUTORY AUTHORITY: KRS 42.500(10), 42.520(2), 42.525

NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.500(10) requires the State Investment Commission to promulgate administrative regulations for the investment and reinvestment of state funds. KRS 42.520(2) requires the commission to promulgate administrative regulations concerning the assignment of priorities to public depositories. KRS 42.525(1) requires the commission to promulgate administrative regulations for the investment and reinvestment of state funds and the acquisition, retention, management, and disposition of investments. This administrative regulation establishes the standards that govern the commonwealth's investment and cash management programs.

Section 1. Definitions. (1) "Commission" means the State Investment Commission.

(2)[~~"Floating rate" means that the interest rate:~~

~~(a) Is paid on the specific security changes periodically on a pre-established schedule;~~

~~(b) May be tied directly to an index plus some spread or margin; and~~

~~(c) Includes hybrid adjustable rate mortgages if the first repricing date is less than six (6) years from the issuance date.~~

~~(3)~~] "Hedge" means a position in a financial instrument taken to minimize or eliminate the risk associated with an existing instrument or portfolio of instruments.

(3)[~~(4)~~] "Interest rate swaps" means an agreement governed by an International Swap and Derivatives Association master contract between two (2) parties to exchange, or have the conditional right to exchange, specified cash flows.

(4)[~~(5)~~] "NRSRO" means "Nationally Recognized Statistical Ratings Organization", which is a credit rating agency that is registered with the Securities and Exchange Commission, and which provides its opinion on the creditworthiness of an entity and the financial obligations issued by that entity.

(5)[~~(6)~~] "Office" means the Office of Financial Management.

(6)[~~(7)~~] "Options" means a contract that provides the right, but not the obligation, to buy or sell a specific amount of a security within a predetermined time period and includes specific bonds or notes, an exchange traded futures contract, or the cash value of an index.

(7)[~~(8)~~] "Pools" means the investment pools that are managed by the Office of Financial Management, under the guidance of the commission.

Section 2. The commission shall:

(1) Not invest state funds in an institution or instrument that it deems unsafe and a threat to the security of state funds;

(2) Maintain adequate liquidity to meet the cash needs of the state; and

(3) Within the limits established by this administrative regulation, invest in securities that maximize yield or return to the Commonwealth.

Section 3. (1) The commission may:

(a) Engage in securities lending.

(b) Allow inter-pool transfers to meet short term cash needs.

(2) Within the limited term pool, if borrowing exceeds thirty-three (33) percent of the value of the pool's total assets resulting from a change in values of net pool assets at any time, the pool shall then reduce borrowing to no more than thirty-three (33) percent within three (3) business days and shall continue to use prudence in bringing the percentage of borrowing back into conformity.

Section 4. Interest earned on the cash balances shall be calculated daily on an accrual basis.

Section 5. Investment Criteria. (1) The criteria to determine the amount of funds per investment instrument shall be the:

(a) Liquidity needs of the state in aggregate as budgeted;

(b) Rates available per instrument; and

(c) Safety of principal and interest.

(2) An investment instrument shall qualify if it is specified by:

(a) KRS 42.500;

(b) This administrative regulation;

(c) 200 KAR 14:081; or

(d) 200 KAR 14:091.

Section 6. Investment Securities. The commission shall invest only in the following security types:

(1) U.S. Treasury, agency, and government sponsored entity agency securities with a maturity of less than seven (7) years, or an embedded put of less than three (3) years.

(2) Mortgage pass-through securities issued by U.S. government agencies or by government sponsored entities, including Government National Mortgage Association, Fannie Mae, Freddie Mac, and Small Business Administration with an average life of less than four (4) years at the time of purchase, using Bloomberg consensus prepayment projections, if available, or other reasonable prepayment assumptions if there is no consensus. The commission may hold pass-throughs purchased under this subsection which have an average life of less than six (6) years, using Bloomberg consensus prepayment projections, if available, or other reasonable prepayment assumptions if there is no consensus.

(3) Real estate mortgage investment conduit obligations, as defined by the Internal Revenue Code, 26 U.S.C. 1-9834, also known as collateralized mortgage obligations, or CMOs, rated in the highest category by an NRSRO with an average life of less than four (4) years at the time of purchase, using Bloomberg consensus prepayment projections, if available, or other reasonable prepayment assumptions if there is no consensus. The commission may hold CMOs purchased under this subsection which have an average life of less than six (6) years, using Bloomberg consensus prepayment projections, if available, or other reasonable prepayment assumptions if there is no consensus.

(4) Asset-backed securities (ABS) rated in the highest category by an NRSRO with an average life of four (4) years or less.

(5) U.S. dollar denominated corporate and Yankee securities issued by foreign and domestic issuers, rated in one (1) of the three (3) highest categories by an NRSRO, with a maturity not longer than five (5) years, or an embedded put of less than three (3) years.

(6) U.S. dollar denominated sovereign debt rated in one (1) of the three (3) highest categories by an NRSRO, with a maturity not to exceed five (5) years.

(7)(a) Money market securities, including:

1. Commercial paper;

2. Certificates of deposit; and

3. Bankers' acceptances issued by banks having the highest short-term rating by an NRSRO.

(b) Maturities shall be limited to 180 days for bankers' acceptances and 270 days for all other money market securities.

(8) Repurchase agreements collateralized at a minimum of 102 percent (marked to market daily) with treasuries, agencies, and agency mortgage backed obligations[~~that meet the requirements established by subsection (4) of this section,~~] with a maximum maturity of one (1) year[~~if executed with approved broker-dealers as provided by Section 8 of this administrative regulation~~] and a maximum of three (3) years for the Kentucky Bank Repurchase Program participants.

(9) Municipal obligations rated in one (1) of the three (3) highest categories by an NRSRO, with a maturity not to exceed five (5) years. The maturity and credit restriction shall be waived for obligations issued by the Commonwealth of Kentucky or any entity within the Commonwealth of Kentucky.

(10) Mutual funds in which the underlying holdings of the fund are in securities in which the pools could invest directly.

(11) In meeting credit standards listed previously in this section, the lowest rating issued by an NRSRO shall be used to determine compliance. The commission, at a minimum on an annual basis, shall determine which NRSRO's shall be used.

Section 7. Limits on Investment Securities. (1) U.S. agency mortgage backed securities and collateralized mortgage obligations shall not exceed twenty-five (25) percent of total pool assets in aggregate.

(2) Asset-backed securities shall not exceed twenty (20) percent of total pool assets.

(3) U.S. dollar denominated corporate and Yankee and sovereign securities issued by foreign and domestic issuers shall not exceed thirty-five (35) percent of an individual pool or $25,000,000 per issuer within an individual pool, inclusive of commercial paper, bankers' acceptances, and certificates of deposit unless:

(a) These securities are guaranteed by the full faith and credit of the United States government; or

(b) These securities were purchased between February 19, 2009 and March 31, 2009.

(4) Municipal securities shall not exceed $25,000,000 per issuer.

(5) U.S. dollar denominated sovereign debt shall not exceed five (5) percent of any individual portfolio and $25,000,000 per issuer.

(6)[~~(5)~~] The investment amount for a single mutual fund shall not exceed ten (10) percent of total pool assets.

(7)[~~(6)~~] The credit and diversification requirements documented in this administrative regulation shall apply at the time of purchase based on book value for the Limited Term Pool and market value for other pools.

(8)[~~(7)~~] The limits set forth in this section may be waived by unanimous vote of the commission if a situation arises which could damage the state's credit.

Section 8. Risk Management. The pools may utilize interest rate swaps, over-the-counter and exchange traded U.S. Treasury contracts and options to manage the portfolio's exposure to interest rate risk. These instruments shall only be used if the results are demonstratively superior to cash market transactions.

Section 9. Pools and Operating Procedures. (1)(a)[~~The limited-term pool shall be managed to meet the requirements of Rule 2a-7 of the Investment Company Act of 1940, 17 C.F.R. 270.2a-7. Terms used in this section shall have the definitions prescribed in the Investment Company Act of 1940, 15 U.S.C. 80a-1 through 80a-64.~~

~~(b)~~] The limited-term pool shall not purchase a security with a final maturity exceeding 365[~~397~~] days[~~, except for governmental securities, which may have a final maturity of up to 762 days~~].

(b)[~~(c)~~] The weighted average maturity, adjusted for interest rate resets and demand features, shall not exceed sixty (60) days; and the weighted average life, adjusted for demand features only but not interest rate resets, shall not exceed 120 days.

(c)[~~(d)~~] At a minimum:

1. Ten (10) percent of the pool shall be invested in cash, direct obligations of the U.S. government or securities that mature or are subject to a demand feature payable within one (1) business day; and

2. Thirty (30) percent of the pool shall be invested in cash, direct obligations of the U.S. government, government agency discount note maturing in sixty (60) days or less or securities that mature or are subject to a demand feature payable within five (5) business days.

(d)[~~(e)~~] All securities purchased for the pool shall be rated by an NRSRO.

(e)[~~(f)~~] No more than five (5) percent of the pool shall be invested in illiquid securities.

(f)[~~(g)~~] No more than three (3) percent of the pool shall be invested in second tier securities and no more than five-one hundredths (.05) percent of the pool shall be invested in a second tier security issuer.

(g)[~~(h)~~] The net asset value of pool shares shall be computed using the amortized cost method of valuing the pool's investments.

(h)[~~(i)~~] The shadow net asset value using the market value of pool holdings shall be computed no less than monthly and made public within sixty (60) days of the calculation date.

(i)[~~(j)~~] Stress testing of the pool based on redemption and changes in market value shall be performed no less than quarterly and reported to the commission.

(j)[~~(k)~~] Monthly portfolio listings shall be published to a public Web site and shall remain available for no less than six (6) months.

(2)(a) Except as provided by paragraph (b) of this subsection, state funds held in agency or university accounts, the interest of which accrues to the agency or university, shall be placed in the intermediate pool.

(b) These funds may be placed in the limited-term pool, if the commission determines that the liquidity needs of an agency require shorter term investment.

(c) The duration of the intermediate pool shall not exceed three (3) years.

Section 10. Approved Broker-Dealers. (1) A broker-dealer who was approved by the commission prior to the effective date of this administrative regulation shall be considered an approved broker-dealer.

(2) Except as provided by subsection (1) of this section, a broker-dealer shall be approved by the commission if the broker-dealer has met the requirements established by subsection (3), (4), or (5) of this section, as applicable.

(3) An approved broker-dealer shall be a broker dealer who meets one (1) of the following qualifications:

(a) Is a primary dealer of the Federal Reserve;

(b) Maintains an office in Kentucky, and has either $25,000,000 in excess net capital or has trades that are guaranteed by a primary dealer of the Federal Reserve;[~~or~~]

(c) Has a minimum of $100,000,000 in excess net capital; or

(d) Is an alternative trading system as defined by the Securities and Exchange Commission.

(4)[~~An approved broker-dealer for repurchase agreements shall:~~

~~(a) Have transaction amounts limited to his excess net capital;~~

~~(b) Have executed the:~~

~~1. Public Securities Association Master Repurchase Agreement prior to entering into a repurchase transaction; and~~

~~2. Appropriate third-party custodial agreement or Custodial Undertaking in connection with Master Repurchase Agreement for tri-party repurchase agreements; and~~

~~(c) Be primary dealer of the Federal Reserve.~~

~~(5)~~] An approved broker-dealer for hedge vehicles shall:

(a) Have at least $100,000,000 in excess net capital;

(b) Have market value transactions limited to his excess net capital; and

(c) Have executed the:

1. International Swap and Derivatives Association Agreement prior to the implementation of a swap; and

2. Commonwealth of Kentucky Master Agreement, Over-the-counter Option Transactions - U.S. Treasury Securities, prior to the implementation of an over the counter option transaction.

(5)[~~(6)~~](a) Within 180 days of the end of each broker-dealer's fiscal year, a broker-dealer shall submit a copy of the broker-dealer's audited financial statements for that fiscal year.

(b) A broker-dealer who wishes to be approved by the commission as an approved broker-dealer shall submit a copy of the broker-dealer's current audited financial statements.

(6)[~~(7)~~] Notwithstanding the broker-dealer requirements described in this section, the state may purchase securities directly from the issuer.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Securities Industry and Financial Markets Association Master Repurchase Agreement", 12/08;

(b) "Custodial Undertaking in Connection with Master Repurchase Agreement, Bank of New York", 12/08;

(c) "Custodial Undertaking in Connection with Master Repurchase Agreement, Chase Manhattan", 12/08;

(d) "International Swap and Derivatives Association Agreement", 12/02; and

(e) "Commonwealth of Kentucky Master Agreement, Over-the-counter Option Transactions - U.S. Treasury Securities", 12/97.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at State Investment Commission, Suite 76, Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LORI FLANERY, Secretary

APPROVED BY AGENCY: May 15, 2015

FILED WITH LRC: May 15, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 23, 2015 from 10:00 a.m. to 12:00 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 at least 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 the end of the day on June 30, 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: Doug Hendrix, Deputy General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hendrix

(1) Provide a brief summary of:

(a) What this administrative regulation does: It provides standards for the investment and reinvestment of state funds and the acquisition, retention, management and disposition of the investments by the State Investment Commission ("SIC").

(b) The necessity of this administrative regulation: KRS 42.525(10) directs the SIC to promulgate regulations regarding the management and investment of the state's funds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Sets forth the criteria and requirements for the management and investment of state funds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the guidelines the SIC and Finance and Administration Cabinet' Office of Financial Management must follow regarding the management and investment of state funds.

(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 eliminate a reference to Securities and Exchange Commission Rule 2a-7 (17 C.F.R. 270.2a-7), which is being amended by the SEC (effective October 2016). The SEC's amendments would allow the SIC to impose liquidity fees and redemption gates to withdrawals from money market mutual funds. Eliminating the reference to Rule 2a-7 will eliminate the implication that the SIC has powers it does not possess. The amendment also allows repurchase agreement transactions with counter-parties other than broker-dealers, expanding the SIC's options in structuring these transactions. It deletes a definition that is unnecessary to the regulation.

(b) The necessity of the amendment to this administrative regulation: The regulation must be amended to avoid issues with the SEC's new Rule 2a-7.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute by clarifying SIC's authority in managing and investing the state's funds.

(d) How the amendment will assist in the effective administration of the statutes: The amendments strengthen SIC's limitations on investment of state funds.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendments should have minimal impact.

(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: N/A

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): N/A

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

(a) Initially: No additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No

(9) TIERING: Is tiering applied? Tiering is not applied; the amended regulation relates to the investment of state funds only by the SIC and has no impact on governments or small businesses. The Office of Financial Management is staff for the SIC.

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? SIC and Office of Financial Management (which provides staff for SIC).

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Amendments to 17 C.F.R. 270.2a-7

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 costs.

(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:

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)

200 KAR 14:081. Repurchase agreement.

RELATES TO: KRS 41.610, 42.500(9)-(14), 42.520, 42.525
STATUTORY AUTHORITY: KRS 42.500(10), 42.520(2), 42.525
NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.500(10) requires the State Investment Commission to promulgate administrative regulations for the investment and reinvestment of state funds. KRS 42.520(2) requires the commission to promulgate administrative regulations concerning the assignment of priorities to public depositories. KRS 42.525(1) requires the commission to promulgate administrative regulations for the investment and reinvestment of state funds and the acquisition, retention, management, and disposition of investments. This administrative regulation establishes the general standards which shall apply to the employment of repurchase agreements as investment vehicles with eligible financial institutions.

Section 1. Definitions. (1) "Commission" means the State Investment Commission.
(2) "Eligible financial institution" means an entity approved for repurchase agreements by the commission[~~:~~
~~(a) A commercial bank, or savings and loan association:~~
~~1. Chartered to do business in Kentucky by the Commonwealth of Kentucky, or by an agency of the United States government; and~~
~~2. That maintains an office in Kentucky; or~~
~~(b) A broker-dealer approved pursuant to the provisions of Section 10 of 200 KAR 14:011~~].
(3) "Office" means the Office of Financial Management.
(4) "Repurchase agreement" means an actual, conditional purchase or sale of securities of the United States Treasury, an agency, instrumentality, or corporation of the United States, or another security authorized for investment pursuant to KRS 42.500(9)(a) or (b), with an agreement to resell or repurchase the securities to their original owner on a specific date in the future.

Section 2. Minimum Interest Rates. Except as provided by KRS 41.610, the commission shall not invest public funds in a repurchase agreement with a yield less than could be received on a directly purchased United States Treasury security of comparable maturity.

Section 3. Reporting Requirements for Eligible Investment Institutions. The commission shall inform eligible financial institutions of the reporting requirements for the investment of state funds in eligible financial institutions established by this section.[~~(1)~~] An eligible financial institution shall:
(1)[~~(a)~~] Submit a copy of its quarterly financial reports[~~as furnished to Department of Financial Institutions,~~] including accompanying schedules, to the commission within thirty (30) days from the end of each quarter; and
(2)[~~(b)~~] Complete and sign the Securities Industry and Financial Markets[~~"Public Securities~~] Association Master Repurchase Agreement, incorporated by reference in 200 KAR 14:011[~~"~~].
[~~(2) An approved broker-dealer shall:~~
~~(a) Submit a copy of its annual audited financial statements and copies of quarterly financial statements, as published, to the commission; and~~
~~(b) Complete and sign the "Public Securities Association Master Repurchase Agreement", incorporated by reference in 200 KAR 14:011.~~]

Section 4. Eligible Securities. Investment securities authorized for investment pursuant to KRS 42.500(9)(a) and (b) shall be considered eligible securities for repurchase agreements.

Section 5. Sufficiency of Securities Purchased. (1) The securities purchased shall have a market value, including accrued interest, of not less than 102 percent of the face value of the repurchase agreement.
(2) The state's custodian banking contract shall require the custodial bank to review the sufficiency of collateral on all repurchase agreements, except those subject to a triparty agreement. The review shall occur at least every seven (7) calendar days with periodic reviews made by the office.
(3) The commission shall demand additional securities to be delivered immediately, if market conditions cause the value of the securities purchased to drop below 102 percent of the face value of the repurchase agreement.

Section 6. Status of Parties. (1) The commission and the eligible financial institutions authorized to enter into repurchase agreements:
(a) Shall be considered principals in repurchase agreements; and
(b) Shall not be considered agents for third parties.
(2) Contractual obligations shall apply to and be binding on the commission and the specific eligible financial institution with which the repurchase agreement is initially negotiated and settled.
(3) The commission shall approve the eligible financial institutions quarterly following fundamental analysis of the most recent financial releases.
(4) The Office of Financial Management shall monitor credit worthiness of eligible financial institutions daily based on financial market indicators.

Section 7. Default. (1)(a) If an eligible financial institution with which the commission has entered into a repurchase agreement defaults, or is determined by the commission to be in danger of default, the commission shall set off claims and liquidate property held in respect to the repurchase agreement against obligations owing to the eligible financial institution under other repurchase agreements.
(b) Payments, deliveries, and other transfers made under a repurchase agreement shall be deemed to have been made in consideration of payments, deliveries, and other transfers made under any other repurchase agreement by the eligible financial institution.
(c) The obligation to make payments, deliveries and other transfers under a repurchase agreement may be applied against the obligation to make payments, deliveries and other transfers under any other repurchase agreements of the eligible financial institution and netted.
(2)(a) From the proceeds of liquidated property, the commission shall pay itself the full principal and accrued interest due as of the date of liquidation.
(b) Remaining cash balances shall be forwarded to the financial institution with which the repurchase agreement was originally executed.

Section 8. Kentucky Bank Repurchase Program. (1) Repurchase agreements with commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with offices located in Kentucky before being placed shall meet the following criteria:
(a) A loan to deposit ratio equal to or greater than seventy (70) percent;
(b) A nonperforming loan to capital ratio of equal to or less than twenty-five (25) percent;
(c) A capital to assets ratio equal to or greater than eight (8) percent or regulatory requirements; and
(d) A return on assets ratio greater than five-tenths (0.5) percent.
(2) Repurchase agreements with maturities equal to or greater

than 365 days with commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with offices located in Kentucky shall be limited to $5,000,000 per institution.

(3) The office shall review the financial ratios listed quarterly to determine eligibility of institutions. Existing repurchase agreements with institutions which fail to meet the minimum criteria for two (2) consecutive quarters shall be subject to call at par value by the commission. Repurchase agreements shall be placed according to:

(a) Availability of funds;

(b) Demand for funds by the institutions; and

(c) Highest loan to deposit ratio of eligible institutions.

(4)(a) A repurchase agreement with a commercial bank or savings and loan shall not be an amount in excess of its capital structure or ten (10) percent of the institution's deposits, whichever is less.

(b) The commission shall not enter into a Kentucky Bank Repurchase Program repurchase agreement with a commercial bank or savings and loan association that will cause that institution to exceed in aggregate a total of $25,000,000 in repurchase agreements.

(5) Yield charged and collateral requirements for commercial banks and savings and loans.

(a) A commercial bank or savings and loan submitting U.S. Treasuries and agencies excluding mortgage backed securities and collateralized mortgage obligations shall be charged the same duration yield generic repurchase rate as quoted by Bloomberg Financial Markets with 102 percent collateral.

(b) A commercial bank or savings and loan submitting mortgage-backed securities and collateralized mortgage obligations shall be charged the same duration yield generic repurchase rate as posted on Bloomberg Financial Markets, plus fifty (50) basis points with 105 percent collateral.

(6) Payment for and safekeeping of purchases.

(a) Each transaction shall be conducted on a payment-versus-delivery basis.

(b) A party shall not allow state funds to be released until delivery of adequate, negotiable collateral has been verified.

(c) Securities purchased from commercial banks or savings and loan associations in a repurchase agreement shall be received, verified, and safe-kept by the state's custodial bank or its agent.

LORI FLANERY, Secretary

APPROVED BY AGENCY: May 15, 2015

FILED WITH LRC: May 15, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 23, 2015 from 10 a.m. to 12 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 at least 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 end of day on June 30, 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: Doug Hendrix, Deputy General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Doug Hendrix

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation prescribes the standards applicable to repurchase agreements used in the short-term investment of state funds by the State Investment Commission (SIC).

(b) The necessity of this administrative regulation: KRS 42.525(10) directs the SIC to promulgate regulations regarding the management and investment of the state's funds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Sets forth the criteria for the short-term investment of state funds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the guidelines the SIC and Finance and Administration Cabinet' Office of Financial Management must follow regarding the management and investment of state funds.

(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 allows the SIC flexibility to choose entities other than broker-dealers for repurchase agreements to invest state funds for a short-term. These other entities must meet certain credit standards.

(b) The necessity of the amendment to this administrative regulation: The amendment allows SIC flexibility in its investments.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment allows for better investing opportunities while protecting the investments through confirming credit worthiness of vendors.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow for diversity of the type of counter-party while increasing credit worthiness reviews.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: No effect on in-state entities. Small businesses are not affected.

(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 additional actions required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No entities identified in question (3).

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

(a) Initially: No initial costs.

(b) On a continuing basis: Minimal on-going costs of less than $500 per year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The minimal costs will be greatly offset by increased investment earnings potentially in excess of $100,000 per year.

(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 required.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No additional fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied; the amended regulation relates only to the investment of funds by the SIC, which marginally affects the Finance and Administration Cabinet's Office of Financial Management, which is staff to the SIC. The amended regulation has no impact on other government agencies, local governments or small businesses.

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 will impact the short term investment transactions executed by the Office of Financial Management in the Finance and Administration Cabinet. These transactions are executed under the supervision of the State Investment Commission. The amended regulation will have no fiscal impact on local governments. The only state agency it will marginally impact is the Office of Financial Management, which is staff for the SIC.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 42.500 Section (11) authorizes the State Investment Commission to execute these transactions.

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 increased investment income during the first year could exceed $100,000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The increased investment income should exceed $100,000 and could approach $200,000 in subsequent years.

(c) How much will it cost to administer this program for the first year? There are no up-front costs to implement this program.

(d) How much will it cost to administer this program for subsequent years? On-going administrative costs will be less than $250 per year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(Amendment)

201 KAR 2:015. Continuing education.

RELATES TO: KRS 214.610, 315.065, 315.116, 315.120

STATUTORY AUTHORITY: KRS 315.110(1), 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.065(2) and (3) requires[~~require~~] the Board of Pharmacy to establish continuing education requirements for pharmacists. This administrative regulation establishes requirements for the continuing pharmacy education of registered pharmacists and requires all registered pharmacists holding a license issued by the board to participate in continuing pharmacy education as a means of renewal of their licenses.

Section 1. Definition. "Continuing education unit" or "CEU" is defined by KRS 315.010(7).

Section 2. (1) Continuing education hours for credit may be compiled in the following areas if the sponsor grants the participant a certificate of completion:

(a) Cassette and audiovisual presentation;

(b) In-company professional seminars;

(c) Accredited school of pharmacy continuing education programs;

(d) Postgraduate courses in pharmaceutical sciences;

(e) Correspondence courses;

(f) Programs granted continuing education credit by other states;

(g) The Accreditation Council for Pharmacy Education;

(h) Continuing education television series;

(i) Programs sponsored by allied professional groups; or

(j) Professional society and association sponsored programs.

(2) The board approval of each program shall expire at the end of three (3) years.

Section 3. Continuing education sponsors shall be responsible for submitting to the board for final accreditation continuing education programs for participants.

(1) A sponsor shall be any person, school, association, company, corporation or group who wishes to develop a continuing education program.

(2) Programs shall be submitted to the board at least sixty (60) days prior to planned participation so the participants can know the value of the experience prior to actual participation.

(3) Program changes shall be made to and accredited by the board, or the evaluation and accreditation of the program shall be void.

(4) Continuing education credit shall be given only once for each program per participant.

(5) Sponsors shall retain a file of each participant's program completion for three (3) years.

Section 4. (1) Sponsors and pharmacists requesting approval of continuing pharmacy education shall submit Kentucky Board of Pharmacy Continuing Education Program Approval Form. Pharmacists shall keep valid records, receipts, and certifications of continuing pharmacy education programs completed for three (3) years[~~, except the pharmacist shall keep a copy of his or her HIV/AIDS CE certificate for ten (10) years,~~] and submit the certification to the board on request.

(2) Submission of a fraudulent statement or certificate concerning continuing pharmacy education shall subject the pharmacist to discipline as provided in KRS 315.121.

Section 5. (1) A pharmacist shall:

(a) Complete a minimum of one and five-tenths (1.5) CEU (fifteen (15) contact hours) annually between January 1 and December 31; and

(b) Not transfer or apply excess hours or units for future years.

(2) A pharmacist may be granted a deferral on a year-to-year basis at the discretion of the board for illness, incapacity, or other extenuating circumstances.

(3) A pharmacist first licensed by the board within twelve (12) months immediately preceding the annual renewal date shall be exempt from the continuing pharmacy education provisions.

Section 6. All pharmacists shall keep the board informed of their correct addresses.

Section 7. CEU may be transferred from another state to Kentucky if the transfer state recognizes Kentucky CEU.

Section 8. A licensee who failed to timely renew his license shall:

(1) Comply with the applicable provisions of KRS 315.120(2) or (3); and

(2) Complete fifteen (15) hours of continuing education for each year the applicant failed to renew his license, up to a maximum of seventy-five (75) hours.

Section 9.[~~(1)At least once every ten (10) years, a pharmacist shall successfully complete a continuing education course of not less than one (1) contact hour (0.1 CEU) concerning HIV/AIDS that complies with KRS 214.610(1).~~

~~(2) The continuing education course shall be:~~

~~(a) Approved by the Cabinet for Health and Family Services HIV/AIDS Branch; or~~

~~(b) Conducted by a provider approved by the Accreditation Council for Pharmacy Education (ACPE).~~

~~Section 10~~.] Incorporation by Reference. (1) The Kentucky Board of Pharmacy Continuing Education Program Approval Form, 2002, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300[~~23 Millcreek Park~~], Frankfort, Kentucky 40601[~~-0230~~], Monday through Friday, 8 a.m. to 4:30 p.m.

JOEL THORNBURY, President

APPROVED BY AGENCY: May 13, 2015

FILED WITH LRC: May 14, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday June 22, 2015 at 9:00 a.m. at the board's office located at State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this 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 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 11:59 p.m. Tuesday June 30, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax(502) 696-3806.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for continuing education for pharmacists.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 315.065(2) and (3).

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation is in conformity with the authorizing statute that requires the board to promulgate administrative regulations that establishes the requirements for obtaining continuing pharmacy education credit.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will set the requirements for continuing pharmacy education credit for pharmacists.

(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 will repeal the requirement for pharmacists to obtain keep their continuing education certificate for HIV/AIDS for ten (10) years.

(b) The necessity of the amendment to this administrative regulation: Pharmacists must no longer obtain at least one hour of HIV/AIDS continuing education at least once every ten (10) years.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment authorizes the board to promulgate regulations regarding continuing education requirements for pharmacists.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will repeal the requirement that a pharmacist shall obtain and maintain a copy of his/her HIV/AIDS continuing education certificate for ten (10) years.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates that all pharmacists will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pharmacists will longer be required to obtain or keep a copy of his/her HIV/AIDS CE certificate for ten (10) years.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Pharmacists will have a record showing proof of obtaining the required HIV/AIDS CE.

(5) Provide an estimate of how much it will cost to implement 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: No funding is required for implementation of this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all pharmacists.

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 would impact the Kentucky Board of Pharmacy

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.065, KRS 315.121 and KRS 315.191 requires or authorizes the action taken by this administrative regulation

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

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

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

(c) How much will it cost to administer this program for the first year? 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 Licensed Diabetes Educators
(Amendment)

201 KAR 45:120 Renewal, reinstatement, and inactive status.

RELATES TO: KRS 309.331, 309.334 309.335
STATUTORY AUTHORITY: KRS 309.331(1), 309.335
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.331 requires the board to promulgate administrative regulations establishing procedures for annual renewal[~~and reinstatement~~] of licenses, and KRS 309.335(2)(c) requires the board to promulgate administrative regulations for reinstatement of licenses. This administrative regulation establishes procedures for annual renewal and reinstatement of licenses.

Section 1. Regular License Renewal. (1) A licensed diabetes educator or master licensed diabetes educator shall submit to the board by November 1 of each year:
(a) A completed Renewal Application, Form DE-02;
(b) Proof of the required continuing education as set forth in 201 KAR 45:130; and;
(c) The renewal fee as established in 201 KAR 45:100.
(2) If a license is not renewed by January 30 of the new licensure year, the license shall automatically expire.

Section 2. Reinstatement. (1) An expired license shall be reinstated upon the licensee:
(a) Submitting a completed Reinstatement Application, Form DE-08;
(b) Paying the required fees established in 201 KAR 45:100; and
(c)[~~(b)~~] Submitting proof of completion of an amount of continuing education courses equivalent to the continuing education requirements as established in 201 KAR 45:130 for each year since the last date the license was active.
(2) An expired license may[~~shall~~] be reinstated within five (5) years of the date of expiration.

Section 3. Inactive Status. (1) A licensee may place his or her license in inactive status. To request that a license be placed in inactive status, the licensee shall submit written notice to the board prior to November 1.
(2)(a) An individual with an inactive license shall not practice diabetes education while the license is inactive.
(b) A licensee may remain in inactive status for a maximum of five (5) years.
(3)(a) During the period of inactive status, the licensee shall not be required to meet the annual continuing education requirements as established in 201 KAR 45:130.
(b) Upon the licensee's request for licensure reactivation, the licensee shall provide proof of completion of an amount of continuing education courses equivalent to the continuing education requirements as established in 201 KAR 45:130 for each year the license was inactive.
(4)(a) An individual shall submit in writing a request to the board to be placed back in active status.
(b) The request shall be submitted at least one (1) week in advance of the board's regularly scheduled board meeting.

Section 4. Regular Permit Renewal. (1) An apprentice diabetes educator shall submit to the board by November 1 of each year:
(a) A completed Apprentice Renewal Application, Form DE-04;
(b) Proof of the required continuing education established in 201 KAR 45:130; and
(c) The renewal fee established in 201 KAR 45:100.
(2)(a) If a permit is not renewed by January 30 of the new licensure year, it shall automatically expire, and the apprentice diabetes educator shall reapply for a permit as established in KRS 309.334.
(b) Work experience accumulated shall not carry over between permits.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Renewal Application", Form DE-02, 2/2015;[~~and~~]
(b) "Apprentice Renewal Application", Form DE-04, 06/2015; and
(c) "Reinstatement Application," Form DE-08, 06/2015[~~08/2014~~].
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Diabetes Educators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

KIM DECOSTE, Chairperson
APPROVED BY AGENCY: May 14, 2015
FILED WITH LRC: May 14, 2015 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 23, 2015 at 9:30 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, 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 wished 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 June 30, 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: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James
(1) Provide a brief summary of:
(a) What this administrative regulation does: The regulation establishes the process to renew and reinstate a license and place a license into inactive status.
(b) The necessity of this administrative regulation: This regulation is necessary because it explains how a licensee can renew his license before it expires, reinstate the license once it has expired and place it into an inactive status.
(c) How this administrative regulation conforms to the content of the authorizing statues: The board is given the authority to establish administrative regulations for the licensing of diabetes educators.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the process to renew and reinstate a license and place a license into inactive status.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment updates the apprentice diabetes educator renewal form to include a page for the continuing education requirements and adds a reinstatement form.
(b) The necessity of the amendment to this administrative regulation: The amendment updates the apprentice diabetes educator renewal form to include a page for the continuing education requirements and adds a reinstatement form.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 309.331(2) authorizes the board to issue renewals, and KRS 309.335(2)(c) requires the Board to promulgate regulations for reinstatements.
(d) How the amendment will assist in the effective and administration of the statutes: This amendment will update the

apprentice diabetes educator renewal form to include a page for the continuing education requirements and add a reinstatement form.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 600 persons have been issued licenses or permits by the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: This administrative regulation requires applicants for an apprentice diabetes educator permit renewal to list continuing education hours obtained and requires applicants for reinstatement to complete the form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for applying is established in a separate regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Apprentice diabetes educators will be able to renew their permits, and persons with lapsed licenses will be able to apply for reinstatement.

(5) Provide an estimate of how much it will cost to implement 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 operation is funded by the 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 increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation did not establish the fees but there will be a fee applied that is set in a separate regulation for renewal and reinstatment.

(9) TIERING: Is tiering applied? Tiering was not applied because these requirements apply equally to all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, countries fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331, 309.335

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 (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensed Diabetes Educators
(Amendment)

201 KAR 45:170. Application procedures.

RELATES TO: KRS 309.331, 309.334, 309.335, 309.336

STATUTORY AUTHORITY: KRS 309.331(1), 309.334(2)(c), 309.335(1)(b)1., 309.336(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.331(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.325 to 309.339. KRS 309.335(1)(b)1. requires an applicant for licensure as a licensed diabetes educator to file an application as provided by the board,[~~and~~] to show successful completion of a course or program as determined by the board, and to demonstrate experience in the care of people with diabetes under supervision that meets requirements specified in administrative regulations promulgated by the board. KRS 309.334(2)(c) requires the board to establish additional requirements to apply for an apprentice diabetes educator permit, and KRS 309.336(2)(b) requires the board to establish additional requirements to apply for licensure as a master licensed diabetes educator. This administrative regulation establishes application procedures for licensed diabetes educators, master licensed diabetes educators, and apprentice diabetes educators.

Section 1. Licensed Diabetes Educator Application Procedures. An applicant for licensure as a licensed diabetes educator shall submit to the board:

(1) A completed Application for Licensure, Form DE-01, incorporated by reference in 201 KAR 45:110, including documentation verifying completion of 750 hours of work experience as an apprentice diabetes educator under a supervisor as provided in 201 KAR 45:110;

(2) Evidence to the board showing successful completion of one (1) of the following:

(a) A board-approved course as specified in 201 KAR 45:180;

(b) The credentialing program of the American Association of Diabetes Educators or the National Certification Board for Diabetes Educators; or

(c) An equivalent credentialing program pursuant to KRS 309.335(1); and

(3) Payment of the licensure fee as established in 201 KAR 45:100.

Section 2. Master Licensed Diabetes Educator Application Procedures. An applicant for licensure as a master licensed diabetes educator shall submit to the board:

(1) A completed Application for Licensure, Form DE-01;

(2) Proof of completion of the credentialing program of the American Association of Diabetes Educators or the National Certification Board for Diabetes Educators in Board Certified Advanced Diabetes Management or as a Certified Diabetes Educator; and

(3) Payment of the licensure fee as established in 201 KAR 45:100.

Section 3. Apprentice Diabetes Educator Application Procedures. An applicant for an apprentice diabetes educator permit shall submit to the board:

(1) A completed Application for Apprentice Diabetes Educator Permit, Form DE-03;

(2) Payment of the licensure fee as established in 201 KAR 45:100; and

(3) Proof of an active license or certification in good standing as at least one (1) of the following:

(a) American College of Sports Medicine Certified Clinical Exercise Specialist or Registered Clinical Exercise Physiologist;

(b)1. Certified social worker or licensed clinical social worker pursuant to KRS Chapter 335; and

2. The applicant shall also have at least two (2) years of experience in a health profession;

(c) Dietitian pursuant to KRS Chapter 310;

(d) Health educator holding active certification as a master certified health education specialist with the National Commission on Health Education Credentialing;

(e) Nutritionist pursuant to KRS Chapter 310;

(f) Occupational therapist pursuant to KRS Chapter 319A;

(g) Optometrist pursuant to KRS Chapter 320;

(h) Osteopath pursuant to KRS Chapter 311;

(i) Pharmacist pursuant to KRS Chapter 315;

(j) Physical therapist pursuant to KRS Chapter 327;

(k) Physician pursuant to KRS Chapter 311;

(l) Physician assistant pursuant to KRS Chapter 311;

(m) Podiatrist pursuant to KRS Chapter 311;

(n) Psychologist pursuant to KRS Chapter 319;

(o) Registered nurse pursuant to KRS Chapter 314; or

(p) A license or certification from a state or the District of Columbia equivalent to one (1) of the licenses or certifications listed in this subsection.

(4) The board shall not consider an applicant for an apprentice diabetes educator permit who does not hold an active license or certification as listed in subsection (3) of this section.

(5) An applicant for an apprentice diabetes educator permit shall include the Supervised Work Experience Report, Form DE-05, incorporated by reference in 201 KAR 45:110.

Section 4. Incorporation by Reference. (1) "Application for Apprentice Diabetes Educator Permit", Form DE-03, 08/2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Diabetes Educators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

KIM DECOSTE, Chairperson

APPROVED BY AGENCY: May 14, 2015

FILED WITH LRC: May 14, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 23, 2015 at 11 AM Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished 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 June 30, 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: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the requirements to apply for licensure.

(b) The necessity of this administrative regulation: This regulation is necessary because it establishes the requirements to apply for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statues: The board is given the authority to establish regulations for the practice of diabetes educators.

(d) How this administrative regulation currently assists or will assist in the effective
administration of the statutes: This administrative regulation will establish the requirements to apply for licensure.

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

(a) How the amendment will change this existing administrative regulation: This amendment requires completion of 750 hours of supervised work experience as an apprentice diabetes educator prior to application for licensure.

(b) The necessity of the amendment to this administrative regulation: This amendment requires that the 750 hours of supervised work experience be earned as an apprentice diabetes educator. The current regulation only requires completion of Form DE-01, which only requires 750 hours of supervised work experience.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 309.331 authorizes the Kentucky Board of Licensed Diabetes Educators to promulgate administrative regulations in accordance with KRS Chapter 13A to carry out and enforce KRS 309.325 to 309.339.

(d) How the amendment will assist in the effective and administration of the statutes: The amendment will ensure that the only persons applying to be licensed diabetes educators will have completed the apprenticeship requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Over 600 individuals have been issued licenses or permits by the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with the administrative regulation or amendment: Applicants for licensure will be required to demonstrate completion of 750 hours of supervised work experience as an apprentice diabetes educator.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for applying is established in a separate regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for licensure will be able to apply for licensure.

(5) Provide an estimate of how much it will cost to implement 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 operation is funded by the fees paid by licensees and apprentice diabetes educators.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees. The application fee is set in a separate regulation.

(9) TIERING: Is tiering applied? Tiering was not applied because these requirements apply equally to all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, countries fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Office of Occupations and Professions in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331, 309.334, 309.335, 309.336

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 (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

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

301 KAR 1:122. Importation, possession, and prohibited aquatic species.

RELATES TO: KRS 150.180

STATUTORY AUTHORITY: KRS 150.025(1)(c), 150.280(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations regarding the buying, selling, or transporting of fish and wildlife. KRS 150.280(2) authorizes the department to promulgate administrative regulations prohibiting the holding or transporting of species potentially damaging to native ecosystems. This administrative regulation establishes the species of aquatic life which are prohibited in the Commonwealth.

Section 1. A person shall not buy, sell, possess, import, or release any aquatic species not native or established in Kentucky waters, except as established[~~specified~~] in Sections 2, 4, or 5 of this administrative regulation.

Section 2. Exceptions. (1) A person may buy, sell, import, or possess aquarium species, except those established[~~specified~~] in Section 3 of this administrative regulation, but shall not release the species into Kentucky waters.

(2) A person may buy, sell, import, or possess sterile, triploid grass carp (Ctenopharyngodon idella) pursuant to[~~, but shall comply with the requirements of~~] 301 KAR 1:171.

(3) A fertile, diploid grass carp may only be imported or possessed by a certified propagator for the exclusive purpose of producing triploid grass carp.

Section 3. The[~~following~~] live aquatic organisms established in subsections (1) through (7) of this section shall not be imported, bought, sold, or possessed in aquaria:

(1) Subfamily Serrasalminae - piranha, piraya, pirae, or tiger characins;

(2) Astyanax mexicanus - Mexican banded tetra, Mexican minnow or Mexican tetra;

(3) Petromyzon marinus - sea lamprey;

(4) Genus Clarias - walking catfish;

(5) Genus Channa - snakeheads of Asia and Africa;[~~or~~]

(6) Dreissena polymorpha - zebra mussel; or

(7) Neogobius melanostomus – round goby.

Section 4. Asian carp. (1) A person shall not buy, sell, import, transport, or release the[~~following~~] live Asian carp species established in paragraphs (a) through (d) of this subsection:

(a) Hypophthalmichthys molitrix – silver carp;

(b) Hypophthalmichthys nobilis – bighead carp;

(c) Mylopharyngodon piceus – black carp; or

(d) Ctenopharyngodon idella – grass carp, except as established in Section 2(2) and (3) of this administrative regulation.

(2) A licensed commercial fisherman shall be permitted to possess, sell, and transport the species of Asian carp established[~~listed~~] in Section 4(1) of this administrative regulation if the Asian carp are:

(a) Not being transported in water;

(b) Moribund; and

(c) Being transported to a fish processing facility.

Section 5. Commissioner Approval. The commissioner may permit the importation of a banned aquatic species if the applicant demonstrates that the species shall be used for legitimate scientific or educational purposes.

GREGORY K. JOHNSON, Commissioner
ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: May 8, 2015

FILED WITH LRC: May 12, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2015, at 1 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through June 30, 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) 564-3400, fax (502) 564-9136, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the species of aquatic organisms that are allowed to be possessed and those that are prohibited in the Commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to prevent the spread of exotic invasive species that can damage aquatic ecosystems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1)(c) authorizes the Department to promulgate administrative regulations regarding the buying, selling, or transporting of fish and wildlife. KRS 150.280(2) authorizes the department to promulgate administrative regulations prohibiting the holding or transporting of species potentially

damaging to native ecosystems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the effective administration of the statutes by identifying aquatic species that are prohibited in the Commonwealth to protect Kentucky's native fish populations.

(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 add the round goby (Neogobius melanostomus) to the list of organisms that shall not be imported, bought, sold or possessed in aquaria.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to prevent the expansion of round goby populations into Kentucky. The round goby is an aggressive invasive fish species which has the potential to negatively affect Kentucky's native fish populations if released into the wild from aquaria of through use as live fishing bait.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who have interest in importing, buying, selling or possessing round goby in Kentucky will be affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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 of the regulated entities will not be allowed to import, buy, sell or possess round goby in Kentucky.

(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 entities identified in question (3) as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with these regulations, all entities will ensure the long-term survival of native fish populations in Kentucky.

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

(a) Initially: There will be no cost initially to implement this administrative regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees will be directly or indirectly increased.

(9) TIERING: Is tiering applied? Tiering was not applied because all entities will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1)(c) authorizes the Department to promulgate administrative regulations regarding the buying, selling, or transporting of fish and wildlife. KRS 150.280(2) authorizes the department to promulgate administrative regulations prohibiting the holding or transporting of species potentially damaging to native ecosystems.

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

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

(c) How much will it cost to administer this program for the first year? No cost will be incurred for the first year as the Department's Law Enforcement Division already enforces the regulation.

(d) How much will it cost to administer this program for subsequent years? No additional cost will be incurred in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 2:049. Small game and furbearer hunting and trapping on public lands and other federally owned areas.

RELATES TO: KRS 150.010, 150.092, 150.170, 150.370, 150.399, 150.400, 150.410, 150.990, 150.995

STATUTORY AUTHORITY: KRS 150.025(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply statewide or to a limited area. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation. This administrative regulation establishes exceptions to statewide small game and furbearer regulations on public areas.

Section 1. Definitions. (1) "Adult" means a person who is at least eighteen (18) years of age.

(2) "Upland bird" means a ruffed grouse or northern bobwhite.

(3) "Wildlife Management Area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

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

Section 2. This administrative regulation shall establish exceptions to the statewide requirements established in 301 KAR 2:122, 2:251, and 3:010.

Section 3. General Requirements on a Wildlife Management Area or Outdoor Recreation Area. (1) Except as established in subsection (2) of this section, a person hunting any species during

daylight hours, and any person accompanying that hunter, shall comply with hunter orange requirements as established in 301 KAR 2:132, 2:172, and 2:300.

(2) The hunter orange clothing requirement in subsection (1) of this section shall not apply to a person legally hunting waterfowl or doves.

(3) There shall be a free youth small game hunting week for seven (7) consecutive days beginning on the Saturday after Christmas, in which a youth may take small game without a hunting license.

(4) There shall be a free youth trapping week for seven (7) consecutive days beginning on the Saturday after Christmas, in which a youth may trap without a trapping license.

Section 4. Exceptions on Wildlife Management Areas and Outdoor Recreation Areas. (1) Barren River Wildlife Management Area.

(a) The WMA shall be considered to be entirely within the Eastern Zone, as established in 301 KAR 2:122.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) On the Peninsula Unit, including Narrows, Goose and Grass Islands, a person shall not hunt with a breech-loading firearm.

(2) Beaver Creek WMA, including private inholdings.

(a) Ruffed grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) A person shall hunt coyotes during daylight hours only.

(3) Cane Creek WMA, including private inholdings.

(a) Ruffed grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) A person shall hunt coyotes during daylight hours only.

(4) Cedar Creek Lake WMA.

(a) Rabbit season shall be closed after December 31.

(b) With the exception of the statewide squirrel season, the area shall be closed to all other small game and furbearer hunting.

(5) Clay WMA.

(a) The area shall be closed for four (4) consecutive days beginning on the first Friday in December to all hunting except archery deer hunting and the pheasant quota hunt established in Section 5 of this administrative regulation.

(b) Rabbit season shall be closed after December 31.

(c) Ruffed grouse and northern bobwhite hunting shall be restricted to quota hunt dates established in Section 5 of this administrative regulation. All other small game hunting shall be closed until 2:00 p.m. on upland bird quota hunt dates.

(d) Pheasant may be taken beginning on the Tuesday following the pheasant quota hunt through December 31.

1. Any person with a valid hunting license may take a pheasant.

2. The daily limit per hunter shall be three (3) birds of either sex.

(e) Quota fox hunting field trials.

1. There shall be a maximum of two (2) four (4) day events per calendar year.

2. Each event shall be limited to 250 participants.

3. The area shall be closed to nonparticipants.

4. A participant shall:

a. Wear a laminated identification badge issued by the department during the event; and

b. Return the laminated badge at the close of the event.

(6) Curtis Gates Lloyd WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) A person shall not allow a dog to be unleashed from April 1 until the third Saturday in August except if squirrel hunting.

(7) Dix River WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) Ruffed grouse season shall be open from October 1 through December 31.

(8) Fleming WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) Ruffed grouse season shall be open from October 1 through December 31.

(9) Green River Lake WMA.

(a) The area shall be closed to all hunting for four (4) consecutive days beginning on the third Friday in November except for archery deer hunting and the pheasant quota hunt established in Section 5 of this administrative regulation.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) Pheasant.

1. Beginning on the Tuesday following the pheasant quota hunt through December 31, any person with a valid hunting license may take a pheasant.

2. The daily limit per hunter shall be three (3) birds of either sex.

(d) The area shall be closed to ruffed grouse hunting and trapping.

(10) Higginson-Henry WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(11) Kleber WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(12) Lake Cumberland WMA.

(a) Ruffed grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(13) Mill Creek WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) A person shall hunt coyotes during daylight hours only.

(14) Miller-Welch Central Kentucky WMA.

(a) Small game and furbearer hunting seasons shall be closed, except that squirrel season shall be open.

(b) A person shall not allow a dog to be unleashed:

1. From April 1 until the third Saturday in August; or

2. On a Monday, Wednesday, or Friday during the remainder of the year, except:

a. If a person is hunting squirrels during an open season; or

b. If a person is participating in an authorized field trial.

(15) Mullins WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(16) Nolin Lake WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(17) Otter Creek Outdoor Recreation Area.

(a) Except as authorized by the department, a person shall not enter the area during a deer quota hunt without a valid quota hunt confirmation number.

(b) Northern bobwhite season shall be closed.

(c) Rabbit hunting season shall be from December 1 through December 31.

(d) Trapping season shall be from January 1 through the last day in February.

(e) A person who traps on the area shall:

1. First obtain prior authorization from the area manager; and

2. Only trap in department designated areas.

(f) Except during deer quota hunts, a person shall not use the following to take furbearers:

1. A rifle;

2. Ball ammunition; or

3. Slug ammunition.

(g) A person shall not use a rimfire gun to take small game, except during a deer quota hunt.

(18) Paul Van Booven WMA. The area shall be closed to vehicle access from one (1) hour after sunset until one (1) hour before sunrise.

(19) Peabody WMA.

(a) Northern bobwhite hunting on the Sinclair Unit shall:

1. Have shooting hours between 7:30 a.m. and 3:00 p.m.; and

2. Be closed on Sunday.

(b) A northern bobwhite hunter on the Sinclair Unit shall:

1. Check in and check out at the Peabody WMA office; and

2. Visibly display a hunting log on the dashboard of the hunter's vehicle.

(20) Pennyrile Forest WMA.

(a) Ruffed grouse season shall be open from December 1 through December 31.

(b) The daily limit shall be two (2).

(21) Pioneer Weapons WMA.

(a) A person shall not hunt with a breech-loading firearm.

(b) A person shall hunt coyotes during daylight hours only.

(22) Robinson Forest WMA.

(a) Hunting shall not be permitted on the Main Block.

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

(c) A person shall hunt coyotes during daylight hours only.

(23) Taylorsville Lake WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(24) Tradewater WMA.

(a) Ruffed grouse season shall be open from December 1 through December 31.

(b) The daily limit shall be two (2) ruffed grouse.

(25) West Kentucky WMA.

(a) A person shall check in daily at a designated check station prior to using an "A" tract.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31 on Tracts 2, 3, 6, and 7.

(c) Northern bobwhite and rabbit seasons shall be open on Tracts 1, 4, 5, and "A" beginning one-half (1/2) hour before sunrise until 1:00 p.m. local time from January 1 through January 10, except if harvest limits are reached prior to January 10.

1. A hunter shall report harvest numbers and total hours hunted to the area supervisor on a daily basis.

2. If a tract is closed prior to January 10, a sign indicating closure shall be posted at the hunter check station at least twenty-four (24) hours prior to the closure.

(d) A person shall not:

1. Use a rifle, ball, or slug ammunition;

2. Operate a vehicle on Tract 6 from February 1 through April 16; or

3. Allow a dog to be unleashed from April 1 until the third Saturday in August, except while squirrel hunting.

(26) Yellowbank WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) Pheasant may be taken beginning on the Tuesday following the pheasant quota hunt through December 31.

(c) A person shall:

1. Possess a valid hunting license to take pheasant, unless exempt pursuant to KRS 150.170; and

2. Not take more than three (3) pheasants of either sex.

Section 5. Pheasant Quota Hunts. (1) There shall be a pheasant quota hunt on:

(a) Green River Wildlife Management Area for three (3) consecutive days beginning the third Friday in November;

(b) Clay Wildlife Management Area for three (3) consecutive days beginning the first Friday in December; and

(c) Yellowbank Wildlife Management Area for three (3) consecutive days beginning on the second Friday in December.

(2) There shall be a one (1) day clean-up hunt immediately following each of the hunts for pheasant quota hunters drawn for that particular WMA.

(3) Hunt hours for each day shall be from 9:00 a.m. to 4:00 p.m.:

(a) Eastern time for the Green River Wildlife Management Area and Clay Wildlife Management Area hunts; and

(b) Central time for the Yellowbank Wildlife Management Area hunt.

(4) During a quota hunt or clean-up hunt, a person shall wear hunter orange clothing as established in 301 KAR 2:172.

(5) The daily bag limit per hunter shall be two (2) birds of either sex, except there shall be a daily bag limit of three (3) birds of either sex during the one (1) day clean-up hunt.

(6) Pheasant quota hunt procedures.

(a) A person selected for a pheasant quota hunt may hunt on the one (1) day clean-up hunt for that area.

(b) A person applying for a pheasant quota hunt shall:

1. Not apply more than one (1) time for each hunt and shall not be drawn for more than one (1) hunt; and

2. Not apply as a group of more than five (5) people.

(c) A person who is drawn to hunt shall pay the pheasant quota hunt permit fee established in 301 KAR 3:022 prior to the hunt.

Section 6. Northern Bobwhite and Upland Bird Quota Hunts. (1) There shall be one (1) day northern bobwhite quota hunts on one (1) tract of Peabody WMA on the following days:

(a) The fourth Saturday in November, which shall only be a youth-mentor hunt;

(b) The Tuesday following the fourth Saturday in November;

(c) The Tuesday following the third Saturday in December;

(d) The first Saturday in January;

(e) The second Saturday in January; and

(f) The Tuesday following the third Saturday in January.

(2) There shall be one (1) day upland bird quota hunts on Clay WMA on the following days:

(a) On the Wednesday following the first Saturday in November;

(b) The third Sunday in November;

(c) The third Saturday[~~second Sunday~~] in December; and

(d) The fourth[~~third~~] Tuesday in December.

(3) A person participating in a quota hunt shall:

(a) Only hunt from one-half (1/2) hour before sunrise to 2:00 p.m.;

(b) Wear hunter orange clothing pursuant to 301 KAR 2:172; and

(c) Not take more than four (4) northern bobwhite on a daily basis.

(4) A person who participates in an upland bird quota hunt:

(a) Shall not take more than four (4) ruffed grouse daily; and

(b) May take woodcock. Woodcock shall only be taken pursuant to the requirements established in 301 KAR 2:225.

(5) A person applying for a northern bobwhite or upland bird quota hunt shall:

(a) Not apply more than one (1) time for each hunt and shall not be drawn for more than one (1) hunt; and

(b) Not apply as a group of more than three (3) people.

(6) A person selected for a quota hunt shall only hunt the species identified on the permit.

Section 7. General Quota Hunt Requirements. (1) A person applying for a pheasant, northern bobwhite, or upland bird quota hunt shall:

(a) Call the toll-free number listed in the current Fall Hunting and Trapping Guide from a touch tone phone between September 1 and September 30;

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

(c) Indicate a choice of days to hunt; and

(d) Pay a three (3) dollar application fee for each applicant prior to the drawing by:

1. Check;

2. Money order;

3. Visa; or

4. MasterCard.

(2) A person, prior to participating in a quota hunt, shall be required to show:

(a) A department-issued quota hunt permit;

(b) A valid Kentucky hunting license or proof of exemption; and

(c) A hunter education card, if required.

(3) A person or group participating in a northern bobwhite or upland bird quota hunt shall submit a hunting log within seven (7) days after the hunt.

(4) A youth-mentor quota hunt party shall have a minimum of one (1) youth as a member of the party.

(5) A person shall comply with all quota hunt requirements or

be ineligible to apply for any other quota hunt during the following year, except for an elk quota hunt.

(6) A youth shall only apply as part of a party that has at least one (1) adult.

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

(8) A quota hunt applicant who is not selected and applies to hunt the following year shall be given one (1) preference point for each year the applicant was not selected.

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

(10) A person shall forfeit all accumulated points if, in a given year, the person does not apply for the hunt in which points were earned.

Section 8. Dog Training Areas on Wildlife Management Areas. (1) A group or club may request that a dedicated dog training area be authorized by the department on a specific WMA.

(2) The department shall authorize a dog training area if:

(a) The department approves a suitable location for the dog training area; and

(b) A signed memorandum of understanding is entered into with the club or group.

(3) The conditions established in this subsection shall apply for each dog training area on a WMA.

(a) All northern bobwhite quail to be used in training shall be banded with aluminum leg bands and individually placed in the dog training area.

(b) Dog training areas shall remain open to all other legal WMA uses.

(c) A person shall comply with all dog training area requirements pursuant to 301 KAR 2:041, unless otherwise stated in the memorandum of understanding.

(d) Unleashed dogs shall be allowed within the boundaries of the dog training area year-round, except for the following days:

1. May 15 through August 15;

2. Youth statewide turkey season; and

3. Statewide turkey season.

(e) Released northern bobwhite quail with aluminum leg bands, chukars, pheasants, or pigeons may be harvested on legal dog training days.

(f) Immediately prior to dog training, a person shall:

1. Walk and examine the entire dog training area to ensure that no wild northern bobwhite quail are present; and

2. Then place released birds in the training area.

Section 9. General Requirements on Federally Owned Areas. (1) Season dates, bag limits and other requirements of 301 KAR 2:251,[~~2:049,~~] and 2:050 shall apply except as otherwise established in this administrative regulation.

(2) Hunter orange requirements established in Section 3 of this administrative regulation shall apply to a person hunting or trapping on federal areas referenced in this section.

(3) A person shall:

(a) Obtain proper permission[~~, in the form of area permits,~~] before hunting;

(b) Not hunt except on assigned dates and in assigned areas; and

(c) Comply with all[~~any~~] requirements established by the agency controlling the area.

Section 10. Exceptions on Specific Federally Owned Areas. (1) If hunting is not prohibited by other area priorities, Fort Campbell, Fort Knox, Land Between the Lakes National Recreation Area, Bluegrass Army Depot, and Reelfoot National Wildlife Refuge may allow hunting if in compliance with 301 KAR 2:122 and 2:251 for:

(a) Squirrels, from June 1 through June 14;

(b) Northern bobwhite[~~Quail~~] and rabbit, no earlier than November 1 nor later than the last day of February;

(c) Furbearers, no earlier than October 1 nor later than the last day of February;

(d) Frogs, year round; or

(e) Crows, for a maximum of 124 days between September 1 and the last day of February.

(2) A person shall hunt coyotes during daylight hours only on lands managed by:

(a) Daniel Boone National Forest;

(b) George Washington and Jefferson National Forests;

(c) Land Between the Lakes National Recreation Area;

(d) Clarks River National Wildlife Refuge; and

(e) Reelfoot National Wildlife Refuge.

(3) Fort Knox shall not allow more than thirty (30) days of ruffed grouse hunting between October 1 and the last day of February.

(4) On Land Between the Lakes National Recreation Area, a person hunting the species listed in this administrative regulation shall not use:

(a) Crossbows;

(b) Shotgun slugs or shot larger than BB; or

(c) Center-fire rifles or center-fire handguns, except during designated groundhog or coyote hunts.

(5) Big South Fork National River and Recreation Area.

(a) Ruffed grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) A person hunting coyotes shall comply with any federal requirements established by the National Park Service.

GREGORY K. JOHNSON, Commissioner
ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: May 8, 2015

FILED WITH LRC: May 12, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2015, at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through June 30, 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 administrative regulation establishes exceptions to statewide small game and furbearer regulations on public lands and other federally owned areas.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly manage small game and furbearer populations, and to provide reasonable hunting and trapping opportunity on public lands.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department to promulgate administrative regulations establishing open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply statewide or to a limited area. KRS 150.620 authorizes the department to promulgate

administrative regulations for the maintenance and operation of lands it has acquired for public recreation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the administration of the statutes by establishing small game and furbearer hunting and trapping seasons and regulating hunting opportunity on public lands.

(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 shift upland bird quota hunts on Clay WMA to avoid overlap with expanded hunting opportunities for deer hunting. It will also close the area to other small game hunters until 2:00 p.m.

(b) The necessity of the amendment to this administrative regulation: The amendment will maximize public hunting opportunity while mitigating conflicts between differing user groups.

(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: There are no estimates for the number of hunters that use Clay WMA for small game hunting.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment establishes new hunting dates and time periods for small game hunters.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation amendment does not directly increase any cost for hunters.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation change will minimize user conflicts between deer hunters and upland bird hunters and other small game hunters.

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

(a) Initially: There will be no additional cost to the department to implement this administrative regulation.

(b) On a continuing basis: There will be no additional 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 a fee or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not used because all hunters must comply with this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Divisions of Wildlife and Law Enforcement.

(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 KRS 150.620

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue will be generated by this administrative regulation during subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Forestry
(Amendment)

402 KAR 3:010. Timber sales[~~Policies incorporated by reference~~].

RELATES TO: KRS[~~13A.130,~~] 149.010, 149.020[~~149.510~~]

STATUTORY AUTHORITY: KRS[~~13A.190,~~] 149.010, 149.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 149.020 authorizes the cabinet to receive by donation, purchase, or lease lands, for forestry purposes, and may convey, exchange, or lease those lands and may sell timber or other forest products thereon. This administrative regulation establishes the requirements of major and minor timber sales[~~KRS 149.010 requires the division to promulgate administrative regulations to protect and supervise forest property and to advance forest interests of the state. This administrative regulation provides for the incorporation by reference of the policies that are used by the Division of Forestry~~].

Section 1. Definitions. (1) "Director" means the director of the Division of Forestry.

(2) "Major timber sales" means sales of merchantable timber with a return of $25,000 or more in cash receipts to the Division of Forestry.

(3) "Minor timber sales" means sales of merchantable timber with a return of less than $25,000 in sales receipts to the Division of Forestry.

Section 2. Major Timber Sales from State Forests. Timber may be harvested from a state forest for sale pursuant to KRS 149.020 and shall comply with Major Timber Sales on state forest property, Forestry Guideline Memorandum 14-01. Major timber sales shall be conducted in accordance with the requirements of this section.

(1) Advertisement.

(a) The Division of Forestry shall mail a timber sale packet to each prospective buyer a minimum of three (3) weeks before bid opening. The sale shall be advertised at least one (1) time in three (3) local newspapers or three times (3) in one (1) local newspaper.

(b) A timber sale packet shall be prepared for each sale and shall include a:

1. Timber Sale Prospectus, including pertinent details of the sale;

2. Form SF-4, Bid for Advertised Timber;

3. Summary of Timber Marked if the trees are individually designated, or a Cruise Summary if it is a boundary sale;

4. Form SF-3, Timber Sale Contract;

5. Map of the sale area; and

6. Self-addressed sealed bid envelope.

(2) Contract.

(a) Timber shall be sold by written timber sales contract. The terms shall be adequate in the judgment of the director, to protect the interests of the Commonwealth.

1. The timber sale contract shall be awarded immediately after bid opening.

2. Full payment for the timber sold shall be submitted within five (5) working days of awarding the contract.

(b) A certified check, made payable to Kentucky State Treasurer in an amount not less than $2,500 or more than ten (10) percent of the established minimum bid, shall be required as a sign of good faith to accompany each bid.

1. The bid shall be considered as part of the total sale price of the successful bidder.

2. Deposits of unsuccessful bidders shall be returned.

(c) As a guarantee of the performance of the terms of the contract, the successful bidder shall, within five (5) days of the date of the contract, deposit with the Division of Forestry a certified check as performance bond in the amount of not more than ten (10) percent of the established minimum bid, but not less than $2,500.

1. In lieu of the posting of the certified check as a performance bond, the successful bidder may post a surety bond with surety satisfactory to the Division of Forestry.

2. The bond shall be held until the completion of the terms of the contract.

(3) Compliance.

(a) The timber purchaser shall be required to comply with all timber sale contract requirements.

1. During ongoing harvesting activities, the operation shall be inspected by the local state forest administrator at least once every two (2) weeks to access compliance and to be available to answer any questions the purchaser may have.

2. If the purchaser is found in non-compliance with the contract, then the purchaser shall be informed and told what corrective measures shall be taken.

(b) If the purchaser fails or refuses to comply with the direction given by the state forest administrator, then the operation shall be suspended or terminated in accordance with the timber sale contract.

(c) Upon satisfactory completion of all terms of the contract and payment of any damages incurred, the Division of Forestry shall release the purchaser's performance bond.

(4) Minimum Bid. A minimum acceptable bid shall be determined for each sale and shall be stated as a part of the timber sale packet advertisement.

(a) A guide for determining the minimum bid shall be calculated by indexing the current price of number one (1) common lumber for each species, multiplying by the general profit or risk percentage and commission for industry in the particular area of the sale, and subtracting average logging, milling and drying cost.

(b) The price of number two (2) common lumber may be substituted for number one (1) common on low quality species.

(c) This calculation may be altered in accordance with direction given in the Major Timber Sales on state forest property, Forestry Guideline Memorandum 14-01.

(5) Negotiated Sale. If bids are not received on an advertised tract of timber, the Division of Forestry, with the approval of the director, may negotiate the sale of the tract of timber if it is judged in the best interest of the Division of Forestry and the Commonwealth.

(a) Negotiated sales shall be for no less than the minimum bid.

(b) The contract shall be executed within six (6) months of the bid opening date.

Section 3. Minor Timber Sales from State Forests. (1) Timber may be harvested from a state forest for sale pursuant to KRS 149.020 and Minor Timber Sales on state forest property, Forestry Guideline Memorandum 14-02. Minor timber sales shall require:

(a) A performance bond of $500 or five (5) percent of the winning bid amount, whichever is greater; and

(b) Full payment for products and performance bonds, if necessary, to be made within five (5) working days of execution of the permit.

(2) Potential buyers for minor timber sales shall submit Form SF-2, Timber Sale Permit, and the sales shall be carried out under the supervision of the Division of Forestry.

(3) Harvest or salvage operations in preparation for land use change as approved by the director of the Division of Forestry may exceed the $25,000 maximum limitation.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Major Timber Sales on state forest property", Forestry Guideline Memorandum 14-01, July 24, 2014;

(b) "Minor Timber Sales on state forest property", Forestry Guideline Memorandum 14-02, July 24, 2014;

(c) "Free removal of Forest Products on state forests", Forestry Guideline Memorandum 14-03, July 24, 2014;

(d) "Rural Community Fire Protection", Forestry Guideline Memorandum 14-04, August 4, 2014;

(e) "Timber Sale Permit", SF-2, November 2009;

(f) "Timber Sale Contract", SF-3, November 2009; and

(g) "Bid for Advertised Timber", SF-4, November 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Forestry, 627 Comanche Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m[~~The following documents from the Kentucky Division of Forestry are incorporated herein by reference:~~

~~(1) Major Timber Sales on state forest property Policy and Procedure Memorandum 85-01.~~

~~(2) Minor Timber Sales on state forest property Policy and Procedure Memorandum 85-02.~~

~~(3) Policy and Procedure Memorandum 85-03 Free Removal of Forest Products on state forests.~~

~~(4) Rural Community Fire Protection Program Policy and Procedure Memorandum 85-04~~].

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: May 7, 2015

FILED WITH LRC: May 12, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 23, 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 June 16, 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 June 30, 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 of major and minor timber sales.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information on bid procedures to individuals interested in harvesting timber on state properties.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 149.020 authorizes the cabinet to receive by donation, purchase, or lease lands, for forestry purposes, and may convey, exchange, or lease those lands and may sell timber or other forest products. This administrative regulation provides details on the process to follow when harvesting timber on state property.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 149.020 authorizes the cabinet to receive by donation, purchase, or lease lands, for forestry purposes, and may convey, exchange, or lease those lands and may sell timber or other forest products. This administrative regulation assists in the administration of the statutes by providing information on major and minor timber sales from state owned properties.

(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 applies regulatory type language from the material incorporated by reference and places it in the regulations itself. This amendment also updates that information.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide the remove regulatory language from the material incorporated by reference and places it in the body of the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 149.020 authorizes the cabinet to receive by donation, purchase, or lease lands, for forestry purposes, and may convey, exchange, or lease those lands and may sell timber or other forest products. This amendment removes information related to the harvesting of timber on state lands from the material incorporated by reference and places it in the body of the administrative regulations due to the regulatory nature of the language.

(d) How the amendment will assist in the effective administration of the statutes: KRS 149.020 authorizes the cabinet to receive by donation, purchase, or lease lands, for forestry purposes, and may convey, exchange, or lease those lands and may sell timber or other forest products. This amendment assists in the administration of the statute by removing information that is regulatory in nature related to major and minor timber sales and placing it in the body of the 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 impact ten (10) state forests and 1,567 loggers who could bid on these harvesting operations.

(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 updated requirements related to the harvesting of timber on state lands.

(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 timber to be harvested.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Owners or operators that intend to harvest timber on state lands will benefit from updated information to follow regarding the harvesting timber.

(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 intend to harvest timber on state lands will participate in a bid process and will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 149.020.

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.

(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 generates approximately $100,000 per year for state 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 continue to generate $100,000 per year for state government.

(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 Forestry
(Amendment)

402 KAR 3:030. Best management practices for timber harvesting operations.

RELATES TO: KRS 149.330, 149.332, 149.334, 149.344, 149.346, 149.348, 149.350, 149.355, 224.10-100

STATUTORY AUTHORITY: KRS 149.330, 149.334(5), 149.344

NECESSITY, FUNCTION, AND CONFORMITY: KRS 149.334(5) authorizes the cabinet to promulgate administrative regulations relating to the Kentucky Forest Conservation Act, KRS 149.330 to 149.355. KRS 149.344 requires that any logger or operator engaged in the conduct of any timber harvesting operations use appropriate best management practices.[~~KRS 149.330(1) defines best management practices as those practices developed by the Division of Forestry and approved by the Agriculture Water Quality Authority.~~] This administrative regulation establishes the best management practices for timber harvesting operations as developed by the Division of Forestry and approved

by the Agriculture Water Quality Authority.

Section 1. [~~Commencing July 15, 2000,~~] A logger or operator engaged in timber harvesting operations shall comply with the provisions of The Kentucky Agriculture Water Quality Plan, Best Management Practices, Section 1, Silviculture[~~, pages 13-40~~].

Section 2. Incorporation by Reference. (1) "The Kentucky Agriculture Water Quality Plan, Best Management Practices, Section 1, Silviculture", March 2014,[~~pages 13-40, and Section 4, Glossary, pages 242-246 (Revised January 1, 2001),"~~] is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Division of Forestry, 627 Commanche Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: May 12, 2015

FILED WITH LRC: May 12, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 23, 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 June 16, 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 June 30, 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 best management practices for timber harvesting operations as developed by the Division of Forestry and approved by the Agriculture Water Quality Authority.

(b) The necessity of this administrative regulation: This administrative regulation is necessary establish the best management practices for timber harvesting operations to include in the Agriculture Water Quality Plan.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 149.334(5) authorizes the cabinet to promulgate administrative regulations relating to the Kentucky Forest Conservation Act, KRS 149.330 to 149.355. KRS 149.344 requires that any logger or operator engaged in the conduct of any timber harvesting operations use appropriate best management practices. This administrative regulation establishes the best management practices for the logger or operator to follow.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 149.334(5) authorizes the cabinet to promulgate administrative regulations relating to the Kentucky Forest Conservation Act, KRS 149.330 to 149.355. KRS 149.344 requires that any logger or operator engaged in the conduct of any timber harvesting operations use appropriate best management practices. This administrative regulation incorporates by reference the Agriculture Water Quality Plan that includes the best management practices the logger or operator is to use.

(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 simply updates to the most recent version of the Agriculture Water Quality Plan.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the Agriculture Water Quality Plan that is incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 149.334(5) authorizes the cabinet to promulgate administrative regulations relating to the Kentucky Forest Conservation Act, KRS 149.330 to 149.355. KRS 149.344 requires that any logger or operator engaged in the conduct of any timber harvesting operations use appropriate best management practices. This amendment is necessary to update to the most recent version of the Agriculture Water Quality Plan where the best management practices are included.

(d) How the amendment will assist in the effective administration of the statutes: KRS 149.334(5) authorizes the cabinet to promulgate administrative regulations relating to the Kentucky Forest Conservation Act, KRS 149.330 to 149.355. KRS 149.344 requires that any logger or operator engaged in the conduct of any timber harvesting operations use appropriate best management practices. This amendment assists in the effective administration of the statutes by including the most recent version of the Agriculture Water Quality Plan.

(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 all logging operators in the Commonwealth. There are approximately 1,157 loggers in the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed above will be required to use the most recent version of the Agriculture Water Quality Plan.

(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 best management practices to be used. Not every site will use every BMP. They will be site specific.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Logging operators will benefit by having the most recent information to follow regarding best management practices.

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

(a) Initially: This amendment will not increase the costs of the agency to implement.

(b) On a continuing basis: This amendment 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 amendment.

(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 harvest timber within the Commonwealth are required to follow these standards.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 149.344.

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 amendment 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

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

500 KAR 13:020. Internal Investigations Branch[~~Office of Investigations~~].

RELATES TO: KRS 15A.020[~~15A.065~~]

STATUTORY AUTHORITY: KRS 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 authorizes the Secretary to promulgate administrative regulations for the proper administration of the Cabinet and its programs. This administrative regulation establishes the procedures for investigations by the Internal Investigations Branch[~~Office of Investigations~~], Office of Legal Services[~~the Secretary~~].

Section 1. Definitions. (1) "Exonerated" means the incident occurred, but the accused's actions were justified or proper.

(2) "Facility" means a group home, day treatment, residential treatment,[~~or~~] youth development center, a detention center,[~~or~~] any other entity or location for juvenile care operated by or contracted with the Department of Juvenile Justice for the placement of youth, or any entity housing youth placed by or committed to the Department of Juvenile Justice.

(3) "IIB" means Internal Investigations Branch, Office of Legal Services, Justice and Public Safety Cabinet.

(4) "Initiation" means any action by the Internal Investigations Branch[~~Office of Investigations~~] intended to ensure the immediate safety of the[~~alleged~~] victim or to obtain evidence or information relevant to the investigation.

(5)[~~(4)~~] "Not substantiated" means there is insufficient evidence to determine if an incident occurred or if the accused was involved in the incident.

(6)[~~(5)~~] "Offender" means a person:

(a) Who is employed at, volunteers in, visits, or contracts with a facility; and

(b) Against whom an allegation of a special incident has been made.

[~~(6) "OOI" means Office of Investigations, Office of the Secretary, Justice and Public Safety Cabinet.~~]

(7) "Pending further investigation" means a critical witness or offender can not be located or refuses to cooperate with the initial investigation, or there is other interference with the investigation, beyond the control of IIB[~~OOI~~], that prevents IIB[~~OOI~~] from making a final determination for its finding.

(8) "Special incident" means an act in which the health or welfare of a youth[~~resident~~] is harmed or threatened with harm by an offender, including if an offender:

(a) Uses inappropriate or excessive force that results in injury;

(b) Uses inappropriate or excessive force that could result in an injury;

(c) Engages in any sexual activity to include any contact or interaction, which uses or allows, permits or encourages the use of a youth[~~resident~~] for the sexual gratification of the offender or another person;

(d) Uses inappropriate consequences as punishment such as exercise, harsh physical labor, or other physical consequences outside accepted practices in accordance with 505 KAR Chapters 1 and 2 of the Department for Juvenile Justice Policies and Procedures;

(e) Allows or encourages a youth[~~resident~~] to:

1. Use drugs or alcohol;

2. Gamble; or

3. Engage in other illegal activity;

(f) Does not provide appropriate supervision, medical care, food, clothing, shelter, or education;

(g) Uses humiliating, demeaning, profane, or racially charged language directed at a youth[~~resident~~];

(h) Uses verbal threats of harm directed at a youth[~~resident~~];

(i) Exhibits a pattern of harassing conduct directed at a youth[~~resident~~];

(j) Uses or attempts to use a youth for[~~resident in the pursuit of the staff's own~~] personal gain;

(k) Accepts a bribe from a youth[~~resident~~] or indicates a bribe would be accepted;

(l) Enters into any unlawful transaction with a youth as set forth in KRS 530.064, 530.065, or 530.070;

(m) Enters into a business relationship with a youth[~~resident~~]; or

(n) Extends unearned special privileges to a youth[~~resident~~] in return for something[~~done for staff~~].

(9) "Substantiated" means that an incident occurred:

(a) By an admission of the person responsible; or

(b) By a preponderance of the evidence.

(10) "Unfounded" means the charges are false or the offender[~~employee~~] was not involved in the incident.

(11) "Youth" means a person who is under the custody, control, or supervision of the Department of Juvenile Justice as a result of a court order or interstate supervision.

Section 2. Receiving a Report. The Internal Investigations Branch[~~Office of Investigations~~] shall accept reports of special incidents[~~involving residents in a facility~~]. (1)(a) A toll-free number shall be made available to all staff and youth[~~residents in facilities~~] to report special incidents. A voice mailbox system shall be available for reporting special incidents after normal work hours.

(b) The investigator shall attempt to elicit from the person reporting the special incident as much information about the incident as possible, including:

1. The nature and extent of the special incident;

2. The causes of the special incident;

3. The location of the[~~alleged~~] victim;

4. Any witnesses to the[~~alleged~~] special incident;

5. The present danger to the[~~alleged~~] victim;

6. The offender; and

7. The reporting person's identity and relationship to the victim.

(2) Anonymous reports which give sufficient information and allege a special incident shall be accepted.

(3) Referrals from any other source which give sufficient

information and allege a special incident shall be accepted.

Section 3. Investigation of Reports and Special Incidents. (1) If IIB[~~OOI~~] receives a report of a special incident as defined by Section 1(8)(a) through (e) of this administrative regulation, IIB[~~OOI~~] shall:

(a) Conduct an investigation in accordance with Sections 5 and 6 of this administrative regulation; or

(b) Conduct a preliminary inquiry to determine if further investigation is warranted.

(2) If IIB[~~OOI~~] receives a report of a special incident as defined by Section 1(8)(f) through (n) of this administrative regulation, IIB[~~OOI~~] may conduct an investigation.

(a) Any allegation of an alleged special incident not investigated by IIB[~~OOI~~] shall be referred by IIB management[~~the Executive Director of OOI~~] to another appropriate individual or agency for investigation.

(b) If an allegation of a special incident[~~a report~~] is referred to the Department of Juvenile Justice pursuant to paragraph (a) of this subsection, IIB[~~OOI~~] shall review the investigative report and any supporting documentation.

(3) IIB[~~The OOI~~] may investigate a report or allegation involving a person who is employed at, volunteers in, visits, or contracts with a facility that does not meet the definition of a special incident at the request of the Department of Juvenile Justice Commissioner or the secretary of the Justice and Public Safety Cabinet[~~with the approval or the Executive Director of OOI~~]. A report or allegation not investigated by IIB[~~OOI~~] may be referred by IIB management[~~the Executive Director of OOI~~] to another appropriate individual or agency.

Section 4. Time Frames for Investigating Reports of Suspected Special Incidents. Following the receipt of the report, the IIB-2[~~OOI-2,~~] Special Incident Reporting Form[~~,~~] shall be completed and the report investigated or referred in accordance with Section 3 of this administrative regulation. IIB[~~OOI~~] investigations shall be conducted according to the following time frames:

(1) If the report indicates the youth[~~resident~~] is in imminent danger, the investigation shall be initiated within one (1) hour and personal contact made with the[~~alleged~~] victim within twenty-four (24) hours;

(2) If the report does not indicate imminent danger, the investigation shall be initiated within twenty-four (24) hours and personal contact made with the victim within seventy-two (72) hours.

(a) Issues to be considered in determining how soon personal contact is made shall include:

1. The nature of the allegation;

2. How recently the alleged incident occurred; and

3. The measures taken by the facility to ensure the safety of the youth[~~resident~~].

(b) Any deviation from the time frames shall require supervisory approval and be documented in the investigative file.

(3) If the report indicates that the victim is no longer in a facility, the investigation shall be initiated within forty-eight (48) hours and every effort made to have personal contact with the victim within three (3) workdays. Unsuccessful efforts to make personal contact shall be documented in the investigative file.

(4) The time frames shall begin when the report is received by IIB[~~the OOI~~] staff.

Section 5. Initial Investigation. If investigating an allegation or report, an IIB[~~OOI~~] investigator shall:

(1) Complete the IIB-2 form[~~OOI-2~~];

(2) Report any special incidents as required by KRS 620.030 and 620.040;

(3) Notify the Commissioner of the Department of Juvenile Justice or designee of the report;

(4) Interview the victim privately, outside the presence of the offender, with no more than two (2) persons present in addition to the victim and IIB investigator;

(5) Interview the[~~alleged~~] offender;

(6) Interview appropriate witnesses;

(7) Review documentation relevant to the incident; and

(8) Take possession of and preserve appropriate evidence.

Section 6. Determining the Validity of the Report. After the initial investigation the investigator shall:

(1) Complete a written report within thirty (30) days of receipt of the allegation, unless there are extenuating circumstances which are documented, such as law enforcement action, court proceedings, or investigator workload issues. The report shall contain:

(a) The information gathered during the investigation; and

(b) A recommendation regarding the validity of the allegation as substantiated, unfounded, exonerated, not substantiated, or pending further investigation;

(2) Submit the report through supervisory channels within IIB[~~OOI~~] and legal counsel for the Justice and Public Safety Cabinet for review and approval;

(3) Forward all completed investigations to the Commissioner of the Department of Juvenile Justice;

(4) Forward all completed investigations that are substantiated special incidents involving[~~acts of~~] abuse or neglect of a child, in accordance with KRS 620.030 to the:

(a)[~~In accordance with KRS 620.030 to the~~] Cabinet for Health and Family Services; and

(b)[~~To the~~] Local county attorney, law enforcement, or the Kentucky State Police with the exception of all documents and evidence that may be inadmissible in court proceedings under Garrity v. New Jersey, 385 U.S. 496 (1967).

Section 7. Incorporation by Reference. (1) "IIB-2[~~OOI-2~~], Special Incident Reporting Form", 5/15[~~11/06~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

J. MICHAEL BROWN, Secretary

APPROVED BY AGENCY: May 15, 2015

FILED WITH LRC: May 15, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 23, 2015 at 9:00 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day June 30, 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: Kerry Holleran, Staff Attorney, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8225, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kerry Holleran

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation ensures prompt and thorough investigations of alleged Special Incidents in entities operated by or contracted with the Department of Juvenile Justice for the placement of youth, or any entity housing youth placed by or committed to the Department of Juvenile Justice.

(b) The necessity of this administrative regulation:

Failure to implement the regulation could result in youth not being adequately protected in relation to Special Incidents.

(c) How this administrative regulation conforms to the content of the authorizing statues: The Secretary of the Justice Cabinet has the authority to implement this administrative regulation under KRS 15A.160.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides for investigations and findings of alleged Special Incidents by the Internal Investigations Branch within the Justice and Public Safety Cabinet.

(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 change this administrative regulation in the following ways: The word "resident" is replaced throughout the regulation by the word "youth" which corresponds to language found in related statutes regarding children under care, custody, or control of the Department of Juvenile Justice; "Office of Investigations" and "OOI" are replaced throughout the regulation by "Internal Investigations Branch" and "IIB"; Section 1 is amended by adding (11) defining the word "youth"; Section 1(2) is amended to include all potential places where youth under the care, custody, or control of the Department of Juvenile Justice may be located; Section 3(2)(a) and (3) are amended to replace "Executive Director" with "management"; Section 3(3) is amended to include the Secretary of the Justice and Public Safety Cabinet as a person who may request IIB investigations; Section 5(4) is amended to clarify what is meant by the word "privately"; Section 6(4)(b) is amended to reflect current U.S. Supreme Court case law which discusses certain inadmissible evidence in court proceedings; Section 7(1) is amended to reflect the name and updated date change of the form IIB-2.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation needs to be amended to reflect the branch's recent name change from Office of Investigations to Internal Investigations Branch; to delete the word "resident" and replace it with the word "youth" and its definition to correspond to related statutes; to clarify all places where youth under the care, custody, or control of the Department of Juvenile Justice may be located; to add the Justice and Public Safety Cabinet Secretary to the list of persons capable of authorizing IIB investigations; to clarify who should attend victim interviews, and to ensure IIB staff is aware of U.S. Supreme Court case law rendering certain documents inadmissible in criminal proceedings.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15A.160 authorizes the Secretary to promulgate administrative regulations for the proper administration of the Cabinet and its programs.

(d) How the amendment will assist in the effective administration of the statutes: These amendments assist in the proper administration of the statutes by reflecting the classification change of the former Office of Investigations to the Internal Investigations Branch, a branch of the Office of Legal Services; these amendments also help clarify the scope and nature of the duties of the Internal Investigations Branch.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects all entities operated by or contracted with the Department of Juvenile Justice for the placement of youth, or any entity housing youth placed by or committed to the Department of Juvenile Justice.

(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 Internal Investigations Branch will be able to more accurately relate their findings, but the entities operated by or contracted with the Department of Juvenile Justice for the placement of youth, or any entity housing youth placed by or committed to the Department of Juvenile Justice will not have to take any additional actions.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities operated by or contracted with the Department of Juvenile Justice for the placement of youth, or any entity housing youth placed by or committed to the Department of Juvenile Justice will be better able to deal with employee conduct and better able to protect youth.

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

(a) Initially: No cost is anticipated.

(b) On a continuing basis: No cost is anticipated.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted to the Justice and Public Safety Cabinet would be used if needed, but none are expected to be needed.

(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 anticipated.

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

(9) TIERING: Is tiering applied? No. All entities operated by or contracted with the Department of Juvenile Justice for the placement of youth, or any entity housing youth placed by or committed to the Department of Juvenile Justice are treated equally. There is no disparate treatment within the Internal Investigations Branch of cases investigated that would necessitate tiering.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Juvenile Justice and the Internal Investigations Branch, both within the Justice and Public Safety Cabinet, and the Department of Community Based Services, within the Cabinet for Health and Family Services, are the governmental entities impacted by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.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.

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

(c) How much will it cost to administer this program for the first year? The amendment does not create a new program and no costs are anticipated from the amendment.

(d) How much will it cost to administer this program for subsequent years? The amendment does not create a new program and no costs are anticipated from 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:

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(Amendment)

503 KAR 1:110. Department of Criminal Justice Training basic training: graduation requirements; records.

RELATES TO: KRS 15.330(1)(c), (f), 15.386(1), 15.404(1), 15.440(1)(d)

STATUTORY AUTHORITY: KRS 15.330(1)(c), (f), (h), 15.334(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) authorize the Kentucky Law Enforcement Council to approve law enforcement officers as having met the requirements for completion of law enforcement training and to promulgate administrative regulations to implement that requirement. This administrative regulation establishes requirements for graduation from the Department of Criminal Justice Training basic training course required for peace officer certification and participation in the Kentucky Law Enforcement Foundation Program Fund and for maintenance of basic training records.

Section 1. Basic Training Graduation Requirements. To graduate from the department's basic training course, a recruit shall:

(1) Successfully complete a minimum of 888[~~768~~] hours of training, based upon the curriculum approved by the Kentucky Law Enforcement Council (KLEC)[~~council~~] in accordance with KRS 15.330 and 503 KAR 1:090;

(2) Attain a minimum passing score on all assessments as outlined in the current KLEC-approved curriculum[~~:~~

~~(a) A seventy (70) percent overall score on all academic examinations covered during the course for which a numerical score is assigned. A recruit who does not achieve a seventy (70) percent overall score shall be considered to have failed the component;~~

~~(b) An eighty-four (84) percent on the First Aid/CPR/AED written examination. A recruit who does not achieve an eighty-four percent overall score shall be considered to have failed the component; and~~

~~(c) An eighty (80) percent overall score on the Defensive Tactics: Written Examination. A recruit who does not achieve an eighty (80) percent overall score shall be considered to have failed the component.~~

~~(3) Pass all training areas covered during the course for which a pass or fail designation is assigned. A recruit who does not pass all pass or fail training areas shall be considered to have failed the component~~]; and

(3)[~~(4)~~] Successfully complete all other assignments, exercises, and projects included in the course. After-hours assignments may be required, and shall be successfully completed in order to pass the training segment[~~area~~] for which they were assigned.

Section 2. Physical Training Requirements. A recruit who is required to complete basic training in order to fulfill the peace officer certification provisions established in KRS 15.380 to 15.404 shall meet the physical training entry and graduation requirements established in this section. (1) Physical training entry requirements.

(a) Within five (5) days from the first date of the basic training course, the recruit shall be tested in the following events, in the order listed, as instructed and evaluated by qualified department instructors:

1. Bench press;
2. Sit-ups;
3. 300 meter run;
4. Push-ups; and
5. One and five-tenths (1.5) mile run.

(b) A recruit shall pass the physical training entry requirements if he or she achieves a score of fifty (50) points or more, based upon the following scoring of the physical training events listed in paragraph (a) of this subsection:

1. Bench Press, based upon a percentage of the recruit's body weight:

a. 9 points - Recruit shall bench press at least fifty-five and three-tenths (55.3) percent of body weight;

b. 9.5 points - Recruit shall bench press at least fifty-nine and seven-tenths (59.7) percent of body weight;

c. 10 points - Recruit shall bench press at least sixty-four (64) percent of body weight;

d. 10.5 points - Recruit shall bench press at least sixty-eight and five-tenths (68.5) percent of body weight; and

e. 11 points - Recruit shall bench press at least seventy-three (73) percent or more of body weight;

2. Sit-ups:

a. 9 points - Recruit shall complete at least thirteen (13) repetitions in one (1) minute;

b. 9.5 points - Recruit shall complete at least sixteen (16) repetitions in one (1) minute;

c. 10 points - Recruit shall complete at least eighteen (18) repetitions in one (1) minute; and

d. 11 points - Recruit shall complete nineteen (19) repetitions or more in one (1) minute;

3. 300 meter run:

a. 9 points - Recruit shall complete in sixty-eight (68) seconds or less;

b. 9.5 points - Recruit shall complete in sixty-seven (67) seconds or less;

c. 10 points - Recruit shall complete in sixty-five (65) seconds; and

d. 11 points - Recruit shall complete in less than sixty-five (65) seconds;

4. Push-ups:

a. 9 points - Recruit shall complete at least fourteen (14) repetitions in two (2) minutes;

b. 9.5 points - Recruit shall complete at least seventeen (17) repetitions in two (2) minutes;

c. 10 points - Recruit shall complete at least twenty (20) repetitions in two (2) minutes;

d. 10.5 points - Recruit shall complete at least twenty-three (23) repetitions in two (2) minutes; and

e. 11 points - Recruit shall complete twenty-five (25) repetitions or more in two (2) minutes; and

5. One and five-tenths (1.5) mile run:

a. 9 points - Recruit shall complete in 1,076 seconds (17:56) or less;

b. 9.5 points - Recruit shall complete in 1,054 seconds (17:34) or less;

c. 10 points - Recruit shall complete in 1,032 seconds (17:12) or less;

d. 10.5 points - Recruit shall complete in 1,004 seconds (16:44) or less; and

e. 11 points - Recruit shall complete in 975 seconds (16:15) or less.

(c) A recruit shall:

1. Not be awarded more than eleven (11) points or less than nine (9) points in any one (1) of the five (5) physical ability events; and

2. Be deemed to have failed the physical ability test if he or she fails to achieve at least:

a. A total score of fifty (50) points; or

b. Nine (9) points on any one (1) physical training event.

(d) Retest.

1. A recruit that fails to meet the lowest performance level in a test event, thus earning a zero point value for that event, shall be granted a retest opportunity in that event without having to retest in the other events for which a point value was obtained, except that a retest shall not be granted unless the maximum value of eleven (11) points would allow the applicant to meet the required overall fifty (50) point minimum.

2. A recruit that obtains a point value for each event, but does not obtain an overall score of fifty (50), shall be retested on the physical training entry test again, in its entirety.

3. A retest shall not occur any sooner than forty-eight (48) hours or any later than seventy-two (72) hours from the date of the initial test attempt.

4. All failed events shall be retested on the same date.

5. If the recruit passes all previously failed events on the date of the retest, the recruit shall have met the physical training entry requirements.

6. If the recruit does not pass all previously failed events on the date of the retest, the recruit shall be unqualified to participate in the department's basic training course for which he is currently enrolled, and may reapply to participate in a future department basic training course. The recruit shall receive no credit for the part of the basic training course which he has completed.

(2) Physical training graduation requirements.

(a) In order to graduate, the recruit shall successfully complete each of the following physical ability requirements within five (5) days of graduation from law enforcement basic training, which, except for the entry test score requirements in subsection (1)(b) of this administrative regulation, shall be administered in the same order and in conformity with the KLEC Physical Fitness Testing Protocols, incorporated by reference in 503 KAR 1:140:

1. Bench press. One (1) repetition of maximum (RM) bench press equal to seventy-three (73) percent of the recruit's body weight;

2. Sit-ups. Eighteen (18) sit-ups[~~sit ups~~] in one (1) minute;

3. 300 meter run in sixty-five (65) seconds;

4. Push-ups. Twenty-five (25) push-ups; and

5. One and five-tenths (1.5) mile run in sixteen (16) minutes, fifteen (15) seconds.

(b) If a recruit passes all events when participating in the physical training graduation test, the recruit shall have met the physical training graduation requirements.

(c) Retest. If a recruit fails to pass all events when participating in the physical training graduation test:

1. The recruit shall retest in the failed events no earlier than forty-eight (48) hours after the date of the graduation test, but not later than the last scheduled date of the basic training course;

2. All failed events shall be retested on the same date;

3. If the recruit passes all previously failed events on the date of the retest, the recruit shall have met the physical training graduation requirements; and

4. If the recruit does not pass all previously failed events on the date of the retest, the recruit shall fail basic training.

(3) A physical training midpoint test[~~. During week ten (10) of basic training, the recruits~~] shall be administered to the recruits at the midpoint of the basic training course[~~the events of the physical training requirements~~] for purposes of reporting their progress to their respective law enforcement agencies.

Section 3. Removal[~~Failure~~] and Repetition of Basic Training. (1) Failure of Training.

(a) A recruit that is removed from basic training due to a training segment[~~or area~~] failure pursuant to Section 5 of this administrative regulation[~~prior to the successful completion of DUI Detection~~] shall:

1. Be removed from the basic training class;

2. Reenter basic training in a subsequent class that has the first available vacancy;

3. Start the training at the beginning of the training segment that the recruit did not successfully complete; and

4.[~~required to repeat the entire basic training course; and~~

~~2.~~] Pay all applicable fees for the repeated basic training course in accordance with 503 KAR 3:030.

(b)[~~If a recruit fails a segment or area after the completion of DUI Detection, the recruit shall:~~

~~1. Be removed from the basic training class;~~

~~2. Reenter basic training in a subsequent class that has the first available vacancy; and~~

~~3. Start the training at the beginning of the training area or segment that the recruit did not successfully complete.~~

~~(c)~~] Upon the recruit's return, the recruit shall attend and participate at the beginning of the[~~in the area or~~] segment failed[~~, but shall not be retested in the training area or segment that was previously passed~~].

1. In accordance with 503 KAR 3:030, Section 6(2), the recruit's hiring agency shall prepay to the department the full tuition, room, and board costs of repeating the training segment[~~area~~] which was failed. The hiring agency may recover these costs of repeating the training segment[~~area~~] from its recruit; and

2. If the training segment[~~area~~] is successfully completed, the recruit shall continue with the remainder of the basic training course.

(c) A recruit who is permitted to return to basic training in accordance with this section and is removed due to failure a second time shall:

1. Be required to repeat basic training in its entirety; and

2. Pay all costs of repeating the entire basic training course in accordance with 503 KAR 3:030.

(2) Failure of the physical training graduation requirements. A recruit who fails the physical training graduation requirement in Section 2(2) of this administrative regulation:

(a) Shall not graduate with the recruit's basic training class;

(b) Shall be permitted to retest with the very next basic training class; and

(c) Upon successful completion, may graduate with that class.

(3) A recruit who is permitted to return to basic training in accordance with this section and is removed due to failure a second time shall:

(a) Be required to repeat basic training in its entirety; and

(b) Pay all costs of repeating the entire basic training course in accordance with 503 KAR 3:030.

Section 4. Basic Training Curriculum. The basic training curriculum shall consist of training segments and topics listed in the current KLEC-approved curriculum. The training segments shall at a minimum include one (1) or more of the following topics:

(1)[~~include the following areas:~~

~~(1) Administration and testing;~~

~~(2) Telecommunications (MDT);~~

~~(3)~~] Legal subjects;

(2)[~~(4)~~] Physical training;

(3)[~~(5)~~] Defensive tactics;

(4)[~~(6)~~] Patrol;

(5)[~~(7)~~] Vehicle operations;

(6)[~~(8)~~] Firearms;

(7)[~~(9)~~] Criminal investigation;

(8)[~~(10)~~] D.U.I./Field sobriety testing;

(9)[~~(11)~~] Breath testing; or

(10)[~~(12)~~] Practical evaluation/testing[~~;~~

~~(13) First Aid/C.P.R./A.E.D.; and~~

~~(14) Homeland security~~].

Section 5. Assessments[~~Examinations~~]. (1) Scheduled assessments shall be administered to recruits at the completion of each segment of basic training identified in the law enforcement basic training curriculum that is currently approved by the Kentucky Law Enforcement Council. Each segment shall include at a minimum one (1) or more of the topics listed in Section 4 of this administrative regulation[~~A recruit shall be examined in the following six (6) areas of basic training:~~

~~(a) Area I:~~

~~1. Academic Examination 1;~~

~~2. Vehicle Operations: Day Range;~~

~~3. Work Zone Safety;~~

~~4. Criminal Justice Information System: Mobile Data Terminal (CJIS:MDT); and~~

~~5. Academic Examination 2;~~

~~(b) Area II:~~

~~1. Breath Test Operator: Practical;~~

~~2. Breath Test Operator: Written;~~

~~3. DUI: Practical; and~~

~~4. DUI: Written;~~

~~(c) Area III:~~

~~1. First Aid/Cardiopulmonary Resuscitation/Automated External Defibrillation: Written;~~

~~2. Cardiopulmonary Resuscitation/Automated External Defibrillation: Practical;~~

~~3. First Aid: Practical; and~~

~~4. Practical Examination 1;~~
~~(d) Area IV:~~
~~1. Academic Examination 3;~~
~~2. Handgun: Day;~~
~~3. Handgun: Low Level Light; and~~
~~4. Academic Examination 4;~~
~~(e) Area V:~~
~~1. Long Gun: Shotgun Day;~~
~~2. Long Gun: Shotgun Low Level Light;~~
~~3. Long Gun: Rifle Day; and~~
~~4. Long Gun: Rifle Low Level Light; and~~
~~(f) Area VI:~~
~~1. Defensive Tactics: Written;~~
~~2. Law Enforcement Prevention and Deterrence of Terrorist Acts;~~
~~3. Defensive Tactics: Practical;~~
~~4. Academic Examination 5: Final Exam; and~~
~~5. Practical Examination 2~~].

(2) A recruit shall be permitted one (1) reassessment per assessment failed during basic training but shall not exceed a total of five (5) reassessments during basic training[~~reexamination in each of the six (6) areas of basic training~~].

(3) A recruit who fails an assessment[~~examination, other than defensive tactics or the Practical Examinations,~~] shall not be reassessed[~~reexamined~~]:

(a) Earlier than forty-eight (48) hours from the original examination; or

(b) Later than:

1. Five (5)[~~Ten (10)~~] days after the original examination. A recruit may submit a written request to the training director or his designee[~~branch manager~~] for an additional five (5) days in which to take the reassessment[~~reexamination~~]; and

2. The last scheduled day of the basic training course.

(4)[~~Failure of a defensive tactics examination or Practical Examination 2.~~

~~(a) If the failure occurs prior to the last scheduled day of defensive tactics training, the recruit shall not be reexamined earlier than the last scheduled day of defensive tactics training.~~

~~(b) If the failure occurs on the last scheduled day of defensive tactics training, the recruit shall not be reexamined:~~

~~1. Earlier than twenty-four (24) hours from the original examination; or~~

~~2. Later than the last scheduled day of the basic training course.~~

~~(c) If a recruit fails Practical Examination 2, the recruit may be reexamined:~~

~~1. Immediately; or~~

~~2. No later than the last scheduled day of the basic training course.~~

~~(5)~~] A recruit shall fail basic training if the recruit:

(a) Fails a reassessment[~~reexamination~~] in accordance with subsection (2) of this section; or

(b) Fails any six (6) assessments during[~~two (2) examinations in the same area of~~] basic training.

(5) A recruit is deemed to have failed a segment if a recruit fails any reassessment that is contained within a designated segment.

Section 6. Absence. (1) A recruit may have excused absences from the course with approval of the director of the certified school or his designee.

(2) An excused absence from the course which causes a recruit to miss any of the required[~~768~~] hours of basic training shall be made up through an additional training assignment.

Section 7. Circumstances Preventing Completion of Basic Training. (1) If a recruit is prevented from completing the basic training course due to extenuating circumstances beyond the control of the recruit, including injury, illness, personal tragedy, or agency emergency, he shall be permitted to complete the unfinished areas of the course within 180 days immediately following the termination of the extenuating circumstance, if the:

(a) Extenuating circumstance preventing completion of basic training does not last for a period longer than one (1) year; and

(b) Failure to complete is not caused by a preexisting physical injury or preexisting physiological condition.

(2) If a recruit is prevented from completing the basic training course due to being called for active duty in the Kentucky National Guard or other branches of the United States Armed Forces, the recruit shall be permitted to complete the unfinished[~~areas~~] of the course within 180 days immediately following his or her return from active duty service.

Section 8. Termination of Employment while Enrolled. If, while enrolled in the basic training course, a recruit's employment as a police officer is terminated by dismissal, and the recruit is unable to complete the course, the recruit shall complete the remaining training within one (1) year of reemployment as an officer. The recruit shall repeat basic training in its entirety if:

(1) The break in employment exceeds one (1) year; or

(2) The termination of employment is a result, directly or indirectly, of disciplinary action taken by the department against the recruit while enrolled in the basic training course.

Section 9. Maintenance of Records. (1) At the conclusion of each basic training course, the department shall forward a final roster indicating the pass or fail status of each recruit to the council.

(2) All training records required for fund purposes shall be retained by the department, but a copy of pertinent facts shall be sent to the fund administrator upon written request.

(3) All training records shall be:

(a) Available to the council, the secretary, and the fund administrator for inspection or other appropriate purposes; and

(b) Maintained in accordance with applicable provisions of KRS Chapter 171.

KEITH CAIN, Chair

APPROVED BY AGENCY: May 13, 2015

FILED WITH LRC: May 14, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD**:** A public hearing on this administrative regulation shall be held on June 22, 2015 at 10:00 a.m. in Room 211, Funderbunk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 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**:** Gerald Ross, Acting General Counsel, Department of Criminal Justice Training, Funderbunk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-2214, fax (859) 622-5027.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gerald Ross

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the curriculum and training requirements for those attending the Department of Criminal Justice Training law Enforcement Basic Training Academy.

(b) The necessity of this administrative regulation: this administrative regulation is necessary to allow the Kentucky Law Enforcement Council to fulfill its responsibility, as established in KRS 15.330, to approve law enforcement officers as having met the requirements for completion of law enforcement training, specifically basic training, which is necessary for participation in

the Kentucky Law Enforcement Foundation Program Fund (KELFPF), and peace officer certification pursuant to KRS 15.380 through 15.404.

(c) How this administrative regulation conforms to the content of the authorizing statues: KRS 15.330(1)(h) authorizes the Kentucky Law Enforcement Council to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and KRS 15.990 to 15.992. This administrative regulation is required to establish graduation standards for DOCJT basic training, which is necessary for the administration of KLEFPF (KRS 15.410 through 15.510), and peace officer certification (KRS 15.310 through 15.402).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulations sets clear, reasonable and consistent rules and procedures for graduation from DOCJT basic training, the successful completion of which is necessary before an officer may achieve active peace officer certification, or participate in KLEFPF.

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

(a) How the amendment will change this existing administrative regulation: This amendment increases the training hours needed to successfully complete basic training; and deletes specific curriculum from being stated in the administrative regulation. This allows for appropriate updates, conducted in open meetings by the Kentucky Law Enforcement Council, to be made in a timely manner while adhering to regulatory and statutory requirements. Additionally, the other three training academies (Kentucky State Police, Louisville Metro Police, and Lexington Division of Police) do not have their basic training requirements listed specifically, course for course, in a regulation.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to allow for flexibility to update curriculum and testing areas relating to DOCJT basic training, based upon any current job task analysis.

(c) How the amendment conforms to the content of the authorizing statutes: LTS 15/33-(1)(h), (i) authorizes the Kentucky Law Enforcement Council to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and KRS 15.990 to 15.992. This administrative regulation is required to establish graduation standards for DOCJT basic training, which is necessary for the administration of KLEFPF (KRS 15.410 through 15.510), and peace officer certification (KRS 15.310 and 15.380 through 15.402).

(d) How the amendment will assist in the effective administration of the statutes: This regulation sets clear, reasonable and consistent rules and procedures for graduation from DOCJT basic training, the successful completion of which is necessary before an officer may achieve peace officer certification, or to participate in KLEFPF.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies in the Commonwealth that utilize DOCJT basic training, which is approximately 412 agencies, including most state, county and local agencies, but excluding the Kentucky State Police, the Lexington-Fayette Urban County Division of Police, and the Louisville Metro Police Department.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The agencies should not experience any detrimental impact. They will benefit by receiving a quality graduate with modern, up-to-date training.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with the amendments will result in a modest increase to agencies. Officers attending the basic training academy receive full-time wages from their respective agencies while attending basic training. This amendment is an increase of 120 hours in the basic training academy, which is necessary to meet standards required of law enforcement officers policing in modern society.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The agencies will receive officers better prepared to meet the current public demands on their personnel for professional and adaptive service.

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

(a) Initially: No additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment of this regulation does not establish any new fees or increase any fees, 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. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated; as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect all divisions of state or local governments that employ peace officers who are required by KRS 15.380 to be certified, including city and county police departments, and county sheriffs' offices. All new city, county, and state law enforcement officers are required to attend and complete law enforcement basic training.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.070(1), KRS 15.330(1)(a) and (b), and KRS 15.380.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The economic effect on agencies is minimal – there will be an additional four (4) weeks of salaries they will expend while their officers are completing training. This is offset because their officers will be more fully educated with the skills and knowledge law enforcement officers need to police in modern society.

(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 amendments to this regulation impact how the Kentucky Department of Corrections and state correctional institutions operate. There should be no additional costs to KLEC, DOCJT, or the agencies affected by this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Costs to DOCJT will be dependent on any KLEC-adopted recommendations from future job task analysis

results.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amendment)

804 KAR 4:370. Entertainment destination center license.

RELATES TO: KRS 148.853(2)(b), 241.060(1), 243.030(21), (34)[~~(41), (46)~~], 243.040[~~(18)~~], 243.050[~~(4), (5)~~]

STATUTORY AUTHORITY: KRS 241.060(1), 243.030(21), (34)[~~(46)~~], 243.040[~~(18)~~]

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 241.060 the board has authority to promulgate administrative regulations regarding matters over which the board has jurisdiction. KRS 243.030(21)[~~(41)~~] and (34) authorizes[~~(46)and 243.040(18) authorize~~] the Department of Alcoholic Beverage Control to issue an entertainment destination license[~~and any other special licenses the board finds necessary for the proper regulation and control of traffic in alcoholic beverages~~]. This administrative regulation defines the term entertainment destination center and establishes the privileges and responsibilities of an entertainment destination license[~~creates a special license to facilitate convention and tourism business in the Commonwealth by permitting the retail sale of alcoholic beverages by the drink at entertainment destination centers~~].

Section 1. Definitions. (1) "Entertainment destination center" means a facility:

(a)1. Located in a city of the first class or in a county containing a city of the first class;

2. Located within an urban-county government under KRS Chapter 67A;

3. Located within a city with a population of 20,000 or greater based on the most recent federal decennial census[~~of the second class~~] and meeting the incentive qualifications for an entertainment destination center project as set forth in KRS 148.853(2)(b)(1); or

4. Located within a county containing a city with a population equal to or greater than 20,000 based on the most recent federal decennial census[~~of the second class~~] and meeting the incentive qualifications for an entertainment destination center project as set forth in KRS 148.853(2)(b)(1);

(b) Containing a minimum of 100,000 square feet of building space located within 2,000 feet of:

1. An existing tourism attraction; or

2. A major convention facility measured from closest property line to closest property line; and

(c) Containing a combination of entertainment destination venues including:

1. Nightclubs;

2. Restaurants;

3. Leisure time activities; or

4. Specialty retail stores.

(2) "Major convention facility" means an establishment licensed under KRS 243.050(4) or (5) as a convention center.

(3) "Physical confines of the center" means:

(a) A portion of a public thoroughfare that is:

1. Adjacent to or within the entertainment destination center; and

2. Closed to vehicular traffic;

(b) An area designated by the lease as a common area; or

(c) An area included in the leased space or common areas and defined by a physical barrier, which would preclude motor vehicle traffic and limit pedestrian accessibility, as approved by the Department of Alcoholic Beverage Control.

Section 2. An entertainment destination center license shall authorize the licensee to sell alcoholic beverages by the drink at one (1) or more nonpermanent locations within common areas of the entertainment destination center over which the licensee, by lease or ownership, has exclusive control.

Section 3. (1) Each lessee of premises located within an entertainment destination center that intends to sell alcoholic beverages by the drink at retail shall apply for and obtain the necessary on-premises licenses under KRS 243.030 and 243.040.

(2) If permitted by the owner or lessee of the entertainment destination center in the lease, a licensed retail drink licensee may also sell alcoholic beverages from one (1) nonpermanent facility if the facility is located 100 feet or less from the licensee's permanent premises.

(3) Each retail drink licensee shall obtain a supplemental bar license for the nonpermanent location.

Section 4. (1) On Thursday, Friday, and Saturday of each week, between the hours of 6 p.m. and up to 4 a.m., and during any other days and times as the owner or lessee of the entertainment destination center may determine and which are permitted by local ordinance and state statute, a licensee within the entertainment destination center may allow patrons to leave the individually licensed premises with an alcoholic beverage drink and enter other licensed premises and the common areas of the center, if adequate security is provided by the entertainment destination center licensee at each point of ingress and egress.

(2) Each licensee shall serve all alcoholic beverages in containers bearing the licensee's trademark, trade name, logo, or other identifying markings unique to that licensee.

(3) Each licensee, including the entertainment destination center licensee, shall prohibit patrons from taking alcoholic beverages outside the physical confines of the center.

(4) At times other than those specified in subsection (1) of this section, and in accordance with local ordinance and state statute, the entertainment destination center licensee may permit alcoholic beverages to be consumed in nonpermanent locations and common areas if it provides adequate security at each point of ingress and egress.

(5) During those times the entertainment destination center is operating pursuant to subsection (1) or (4) of this section, the entertainment destination center licensee shall ensure that minors can be easily distinguished from other patrons through use of identity bracelets, hand stamps, badges, or other visible means.

(6) Each licensee of the center shall cause to be posted signs indicating the hours and days when alcoholic beverages may be consumed in the common areas pursuant to subsection (1) of this section and times when that consumption is prohibited.

(7) The entertainment destination center licensee shall be solely responsible for notifying the department of the dates and times during which alcoholic beverages shall be sold in the nonpermanent retail locations and common areas pursuant to subsections (1) and (4) of this section.

Section 5. The holder of the entertainment destination center license shall be subject to the restrictions and prohibitions established in KRS Chapters 243 and 244.

Section 6. (1) The entertainment destination center license shall not be a quota license and shall not be transferable to any other premises.

(2) A licensee who obtains an alcoholic beverage license for permanent premises within the center shall not be prohibited from holding a retail drink quota license.

(3)(a) Except as provided in paragraph (b) of this subsection, a licensee in the center shall not hold a retail package alcoholic beverage license.

(b) A liquor package licensee with an existing contractual commitment may remain at its licensed premises after the entertainment destination center license is issued.

Section 7. (1) Except as provided in this administrative

regulation, all statutes and administrative regulations governing the retail sale of alcoholic beverages by the drink and the consumption of alcohol by patrons shall be applicable to all retail establishments contained within the physical confines of the center.

(2)(a) A licensee shall be solely responsible for alcohol violations occurring on its licensed premises, including its nonpermanent location.

(b) The entertainment destination center licensee shall be solely responsible for alcohol violations occurring at its nonpermanent locations, kiosks, or in the common areas.

(3) Proceedings relating to applications, renewals, suspensions, or revocations of the license created by this administrative regulation shall be conducted in the same manner as for any retail licensee, in accordance with the provisions of KRS Chapters 243 and 13B.

(4) If the board suspends the entertainment destination center license, all retail drink sales at its nonpermanent locations, kiosks, or common areas shall be suspended.

(5) If the alcoholic beverage license of an individual tenant of the center is suspended, the retail licensee shall not sell alcoholic beverages for the duration of the suspension from either its permanent or nonpermanent locations.

FREDERICK A. HIGDON, Commissioner
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: May 13, 2015

FILED WITH LRC: May 14, 2015 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, June 29, 2015 at 10:00 a.m. Eastern Time at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by 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 until the end of the day on June 30, 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: Melissa McQueen, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melissa McQueen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation defines the term entertainment destination center and establishes what criteria are necessary to qualify for that license.

(b) The necessity of this administrative regulation: This regulation is necessary to define the term entertainment destination center and establish what criteria shall be met to qualify for that license type.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This regulation defines the term entertainment destination center and lists the criteria needed to hold such a 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: It eliminates reference to a city classification that no longer exists. It also this regulation corrects the references to statutes which were recodified.

(b) The necessity of the amendment to this administrative regulation: The deletion of reference to a city classification system that is no longer in use is necessary. The correction of statute numbers that changed as a result of recodification will ensure that the referenced statutes are accurate.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060 allows the board to promulgate regulations for matters over which the board has jurisdiction.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the regulation back into compliance by eliminating reference to city classifications which are no longer in use.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: No entities are expected to be affected by the amendment of this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional steps are necessary as this amendment simply corrects statutory references.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not expected to be any additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no financial benefits to this administrative regulation amendment.

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

(a) Initially: No extra costs are anticipated to amend this administrative regulation.

(b) On a continuing basis: None.

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

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

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

(9) TIERING: Is tiering applied? No tiering is applied because this regulation applies equally to the 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? Entities who want to open an entertainment destination center would be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate administrative regulations.

(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. Expenditures are not expected to increase. No revenue will be generated by this administrative regulation amendment.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation amendment.

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation amendment.

(c) How much will it cost to administer this program for the first year? The cost to administer this amendment should be minimal, if any.

(d) How much will it cost to administer this program for subsequent years? The cost to administer this amendment should be minimal, if any.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Additional costs to administer these regulatory changes at the local government level for this year or subsequent years should be minimal or none.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amendment)

804 KAR 10:010. County alcoholic beverage control administrator.

RELATES TO: KRS 241.110, 241.120, 241.130

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 241.060 the board has authority to promulgate administrative regulations regarding matters over which the board has jurisdiction. KRS 241.110 permits the county judge/executive or other appointed person to serve as a county alcoholic beverage control administrator for a moist or wet county. KRS 241.130 requires a county alcoholic beverage control administrator to take an oath and execute a $1,000 or greater bond as a condition of assuming the role as county alcoholic beverage control administrator. This administrative regulation requires a county to provide written notification to the Department of Alcoholic Beverage Control when a county alcoholic beverage control administrator is appointed and to provide proof that the required oath was taken and the required surety bond was posted[~~KRS 241.130 establishes the qualifications and procedures necessary for a person to serve as county alcoholic beverage control administrator. This administrative regulation is in furtherance of that statute and provides for the filing with this board of a certificate of the appointment and a certificate of the surety bond required by the statute~~].

Section 1. Any county having a county alcoholic beverage control administrator under the authority of KRS 241.110 or 241.120, shall notify the Department of Alcoholic Beverage Control in writing, and shall submit the following documents within thirty (30) days of appointment:

(1) A letter from the county judge/executive verifying his or her election to serve as county alcoholic beverage control administrator, or a copy of the appointment letter or resolution which names another person as the county alcoholic beverage control administrator;

(2) A copy of the oath of office that the county alcoholic beverage control administrator has taken that has been signed by the county alcoholic beverage control administrator; and

(3) A copy of the required bond that provides surety for the county alcoholic beverage control administrator[~~Any person qualifying as County Alcoholic Beverage Administrator must immediately notify the Department of Alcoholic Beverage Control, and send a certificate of the County Court Clerk certifying that the required surety bond in the amount of $1,000 has been executed~~].

FREDERICK A. HIGDON, Commissioner
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: May13, 2015

FILED WITH LRC: May 14, 2015 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, June 29, 2015 at 10:00 am Eastern Time at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing within 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 until the end of the day on June 30, 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: Melissa McQueen, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melissa McQueen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation clarifies what documents are necessary in order to provide notice to the Board of the appointment of a county alcoholic beverage control administrator.

(b) The necessity of this administrative regulation: This regulation clarifies which documents are to be provided to the Board upon the appointment of a county alcoholic beverage control administrator.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. The regulation clarifies what documents need to be provided to the board upon appointment of a county alcoholic beverage control administrator.

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

(a) How the amendment will change this existing administrative regulation: It clarifies exactly what documents shall be provided to the board upon appointment of a county alcoholic beverage control administrator.

(b) The necessity of the amendment to this administrative regulation: The clarification of what documents shall be sent to the board will eliminate any confusion as to what is needed to comply with the regulation's notice requirement.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060 allows the Board to promulgate regulations for matters over which the Board has jurisdiction and this amendment clarifies what proof must be shown upon the appointment of county alcoholic beverage control administrators.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the Board in ensuring that the current list of county alcoholic beverage control administrators is up to date and that those individuals have met the requirements of office that are imposed by the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local governments are affected by this amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment clarifies a policy the

local governments are already following.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not expected to be any additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no financial benefits to this administrative regulation amendment.

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

(a) Initially: No extra costs are anticipated to amend this administrative regulation.

(b) On a continuing basis: None.

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

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

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

(9) TIERING: Is tiering applied? No tiering is applied because this regulation applies equally to the 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? County judge/executives and county alcoholic beverage control administrators are expected to be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate administrative regulations.

(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. Expenditures are not expected to increase. No revenue will be generated by this administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? The cost to administer this amendment should be minimal, if any.

(d) How much will it cost to administer this program for subsequent years? The cost to administer this amendment should be minimal, if any.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Additional costs to administer these regulatory changes at the local government level for this year or subsequent years should be minimal or none.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amendment)

804 KAR 10:020. City alcoholic beverage control administrator.

RELATES TO: KRS 241.160, 241.170, 241.180

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 241.060 the board has authority to promulgate administrative regulations regarding matters over which the board has jurisdiction. KRS 241.160 and 241.170 require wet or moist cities with a population equal to or greater than 3,000 based upon the most recent federal decennial census, or a consolidated local government, to create by ordinance the office of city alcoholic beverage control administrator. A city with a population less than 3,000 based upon the most recent federal decennial census may by ordinance create the office of city alcoholic beverage control administrator. KRS 241.180 establishes that a city alcoholic beverage control administrator shall take an oath and execute a $1,000 or greater bond as a condition of assuming the role as city alcoholic beverage administrator. This administrative regulation requires a city or consolidated local government to provide written notification to the Department of Alcoholic Beverage Control that a city alcoholic beverage control administrator was appointed and to provide proof that the required oath was taken and the required surety bond was posted[~~KRS 241.180 establishes the qualifications for a person to be eligible to serve as city alcoholic beverage control administrator. In furtherance of that statute, this administrative regulation requires written notification to this board of such administrator's appointment and the posting of the required surety bond~~].

Section 1. Any city or consolidated local government appointing a city alcoholic beverage control administrator under the authority of KRS 241.160 or 241.170, shall notify the Department of Alcoholic Beverage Control in writing, and shall submit the following documents within thirty (30) days of appointment:

(1) A copy of the appointment letter or resolution which names the person as the city alcoholic beverage control administrator;

(2) A copy of the oath of office that the city alcoholic beverage control administrator has taken that has been signed by the city alcoholic beverage control administrator; and

(3) A copy of the required bond that provides surety for the city alcoholic beverage control administrator[~~The Mayor or City Manager of any city of the first four (4) classes appointing an administrator under the terms of KRS 241.160, shall notify the Department of Alcoholic Beverage Control of the name and address of such administrator, and certify that the required $1,000 surety bond has been executed~~].

FREDERICK A. HIGDON, Commissioner
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: May 13, 2015

FILED WITH LRC: May 14, 2015 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, June 29, 2015 at 10:00 a.m. Eastern Time at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by 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 until the end of the day on June 30, 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: Melissa McQueen, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-7479 .

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melissa McQueen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation clarifies what documents are necessary in order to provide notice to the board of the appointment of a city alcoholic beverage control administrator.

(b) The necessity of this administrative regulation: This regulation clarifies what documents are necessary in order to provide notice to the board of the appointment of a city alcoholic beverage control administrator.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This regulation clarifies what documents are necessary in order to provide notice to the board of the appointment of a city alcoholic beverage control administrator.

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

(a) How the amendment will change this existing administrative regulation: It eliminates reference to a city classification that no longer exists. It also clarifies exactly what documents shall be provided to the board upon appointment of a city alcoholic beverage control administrator.

(b) The necessity of the amendment to this administrative regulation: The deletion of reference to a city classification system that is no longer in use is necessary. The clarification of what documents shall be sent to the board will eliminate any confusion as to what is needed to comply with the regulation's notice requirement.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060 allows the board to promulgate regulations for matters over which the board has jurisdiction and this amendment clarifies what proof must be shown upon the appointment of city alcoholic beverage control administrators.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the board in ensuring that the current list of city alcoholic beverage control administrators is up to date and that those individuals have met the requirements of office that are imposed by the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local governments are affected by this amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment clarifies a policy the local governments are already following.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not expected to be any additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no financial benefits to this administrative regulation amendment.

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

(a) Initially: No extra costs are anticipated to amend this administrative regulation.

(b) On a continuing basis: None.

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

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

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

(9) TIERING: Is tiering applied? No tiering is applied because this regulation applies equally to the 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? City managers or mayors and city alcoholic beverage control administrators are expected to be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate administrative regulations.

(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. Expenditures are not expected to increase. No revenue will be generated by this administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? The cost to administer this amendment should be minimal, if any.

(d) How much will it cost to administer this program for subsequent years? The cost to administer this amendment should be minimal, if any.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Additional costs to administer these regulatory changes at the local government level for this year or subsequent years should be minimal or none.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Non-Depository Institutions
(Amendment)

808 KAR 9:010. Administration and enforcement of KRS 286.9-140[~~Books and records~~] to ensure that check cashers do not violate the law against multiple transactions in excessive amounts by a customer.

RELATES TO: KRS 286.9-010(6), 286.9-075, 286.9-100(1), (7), (9), (10), (18), (19), 286.9-140[~~286.9-110(1)(b), (2)~~]

STATUTORY AUTHORITY: KRS 286.9-010(6)(e), 286.9-090(1), 286.9-140(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.9-100(9)[~~(10)~~] prohibits licensees[~~a licensee~~] from having more than two (2)[~~one (1)~~] deferred deposit transactions[~~transaction~~] from a

customer at a time[~~, with a face value greater than $500~~]. Further, the total proceeds received by a customer from all deferred deposit transactions from all licensees shall not exceed $500 at any one (1) time. KRS 286.9-140 directs the commissioner to implement a common database with real-time access to verify whether any deferred deposit transactions are outstanding for a particular person and, in addition to the general grant of authority in KRS 286.9-090(1), authorizes the commissioner[~~office~~] to promulgate an administrative regulation to enforce KRS 286.9-140[~~286.9-010 to 286.9-120~~]. This administrative regulation establishes requirements for a licensee to ensure that the database established pursuant to KRS 286.9-140 is used by licensees in accordance with KRS Chapter 286.9[~~establish a method to detect and prevent instances where customers enter into an unlawful number of transactions in an excessive total amount permitted by KRS 286.9-100(10) by doing business at several branches of the licensee~~].

Section 1. Definitions. The following shall be additional definitions of "closed" or "close" under KRS 286.9-010(6)(e):

(1) The customer's payment instrument was unpaid and the licensee has sold the underlying debt to a non-affiliated third party without recourse;

(2) The underlying debt represented by the customer's payment instrument has been discharged in bankruptcy;

(3) The database provider has designated the deferred deposit transaction concerning the customer's payment instrument as closed pursuant to KRS 286.9-140(7); or

(4) The licensee has reported to the database provider that the deferred deposit transaction concerning the customer's payment instrument is closed following being held open pursuant to KRS 286.9-140(7).

Section 2. Deferred Deposit Database Requirements. (1) A licensee shall institute procedures and maintain an accounting system that is designed to:

(a) Prevent the licensee from entering into[~~multiple~~] transactions with a customer in violation of KRS 286.9-100(9)[~~(10)~~], including procedures for:

1. Maintaining a record of all current transactions with the licensee; and

2. Checking the record of current transactions with the database prior to issuance of a new transaction; and

(b) Generate reports that will readily permit examination and verification of compliance with KRS 286.9-100(9), KRS 286.9-140, and this section[~~(10)~~] by department examiners.

(2) In addition to the data listed in KRS 286.9-140(1), licensees shall submit the following data to the database for each deferred deposit transaction:

(a) The customer's date of birth;

(b) The check number of the payment instrument;

(c) The database verification fee charged to the customer, if any;

(d) The service fee charged to the customer; and

(e) The date the payment instrument was deposited or otherwise presented for payment.

(3) A licensee shall not cause a closed deferred deposit transaction to be reopened in the database unless all of the following conditions are satisfied:

(a) The deferred deposit transaction was closed by reason of clerical error by the licensee;

(b) The licensee causes the deferred deposit transaction to be reopened on or before the close of business on the business day after the transaction was closed; and

(c) Reopening the transaction would not cause the consumer to exceed the transaction limits set forth in KRS 286.9-100(9).

(4) A licensee shall not accept, collect, or seek payment on a deferred deposit transaction that is designated as closed in the database.

(5) A licensee that has reported to the database provider that a deferred deposit transaction is open beyond the maturity date pursuant to KRS 286.9-140(7) shall immediately notify the database provider when the transaction becomes closed.

(6)(a) Except as provided in paragraph (b) of this subsection, each licensee shall achieve compliance with this administrative regulation within sixty (60) days of the effective date of this administrative regulation.

(b) After the sixty (60) day period established in paragraph (a) of this subsection, a new licensee or an existing licensee applying for an additional location, shall demonstrate the ability to immediately comply with this administrative regulation at the time of application.

CHARLES A. VICE, Commissioner
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: May 15, 2015

FILED WITH LRC: May 15, 2015 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 30, 2015, at 9:00 a.m., Eastern Time, 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 June 30, 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 to ensure that the verification database established pursuant to KRS 286.9-140 is used by licensees in accordance with KRS Chapter 286.9 and provides additional definitions for closing deferred deposit transactions.

(b) The necessity of this administrative regulation: The administrative regulation clarifies and directs how the database is to be utilized by the licensees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.9-010(6)(e) authorizes the commissioner to provide additional definitions; KRS 286.9-090(1) and 286.9-140(1) respectively authorize the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.9, generally, and KRS 286.9-140, specifically.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Provides clarity and interpretation to terms and devices utilized in KRS Chapter 286.9 that are not otherwise defined.

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

(a) How the amendment will change this existing administrative regulation: It will add definitions for terms utilized in KRS Chapter 286.9 and will update the regulatory scheme to conform with enacted legislation. Concurrent to the adoption of this administrative regulation, the department will revoke a prior administrative order that covered many of the issues addressed.

(b) The necessity of the amendment to this administrative regulation: It will provide additional definitions for terms utilized in the statute and update the administrative regulation to conform to enacted legislation.

(c) How the amendment conforms to the content of the authorizing statute: The amendment specifies how the licensees

are to utilize the verification database.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify how the database is to be utilized to ensure that customers are not allowed to have outstanding transactions in excess of the statutory limits.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Deferred deposit licensees (approximately eighty-five (85) companies representing 464 licensed locations as of April 2015) and customers (approximately 209,178 individual customers during 2014).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: the amendment will clarify the definition of a closed transaction and how transaction information is to be entered into the database for use by licensees.

(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 be required by the entities; however, certain licensees which have developed proprietary software to communicate directly with the verification database rather than to utilize the web-based portal may choose to incur additional expense to update their software.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will result in increased regulatory certainty for both licensees and customers.

(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 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 286.9-010(6)(e), 286.9-090(1), and 286.9-140(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. This administrative regulatory amendment is expected to have some impact on the department's annual revenues in that the volume of fines assessed against licensees for violations of the two (2) check and $500 proceeds limits in KRS 286.9-100(9) (i.e. over-limit violations) will likely decrease due to the inability of licensees to reopen previously closed transactions once this amendment is effective. Historically, the industry practice of reopening closed transactions without respect to the customer's other open transactions in the database has resulted in a large majority of the over-limit violations identified by the department.

(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. The department estimates that this amendment will result in a fine revenue decrease of approximately $200,000 annually. For example, in 2014 the department entered 129 agreed orders related to over-limit violations representing $289,500 in fines payable to the department by deferred deposit licensees.

(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 (+/-): A fine revenue decrease of approximately $200,000 annually is expected.

Expenditures (+/-): $0

Other Explanation: None.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Non-Depository Institutions
(Amendment)

808 KAR 12:020. Claims of exemption.

RELATES TO: KRS 286.8-020

STATUTORY AUTHORITY: KRS 286.8-140(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-020(3) requires a person relying upon an exemption established in KRS 286.8-020(1)(h) or (2)(a)-(2)(b)[~~286.8-020(2)(c) or (d)~~] to file with the commissioner[~~executive director~~] a written application for a claim of exemption. This administrative regulation establishes the procedure for filing a written application[~~claim of exemption~~] pursuant to KRS 286.8-020(3).

Section 1. A person filing a claim of exemption under KRS 286.8-020(3) shall:

(1) Submit a completed application for a claim of exemption as follows:

(a) If relying on an exemption as a non-profit organization that has affordable housing as a primary purpose of its operations under KRS 286.8-020(1)(h), the person shall file Form ML-9, Application for a Mortgage Loan Company or Mortgage Loan Broker Exemption (Non-Profit Exemption); and

(b) If relying on an exemption as a mortgage loan company or mortgage loan broker approved and regulated by the United States Department of Housing and Urban Development under KRS 286.8-020(2)(a)-(b), the person shall file Form ML-10, Application for a Mortgage Loan Company or Mortgage Loan Broker Exemption (HUD Exemption); and[~~application for a mortgage loan company and/or mortgage loan broker exemption form;~~]

(2) Enclose with the application documentation that supports the applicant's claim of exemption, as set forth in the applicable application form[~~; and~~

~~(3) Enclose a fee in the amount of $150~~].

Section 2. Within ten (10) days of the change, a person who submits an application under Section 1 of this administrative regulation shall notify the commissioner[~~executive director~~]:

(1) Of a change of address of the applicant; or

(2) That the applicant has ceased to do business in Kentucky.

Section 3. Incorporation by Reference. (1) The following

material is incorporated by reference:

(a) Form ML-9, "Application for a Mortgage Loan Company or Mortgage Loan Broker Exemption (Non-Profit Exemption)", 03/2015; and

(b) Form ML-10, "Application for a Mortgage Loan Company or[~~and/or~~] Mortgage Loan Broker Exemption (HUD Exemption)", 03/2015[~~, 1998 edition", is incorporated by reference~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department[~~Office~~] of Financial Institutions, 1025 Capital Center Drive, Suite 200[~~477 Versailles Road~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5:00[~~4:30~~] p.m. This material may also be obtained from the department's Web site at http://www.kfi.ky.gov.

CHARLES A. VICE, Commissioner
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY; April 28, 2015

FILED WITH LRC: May 12, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 30, 2015, at 2:00 pm., 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 June 30, 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 procedure for nonprofit organizations, mortgage loan companies, mortgage loan brokers, and their branches to file an application for a claim of exemption from the licensing requirements in KRS Chapter 286.8. Organizations and individuals who qualify for a licensing exemption pursuant to KRS 286.8-020(1)(h) or (2)(a)-(b), because they are non-profits focused on providing affordable housing, or are regulated by the United States Department of Housing and Urban Development, must file a written claim of exemption pursuant to KRS 286.8-020(3).

(b) The necessity of this administrative regulation: This regulation establishes the process, including the application forms, required by KRS 286.8-020(3).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.8-020(1) and (2) provide for exemptions from the licensing requirements for mortgage loan companies and brokers set forth in KRS Chapter 286.8. KRS 286.8-020(3) requires individuals or companies relying on the specific exemptions in KRS 286.8-020(1)(h) or (2)(a)-(b) to apply to the commissioner for approval of the exemption.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation specifies the procedure and applicable form required to apply for a mortgage licensing exemption pursuant to KRS 286.8-020.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the existing regulation to reflect the statutory references to "commissioner" rather than "executive director" in KRS Chapter 286.8, promulgates the application form required for each type of exemption, removes the $150 application fee, and corrects the Department's address and hours of operation in Section 3.

(b) The necessity of the amendment to this regulation: This amendment will adopt the Department's current application for exemption, and correct the outdated references as noted. The current version of the regulation and application form do not address the non-profit exemption available pursuant to KRS 286.8-020(1)(h). This amendment is necessary to account for both types of exemptions (i.e. non-profit and HUD-approved), and provide appropriate application forms for each.

(c) How the amendment conforms to the content of the authorizing statute: The amendment promulgates the current application forms required for the commissioner to evaluate claims of exemption as set forth in KRS 286.8-020(3).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide the updated application form, and contact information for the Department.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently thirty-seven (37) entities that are exempt from licensing under KRS 286.8-020(1)(h) and 2(a)-(b). Of these, thirty-one (31) are non-profit organizations that have affordable housing as a primary purpose of operations, and six (6) are companies or brokers approved and regulated by the United States Department of Housing and Urban Development.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This amendment will promulgate the current application for exemption. There are no changes for the regulated entities beyond using the updated application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will result in a $150 savings annually for each entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will result in increased efficiency in the Department's processing of applications for exemption, and a cost savings of $150 annually.

(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 and registrations currently 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. This amendment removes a current fee.

(9) TIERING: Is tiering applied? No tiering was applied as all entities relying on an exemption in KRS 286.8-020(1)(h) or (2)(a)-(b), regardless of their status a non-profit or HUD-regulated, must apply for approval from the commissioner pursuant to KRS 286.8-020(3).

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 286.8-020(3) and 286.8-140(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. This administrative regulatory amendment will result in a decreased revenue for the Department of approximately $5,550 annually due to the removal of the application fee.

(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 as it removes the existing application fee.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulatory amendment will not generate revenue in subsequent years as it removes the existing application fee.

(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 (+/-): The updated form included in this amendment will result in a decrease in revenues for the Department of approximately $5,550 annually.

Expenditures (+/-): The updated form included in this amendment will have no impact on expenditures.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Non-Depository Institutions
(Amendment)

808 KAR 12:021. Licensing and registration.

RELATES TO: KRS 286.8-010, 286.8-020, 286.8-030(1), 286.8-032, 286.8-034, 286.8-060, 286.8-080, 286.8-090(1), 286.8-100, 286.8-140(4), 286.8-255, 286.8-260, 286.8-285, 286.295

STATUTORY AUTHORITY: KRS 286.8-140(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. This administrative regulation establishes procedures for licensure, registration, and electronic submission of filings and fees with the Nationwide Mortgage Licensing System.

Section 1. Licensure as a Mortgage Loan Company or Mortgage Loan Broker. (1) A person applying for licensure as a mortgage loan company or mortgage loan broker shall submit the following:

(a) A completed Form MU1, NMLS Company[~~Uniform Mortgage Lender/Mortgage Broker~~] Form;

(b) A completed Form MU2, NMLS Individual[~~Uniform Mortgage Biographical Statement & Consent~~] Form for each control person designated on the direct owners and executive officers section of the Form MU1;

(c) A reviewed or audited financial statement prepared by a Certified Public Accountant in accordance with Generally Accepted Accounting Principles dated the previous year end to the date of submission of the Form MU1. A financial statement shall include a balance sheet, income statement, statement of cash flows, and all relevant notes. If applicant is a start-up company, an initial Statement of Condition and a pro-forma income statement shall be submitted in lieu of the financial statement;

(d) An original bond furnished by a surety company authorized to conduct business in Kentucky. The name of the principal insured on the bond shall match exactly the full legal name of applicant. The bond shall be submitted on the following form in an amount not less than the amount required by KRS 286.8-060(1):

1. For a mortgage loan company, Form ML-1, Surety Bond for Mortgage Loan Company [~~Form~~]; or

2. For a mortgage loan broker, Form ML-2, Surety Bond for Mortgage Loan Broker [~~Form~~];

(e) A certified copy of the following:

1. If a corporation, the Corporate Charter or Articles of Incorporation and Bylaws;

2. If a limited liability company, the Articles of Organization and Operating Agreement; or

3. If a partnership of any form, the Partnership Agreement;

(f) A Certificate of Authority or a Certificate of Good Standing issued by the Kentucky Secretary of State dated not more than sixty (60) days prior to the submission of the Form MU-1;

(g) If applicant will be operating in Kentucky under a name other than its legal name, a file-stamped copy of the Certificate of Assumed Business Name issued by the Kentucky Secretary of State;

(h) If required to do so by KRS 286.8-032(6), documentation that a managing principal designated by applicant has successfully completed the educational training set forth in KRS 286.8-032(6);

(i)[~~A completed State License Confirmation Form for each state where applicant is licensed or otherwise authorized to conduct business as a mortgage loan company or mortgage loan broker or has been licensed or otherwise authorized to conduct business as a mortgage loan company or mortgage loan broker in the last five (5) years;~~

~~(j)~~] If the principal office will be located in a residence, a completed Form ML-6, Disclosure of Location at a Residence[~~Form~~]; and

(j)[~~(k)~~] The fees set forth in KRS 286.8-034(1).

(2) A person applying for renewal of a mortgage loan company or mortgage loan broker license pursuant to KRS 286.8-034(3) and prior to December 1 shall complete the following:

(a) The required attestation that all information is correct as available online at http://mortgage.nationwidelicensingsystem.org;

(b) A completed Form ML-5, Annual Report of Activity[~~Form, updated 07/2010~~]; and

(c) The fee set forth in KRS 286.8-034(3).

(3) A person applying for renewal of a mortgage loan company or mortgage loan broker license through reinstatement pursuant to KRS 286.8-034(4) shall complete the following:

(a) The required attestation that all information is correct as available online at http://mortgage.nationwidelicensingsystem.org;

(b) A completed Form ML-5, Annual Report of Activity[~~Form, updated 08/2010~~]; and

(c) The fees set forth in KRS 286.8-034(3) and 286.8-034(4).

Section 2. Registration of a Branch. (1) No branch shall be approved unless it is controlled, managed, and supervised by the applicant's principal office.

(2) A person applying for registration of a branch shall submit the following:

(a) A completed Form MU3, NMLS Branch[~~Uniform Mortgage Branch Office~~] Form;

(b) A copy of the lease or deed for the branch;

(c) A completed Form ML-7, Branch Authorization Form[~~, updated 08/2010~~];

(d) If the branch will be located in a residence, a Form ML-6, Disclosure of Location at a Residence[~~Form, updated 08/2010~~]; and

(e) The fee set forth in KRS 286.8-034(1)(b).

(3) A person applying for renewal of a branch registration pursuant to KRS 286.8-034(3) and prior to December 1 shall submit the following:

(a) The required attestation that all information is correct as available online at http://mortgage.nationwidelicensingsystem.org;

(b) A completed Form ML-5, Annual Report of Activity[~~Form, updated 08/2010~~]; and

(c) The fee set forth in KRS 286.8-034(3).

(4) A person applying for renewal of a branch registration through reinstatement pursuant to KRS 286.8-034(4) shall submit the following:

(a) The required attestation that all information is correct as available online at http://mortgage.nationwidelicensingsystem.org;

(b) A completed Form ML-5, Annual Report of Activity[~~Form, updated 08/2010~~]; and

(c) The fees set forth in KRS 286.8-034(3) and (4).

Section 3. Registration of a mortgage loan originator or mortgage loan processor. (1) A person applying for registration as a mortgage loan originator or mortgage loan processor shall submit the following:

(a) A completed Form MU2, NMLS Individual[~~MU4 - Uniform Individual Mortgage License/Registration & Consent~~] Form;

(b) Submit to and bear the cost of a Federal Bureau of Investigations background records check as part of an application for registration as a mortgage loan originator or mortgage loan processor pursuant to KRS 286.8-255(2);

(c) Certification that applicant has successfully completed all education and testing required by KRS 286.8-255; and

(d) The fee set forth in KRS 286.8-255(2)(b).

(3) A person applying for renewal of a mortgage loan originator or mortgage loan processor registration pursuant to KRS 286.8-255(4) shall submit the following:

(a) A completed Form MU2, NMLS Individual[~~Uniform Individual Mortgage License/Registration Renewal~~] Form available online at http://mortgage.nationwidelicensingsystem.org;

(b) Submit to and bear the cost of a Federal Bureau of Investigations background records check as part of a renewal or reinstatement application for registration as a mortgage loan originator or mortgage loan processor pursuant to KRS 286.8-255(4) or 286.8-255(5) if the applicant's Federal Bureau of Investigations background records check currently on file with the Kentucky Department of Financial Institutions is more than three (3) years old;

(c) Certification that applicant has successfully completed all education and testing required by KRS 286.8-255 and 286.8-260; and

(d) The fee set forth in KRS 286.8-255(4).

(4) A person applying for renewal of a mortgage loan originator or mortgage loan processor registration through reinstatement pursuant to KRS 286.8-255(5) shall submit the following:

(a) The required attestation that all information is correct as available online at http://mortgage.nationwidelicensingsystem.org;

(b) Certification that applicant has successfully completed all education and testing required by KRS 286.8-255 and 286.8-260;

(c) Submit to and bear the cost of a Federal Bureau of Investigations background records check as part of a renewal or reinstatement application for registration as a mortgage loan originator or mortgage loan processor pursuant to KRS 286.8-255(4) or 286.8-255(5) if the applicant's Federal Bureau of Investigations background records check currently on file with the Kentucky Department of Financial Institutions is more than three (3) years old; and

(d) The fees set forth in KRS 286.8-255(4) and 286.8-255(5).

Section 4. In addition to the requirements set forth in this administrative regulation, an applicant applying for registration, renewal, or reinstatement as a mortgage loan originator shall provide proof that the mortgage loan originator holds or is covered by a bond furnished by a surety company authorized to conduct business in Kentucky. If the mortgage loan originator is procuring his or her own bond, the bond shall be submitted on the applicable Surety Bond for Individual Mortgage Loan Originators form and in an amount determined by annual loan origination as follows:

(1)[~~(a)~~] If the annual loan volume of the applicant is less than $10,000,000,[~~ten million dollars~~] the surety bond shall be in an amount not less than $15,000 and the applicant shall submit Form ML-3, Surety Bond for Mortgage Loan Originators with an Annual Loan Origination Volume of Less than $10,000,000; or

(2)[~~(b)~~] If the annual loan volume of the applicant is $10,000,000[~~$10 million dollars~~] or more, the surety bond shall be in an amount not less than $20,000 and the applicant shall submit Form ML-4, Surety Bond for Mortgage Loan Originators with an Annual Loan Origination Volume of $10,000,000 or Greater.

Section 5. Financial Responsibility. An applicant seeking registration or renewal under KRS 286.8-255 shall demonstrate the financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly, lawfully, and efficiently within the purposes of the subtitle. Every applicant shall authorize the commissioner to obtain a credit report containing a credit score to aide in making this determination. If the applicant possesses a threshold credit score of 600 or better, then the applicant shall have met this requirement. If the applicant possesses a credit score of less than 600, the commissioner may review the applicant's credit report for the following information to make this determination:

(a) Any outstanding judgments, excluding judgments arising solely from medical expenses for the applicant or an immediate family member;

(b) Any outstanding tax liens or other governmental liens;

(c) Any foreclosures occurring within five (5) years of the date of application or renewal;

(d) Any bankruptcies occurring within five (5) years of the date of application or renewal; and

(e) Any delinquent accounts occurring within five (5) years of the date of application or renewal.

Section 6. Electronic Submission of Filings and Fees through the Nationwide Mortgage Licensing System. (1) A person applying for licensure or registration pursuant to Sections 1, 2, 3, and 4 of this administrative regulation shall electronically submit the following with the State Regulatory Registry, LLC, at http://www.stateregulatoryregistry.org/NMLS, as part of the nationwide mortgage licensing system:

(a) All forms required by Sections 1, 2, 3, and 4 of this administrative regulation, as applicable;

(b) Fingerprints and any other information necessary to obtain the background records checks referenced in Section 3 of this administrative regulation; and

(c) All fees referenced in this administrative regulation.

(2) All forms, documentation, fees, or information that are not available for electronic submission directly through the Nationwide Mortgage Licensing System shall be submitted directly to the department.

(3) Any fees assessed by the State Regulatory Registry, LLC, to process the electronic submissions set forth in subsection (1) of this section shall be borne by the applicant.

Section 7. Abandoned applications. If any applicant fails to provide or respond to a request for additional information within ninety (90) days of submission to the department, the application shall be abandoned. Any applicant seeking licensing or registration after its application has been abandoned shall reapply and resubmit the required information.

Section 8. Inactive Status for Members of the Armed Forces. (1) A member of the Armed Forces who holds a license or registration in good standing under this administrative regulation may request that the commissioner place the license or registration in inactive status during the period of time that the member is mobilized or deployed, and for a period of six (6) months following termination of the mobilization or deployment.

(2) To request inactive status for a license or registration, a person shall complete Form ML-8, Request for Inactive Status Due to Military Service, and submit it along with proof of mobilization or deployment to the commissioner for approval.

(3) A person whose license or registration has been placed in

inactive status shall not engage in the activity requiring the license or registration under KRS Chapter 286.8.

(4) The fee set forth in KRS 286.8-255(4) shall not accrue against any person whose license or registration is in inactive status.

(5) A person may reactivate an inactive license or registration by submitting a written request to the commissioner and attaching proof of compliance with KRS 286.8-255(10) and 286.8-260, if applicable. Upon receipt of a written request and confirmation of compliance with KRS 286.8-255(10) and 286.8-260, the commissioner shall issue an approval for reactivation.

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

(a) Form MU1, "NMLS Company Form" Version 8.8, Drafted 3/19/2012[~~"Form MU1 Uniform Mortgage Lender/Mortgage Broker Form", 1/25/2010~~];

(b) Form MU2, "NMLS Individual Form" Version 8.8, Drafted 3/19/2012[~~"Form MU2 Uniform Mortgage Biographical Statement & Consent Form", 1/25/2010~~];

(c) Form MU3, "NMLS Branch Form" Version 8.8, Drafted 3/19/2012[~~"Form MU3 Uniform Branch Office Form", 1/02/2008~~];

(d) Form ML-1,[~~"Form MU4 Uniform Individual Mortgage License/Registration & Consent Form", 1/25/2010;~~

~~(e)~~] "Surety Bond for Mortgage Loan Company", updated 03/2015[~~08/2010~~];

(e) Form ML-2,[~~(f)~~] "Surety Bond for Mortgage Loan Broker", updated 03/2015 [~~08/2010~~];

(f) Form ML-3,[~~(g)~~] "Surety Bond for Mortgage Loan Originators with an Annual Loan Origination Volume of Less than $10,000,000", updated 03/2015[~~08/2010~~];

(g) Form ML-4, "Surety Bond for Mortgage Loan Originators with an Annual Loan Origination Volume of $10,000,000 or Greater", updated 03/2015;

(h) Form ML-5,[~~"State License Confirmation Form", updated 08/2010;~~

~~(i)~~] "Annual Report of Activity Form", updated 03/2015[~~08/2010~~];

(i) Form ML-6,[~~(j)~~] "Disclosure of Location at a Residence Form" updated 03/2015;

(j) Form ML-7,[~~08/2010"; and (k)~~] "Branch Authorization Form", updated 03/2015; and

(k) Form ML-8, "Request for Inactive Status Due to Military Service", updated 03/2015[~~08/2010~~].

(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.

CHARLES A. VICE, Commissioner
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: April 28, 2015

FILED WITH LRC: May 12, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 30, 2015, at 2:00 pm., 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 June 30, 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 to implement the licensing requirements for mortgage loan companies and brokers, and the registration requirements for mortgage loan originators and processors set forth in KRS Chapter 286.8. Additionally, this regulation provides for an optional inactive status for licensees and registrants on active duty with the armed forces.

(b) The necessity of this administrative regulation: This regulation provides the specific procedures necessary to obtain the licenses and registrations required by KRS 286.8-030 and 286.8-255.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the procedures for licensure, registration, and electronic submission of filings and fees with the Nationwide Mortgage Licensing System ("NMLS").

(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 a process for armed forces service members to place a license or registration issued pursuant to KRS Chapter 286.8 on inactive status during periods of military service. The intent is to provide these individuals with an administrative process to preserve their license or registration during times when armed forces obligations call them away from their regular jobs, without cost and without meeting the existing continuing education requirements while the license or registration is not in use. Additionally, this amendment makes several updates to the referenced forms and removes the requirement that licensees complete a state license confirmation form. The information previously gathered with this form is now available directly through NMLS.

(b) The necessity of the amendment to this regulation: The current regulation does not provide for an inactive license or registration status. Without this amendment, the Department has no way of providing licensing and registration flexibility to armed forces service members within the bounds of the existing regulatory framework. Additionally, many of the forms adopted in this regulation have been updated to reflect the current NMLS.

(c) How the amendment conforms to the content of the authorizing statute: This administrative regulation sets forth the procedures for licensure, registration, and electronic submission of filings and fees with the NMLS.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide a clear way to accommodate armed forces service members who are unable to comply with licensing and registration requirements for renewal during periods of military service, and will update the forms used by both the Department and the NMLS related to licensing and registration under KRS Chapter 286.8.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects mortgage loan originators, mortgage loan processors, mortgage loan companies, mortgage loan brokers, and any branch thereof who engage in the mortgage lending business in Kentucky. The Department currently has approximately 1,017 licensed mortgage companies, branches, and brokers, and approximately 5,308 registered mortgage loan originators and processors.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: This amendment does not place any new requirements on the regulated entities. The changes merely provide licensees and registrants with the option of requesting an "inactive" status in the event of mobilization or deployment in support of the armed forces.

(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 entail any cost to the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will provide additional flexibility in licensing and registration requirements for armed forces service members.

(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.

(6) 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.

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

(9) TIERING: Is tiering applied? Yes, tiering is currently applied to mortgage loan originators in that the amount required for the respective surety bond is based upon the total annual loan volume of the individual mortgage loan originator. This amendment makes no change to the current tiering of mortgage loan originators.

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 Chapter 286.8, specifically KRS 286.8-030(1), 286.8-032, 286.8-140(1), and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("SAFE Act") at 15 U.S.C. Section 5101, et seq.

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 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 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 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 (+/-): The procedural changes and updated forms included in this amendment will have no impact on revenues.

Expenditures (+/-): The procedural changes and updated forms included in this amendment will have no impact on expenditures.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Office of Occupations and Professions
Board of Home Inspectors
(Amendment)

815 KAR 6:010. Home inspector licensing requirements and maintenance of records.

RELATES TO: KRS 198B.700, 198B.706, 198B.712, 198B.714, 198B.716, 198B.722, 198B.724, 198B.738

STATUTORY AUTHORITY: KRS 198B.706, 198B.722

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.706(1) and (15) require the Kentucky Board of Home Inspectors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.700 to 198B.738 and to establish requirements for licensing and certification as well as prescribing forms and applications. KRS 198B.706(7) requires the board to promulgate administrative regulations to provide for the inspection of the records of a licensee. KRS 198B.706(11) requires the board to establish continuing education requirements. KRS 198B.722 requires the board to establish requirements for renewal of licenses and authorizes the board to establish an inactive license. This administrative regulation establishes the licensure and record requirements for home inspectors.

Section 1. Application Requirements. (1) An applicant for a home inspector license shall submit:

(a) A completed Application for Licensure as a Kentucky Home Inspector, Form KBHI 1;

(b) A two (2) inch by two (2) inch passport photograph affixed to the application form;

(c) A certificate of course completion and the applicant's national examination test score;

(d) A certificate of insurance;

(e) If applicable, other state or local licensure, certification, registration, or permit;

(f) A recent background check performed by the Kentucky State Police and a nationwide criminal background investigation check performed by the Federal Bureau of Investigation. <u>If an applicant submits an application for a nationwide criminal background investigation check performed by the Federal Bureau of Investigation (FBI) and the FBI cannot complete the background investigation check within thirty (30) days of the request, an applicant may submit an Optional Affidavit for Licensure and submit the performed nationwide criminal background investigation check within fourteen (14) days of its completion. If an applicant has a felony conviction during your lifetime, a misdemeanor conviction within the past five (5) years or a pending charge, the applicant shall not use the optional affidavit</u>; and

(g) A nonrefundable fee of $250.

(2) An applicant for a home inspector license shall:

(a) Complete and pass a board-approved, prelicensing training course administered by a provider who has been approved by the board in accordance with 815 KAR 6:040 and subsection (8) of this section; and

(b) Pass an examination conducted by a board-approved test provider.

(3) A request to sit for the examination shall be made directly to the test provider.

(4) The examination fee shall be set by the testing company and shall be paid directly to the test provider.

(5) A passing score on the examination shall be valid for a period of three (3) years.

(6) Failing the examination.

(a) An applicant who fails to pass the examination two (2) times shall wait at least fourteen (14) calendar days from the date of the second failed examination prior to retaking the examination.

(b) An applicant who fails to pass the examination three (3) or more times shall wait at least thirty (30) calendar days from the date of the third or subsequent failed examination prior to retaking the examination.

(c) An applicant who fails to pass the examination three (3) times shall not be eligible to retake the examination until the applicant has again completed and again passed the prelicensing training course required by subsection (2)(a) of this section before retaking the examination a fourth time, and also for each subsequent examination failure thereafter.

(7) Procedures and conduct.

(a) The applicant shall follow:

1. Procedures and appropriate conduct established by the board or testing service administering an examination if the procedures and conduct requirements are provided or made available to each applicant or orally announced before the start of the examination; and

2. Written instructions communicated prior to the examination date and instructions communicated at the testing site, either written or oral, on the date of the examination.

(b) Failure to comply with all procedures established by the board or the testing service with regard to conduct at the examination shall be grounds for denial of the application.

(8) Course requirements. To be approved by the board, a prelicensing training course shall require a minimum of:

(a) Sixty-four (64) credit hours of training in the subject areas listed in subparagraphs 1. through 9. of this paragraph for at least the number of hours specified:

1. Manufactured housing: three (3) hours;

2. Standards of practice, KRS Chapter 198B and 815 KAR Chapter 6, contracts, report writing, and communications: eleven (11) hours;

3. Exterior, roofing, insulation, and ventilation: six (6) hours;

4. Structure and interior: nine (9) hours;

5. Electrical and plumbing: nine (9) hours;

6. Heating and air conditioning: six (6) hours;

7. Field training: sixteen (16) hours, including not more than eight (8) hours in a laboratory;

8. General residential construction: three (3) hours; and

9. Environmental hazards, mitigation, water quality, and indoor air quality: one (1) hour;

(b) The completion of three (3) unpaid home inspections under the supervision of a Kentucky licensed home inspector with satisfactory written reports submitted to the course provider in addition to the sixteen (16) hours of field training required by paragraph (a)7 of this subsection; and

(c) An exit examination with a passing score.

(9) <u>An online prelicensing training course shall not be accepted by the board unless the applicant:</u>

<u>(a) Is enrolled in a prelicensing course on or before the effective date of this administrative regulation;</u>

<u>(b) Maintains continuous enrollment; and</u>

<u>(c) Completes the prelicensing course no later than six (6) months from the effective date of this administrative regulation.</u>

<u>(10)</u> Criminal background checks and other disciplinary proceedings.

(a) Each applicant shall submit a recent background check performed by the Kentucky State Police and a nationwide criminal background investigation check performed by the Federal Bureau of Investigation.

(b) If an applicant has resided in a state for less than five (5) years prior to application, the applicant shall also obtain and submit a state-wide criminal background check by a law enforcement agency capable of conducting a state-wide background check from the state where the applicant previously resided.

Section 2. Reciprocity. An applicant seeking a license through reciprocity in accordance with KRS 198B.714 shall:

(1) Submit a completed Application for Licensure as a Kentucky Home Inspector, Form KBHI 1, and attachments established in Section 1(1)(b) through (f) of this administrative regulation; and

(2) Pay a nonrefundable fee of $250.

Section 3. Nonresident Licensees. A nonresident licensee shall:

(1) Submit a completed Application for Licensure as a Kentucky Home Inspector, Form KBHI 1, and attachments established in Section 1(1)(b) through (f) of this administrative regulation;

(2) Pay the fee established in Section 1(1)(g) of this administrative regulation; and

(3) Comply with the provisions established in KRS 198B.716 and this administrative regulation.

Section 4. Renewal of Licenses. (1) To be eligible for renewal of license, an applicant shall hold a valid and current license issued by the board and shall:

(a) Satisfy the continuing education requirements of Section 5 of this administrative regulation;

(b) Pay a nonrefundable renewal fee of $250 per year for each year of licensure;

(c) Submit a fully-completed Application for Renewal Licensure as a Kentucky Home Inspector, Form KBHI 2 and attachments, including:

1. A certificate of completion for continuing education;

2. A certification of insurance information;

3. If applicable, other state or local licensure, certification, registration, or permit; and

4. A state-wide criminal background check; and

(d) Submit a copy of a completed inspection report that has been compiled within the previous twelve (12) months immediately preceding renewal.

(2)(a) The renewal application shall be postmarked by the last day of the month in which the licensee is to renew the license.

(b) If the renewal application is postmarked within sixty (60) days after the last day of the licensee's renewal month, the licensee shall pay a nonrefundable:

1. Renewal fee of $250 per year for each year of licensure; and

2. Late fee of $250.

(3) If a licensee has not submitted a renewal application within sixty (60) days of the last day of the licensee's renewal month, the license shall be cancelled and the licensee shall cease and desist from conducting home inspections.

(4)(a) If a licensee failed to submit a renewal application more than sixty (60) days from the last day of the licensee's renewal month and wants to be licensed, the licensee shall submit a License Reinstatement Application within 120 days of the last day of the licensee's renewal month. The licensee shall pay a nonrefundable:

1. Renewal fee of $250 per year for each year of licensure; and

2. Late fee of $500.

(b) If a licensee failed to submit a renewal application or a License Reinstatement Application within 120 days of the last day of the licensee's renewal month and wants to be licensed, the licensee shall submit a new application in accordance with existing requirements for initial applicants under KRS Chapter 198B and 815 KAR Chapter 6.

Section 5. Continuing Education. (1) The continuing education requirements of this section shall apply only to those licensees who will have been licensed at least twelve (12) months at license renewal.

(2) Each licensee who renews a license in an odd year shall have at least fourteen (14) hours of continuing education per license year. Each licensee who renews a license during an even year shall have at least twenty-eight (28) hours of continuing education during the license biennial period.

(3) Prior to renewal, the continuing education shall include a minimum of:

(a) Three (3) hours in manufactured housing;

(b) Three (3) hours in KRS Chapter 198B and 815 KAR Chapter 6;

(c) Three (3) hours in report writing[~~. The report writing course shall be completed face-to-face. An online report writing course shall not satisfy this continuing education requirement~~]; and

(d) Five (5) hours in technical courses, including identification and determination, as applicable within the standards of practice.

(4)(a) The continuing education courses identified in subsection (3)(a) through (c) of this section shall be completed face-to-face. An online continuing education course shall not satisfy the continuing education requirement for each respective category.

(b) The face-to-face requirement identified for the continuing education courses shall be effective beginning the next renewal period following the effective date of this administrative regulation.

(5) Continuing education shall be obtained from those providers approved by the board as provided in 815 KAR 6:080.

(6)[~~(5)~~] An approved prelicensing course shall satisfy the initial fourteen (14) hour continuing education requirement.

(7)[~~(6)~~] A maximum of three (3) hours per license year shall be awarded for teaching part of a home inspection credit course or home inspection continuing education course as applied to the appropriate content area established in subsection (3)(a) through (d) of this section.

(8)[~~(7)~~] A maximum of three (3) hours per license year shall be awarded for appointment to the board for a board member who is licensed and who has attended not less than eighty (80) percent of the board meetings each license year as applied to the content area established in subsection (3)(b) of this section.

(9)[~~(8)~~] A licensee shall not take the same continuing education course during a licensure period.

(10)[~~(9)~~]A licensee may complete the required continuing education hours within the sixty (60) day grace period from the last day of the licensee's renewal month.

Section 6. Inactive License. (1) Placement of a license in inactive status.

(a)1. To place a license in inactive status, a licensee shall submit a notarized statement indicating the desire to have the license placed in inactive status.

2. This notarized statement shall be mailed to the board and shall be accompanied by:

a. A check for ten (10) dollars made payable to the Kentucky State Treasurer;

b. The actual license card of the licensee; and

c. A current mailing address for the licensee.

(b) A licensee in inactive status shall not engage in home inspection activities within the Commonwealth of Kentucky.

(2) Renewal of license in inactive status.

(a) A licensee with an inactive license shall pay an annual inactive status fee equal to fifty (50) percent of the current renewal fee for an active license.

(b) Failure to pay this annual fee shall result in the expiration of the license on the last day of the licensee's birth month.

(3) Insurance coverage for licensees with inactive license. A licensee with an inactive status license shall not be required to maintain the insurance coverage required by KRS 198B.712(3)(d) during inactive status.

Section 7. Reactivation of Inactive License to Active Status. (1) A licensee who wishes to reactivate a license shall contact the board and submit a notarized statement requesting approval to return to active status.

(2) This request shall be accompanied by:

(a) The name of the licensee requesting activation;

(b) The license number of the licensee requesting reactivation;

(c) The birth date of the licensee requesting reactivation;

(d) A current mailing address for the licensee requesting reactivation;

(e) A check in the amount of ten (10) dollars made payable to the Kentucky State Treasurer;

(f) Proof of liability insurance naming the individual in the amount of $250,000 as required by KRS 198B.712(3)(d);

(g) A state-wide criminal background check administered by a law enforcement agency capable of conducting a state-wide background check; and

(h) Proof of continuing education as required by Section 8 of this administrative regulation.

(3) A license that has been inactive for a period of five (5) years from the date of board action shall be considered expired.

Section 8. Continuing Education Requirements for Licensees in Inactive Status Returning to Active Status. (1) Except as provided by subsection (2) of this section, a licensee with an inactive status who wishes to reactivate the license shall complete the continuing education requirements established in this subsection prior to application to return to active status. The licensee shall complete fourteen (14) hours per year that the license has been inactive, which shall include:

(a) Three (3) hours in manufactured housing;

(b) Three (3) hours of KRS Chapter 198B and 815 KAR Chapter 6; and

(c) Eight (8) hours, in any combination, of:

1. Electrical;

2. Plumbing;

3. Heating, ventilation, and air conditioning;

4. Roofing; or

5. Report writing.

(2) A board approved sixty-four (64) hour prelicensing training course may be used to satisfy the requirement established in subsection (1) of this section.

Section 9. Maintenance of Records. (1) Address.

(a) A license holder shall report a change of address to the board in writing within ten (10) days after the change.

(b) The board shall not be responsible for the license holder's failure to receive notices, communications, and correspondence caused by the license holder's failure to promptly notify the board of a change of address.

(2) Names.

(a) A license holder shall notify the board in writing of a name change within thirty (30) days of the change.

(b) The notification shall be accompanied by a copy of a marriage certificate, divorce decree, court order, or other documentation that verifies the name change.

(c) The board shall not be responsible for the license holder's failure to receive notices, communications, and correspondence caused by the license holder's failure to promptly notify the board of a name change.

(3) Inspection records.

(a) A licensed home inspector shall retain for at least three (3) years from the date of the inspection:

1. The written reports;

2. The contract; and

3. Supporting documentation, if applicable.

(b) Records may be retained in retrievable, electronic format.

(c) The licensee shall provide all records requested by the board within ten (10) days of receipt of the request.

Section 10. (1) The board may deny, refuse to renew, or reactivate a license to an applicant or licensee who:

(a) Has entered a guilty plea to, pleaded guilty to, or been convicted of a:

1. Felony; or

2. Misdemeanor; or

(b) Has had disciplinary action taken against a professional license, certificate, registration, or permit held by the applicant or licensee in any jurisdiction or state, including Kentucky.

(2) The board shall base its decision on the seriousness of the offense or disciplinary action, the length of time since the offense or disciplinary action, and the applicant's or licensee's showing of remorse, rehabilitation, and restitution by clear and convincing evidence.

Section 11. The board shall deny, refuse to renew, or reactivate a license to an applicant or licensee who fails to comply with a provision of KRS Chapter 198B or this administrative regulation.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure as a Kentucky Home Inspector", Form KBHI 1, 7/2014;

(b) "Application for Renewal Licensure as a Kentucky Home Inspector", Form KBHI 2, 7/2014;[~~and~~]

(c) "License Reinstatement Application", Form KBHI 6, 7/2014; and

(d) "Optional Affidavit for Licensure", Form KBHI 7, 6/2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

JAMES CHANDLER, Board Chair

APPROVED BY AGENCY: May 12, 2015

FILED WITH LRC: May 15, 2015 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 29, 2015, at 9:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. 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 the end of the day on June 30, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Lindsey Melton, Board Administrator, Kentucky Board of Home Inspectors, Division of Occupations and Professions, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8809, fax (502) 696-4961.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lindsey Melton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation governs the application and examination process.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements concerning examination.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.706(1) requires administrative regulations governing the examination of applicants for registration.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the requirements concerning examination.

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

(a) How the amendment will change the existing administrative regulation: This amendment will require prospective home inspectors to attend live pre-licensing courses and if can't obtain a FBI background check at time of application, provide an optional affidavit.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to address issues found involving report writing and pre-licensing inspection, and a three (3) to six (6) month delay in the processing of a request for a criminal background check by the FBI.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.706(1) requires administrative regulations governing of applicants for licensure.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statues by establishing the requirements concerning examination.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 375 licensed home inspectors, six (6) prelicensing providers, and five (5) continuing education providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to meet the requirements of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities: The board does not believe that the amendment should impact the present cost incurred by the regulated entities identified in question (3) to comply with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Prospective applicants will have better pre-licensure training.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None.

(b) On a continuing basis: None.

(6) The source of funding for the implementation and enforcement of this administrative regulation: The Kentucky Board of Home Inspectors is funded from fees paid by licensees and applicants as well as a quarterly stipend.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: KRS 198B.706(1) requires administrative regulations governing of applicants for licensure. The board has seen an increase in the number of applicants who could not draft a legible inspection report and failed to perform the required pre-licensure home inspections.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation establishes a new fee for filing a late renewal application.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation directly impacts the Kentucky Board of Home Inspectors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 198B.706(1)(a) and 198B.712(2)(c)

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

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

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues(+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Electrical Division
(Amendment)

815 KAR 35:015. Certification of electrical inspectors.

RELATES TO: KRS 198B.060, 198B.090, 211.350, 227.450, 227.480, 227.489, 227.491, 227.492

STATUTORY AUTHORITY: KRS 227.489

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.489 requires the commissioner of the Department[~~Executive Director of the Office~~] of Housing, Buildings and Construction to certify electrical inspectors based on standards of the National Electrical Code. This administrative regulation establishes the procedures for achieving and maintaining the certification.[~~This amendment is necessary to establish a minimum number of continuing education hours each inspector shall attend each year and clarify that the use of a temporary sticker is at the discretion of the inspector.~~]

Section 1. Definitions. (1) "Applicant" means the person seeking to be certified as an electrical inspector.

(2)[~~"Authority having jurisdiction" means the Office of Housing, Buildings and Construction.~~

~~(3)~~] "Certified electrical inspector" means a person who has:

(a) Met the requirements established in this administrative regulation; and

(b) Been issued[~~Received~~] a certificate by the department[~~of compliance~~].

(3)[~~(4)~~] "Code" means the National Electrical Code (NEC), which is incorporated by reference in 815 KAR 7:120 and 815 KAR 7:125[~~as part of the Kentucky Building Code~~].

(4) "Division" means the Electrical Division within the Department of Housing, Buildings and Construction.

(5) "Electrical" is defined by KRS 227.450(3).

(6) "Electrical industry" means the industry engaged in the generation, transmission, and distribution of electricity and the design, manufacture, construction, installation, alteration, or repair of electrical wiring, facilities, and apparatus for the utilization of electricity.

(7) "Commissioner"[~~"Employee" means a person who is employed on a full-time, part-time, or contractual basis.~~

~~(8) "Executive director~~]" means the commissioner of the Department[~~Executive Director of the Office~~] of Housing, Buildings and Construction.

(8) "Department"[~~(9) "Office"~~] means the Department[~~Office~~] of Housing, Buildings, and Construction.

(9)[~~(10)~~] "NCPCCI" means National Certification Program for Construction Code Inspectors, which administers examinations developed by national code enforcement organizations in collaboration with the Educational Testing Service for the purpose of providing nationally recognized evidence of competence in construction code enforcement.

[~~(11) "Temporary certification" means a certificate issued by the office under the provisions of Section 4 of this administrative regulation which is valid for a limited period of time.~~]

Section 2. Applicability. This administrative regulation shall apply to an electrical inspector in Kentucky and to an applicant for certification as an electrical inspector.

Section 3. Categories of Certified Electrical Inspectors. (1) A certified electrical inspector shall be classified as an:

(a) Electrical inspector one (1) and two (2) family; or

(b)[~~an~~] Electrical inspector general.

(2)[~~(1)~~] An electrical inspector one (1) and two (2) family shall be:

(a) [~~Be~~]A person who has passed the NCPCCI 2A examination; and

(b) [~~Be~~]Qualified to inspect[~~perform an electrical inspection~~] and approve an electrical installation related to a:

1. One (1) or two (2) family dwelling; or

2. Manufactured or mobile home.

(3)[~~(2)~~] An electrical inspector general shall be:

(a) [~~Be~~]A person who has passed the NCPCCI 2B[~~2A~~] examination; and

(b) [~~Be~~]Qualified to inspect and approve an electrical installation related to any type[~~all types~~] of residential, commercial, industrial, or other property that[~~which~~] requires electrical inspection.

Section 4. Application[~~Applications~~] Requirements for[~~Temporary~~] Certification. (1) An applicant for certification as an electrical inspector[~~Before an applicant may sit for the examination for temporary certification as an electrical inspector, the applicant~~] shall:

(a) 1. Have at least five (5) years of experience immediately preceding the application in the installation and design of all types of:

a. Residential wiring systems installed in accordance with the[~~National Electrical~~] code, if the applicant is applying for certification as an electrical inspector one (1) and two (2) family; or

b. Residential, commercial, and industrial wiring systems installed in accordance with the[~~National Electrical~~] code, if the applicant is applying for certification as an electrical inspector general; [~~or~~]

2. Be a registered professional electrical engineer engaged in that[~~his~~] profession for at least three (3) years immediately preceding the application; or

3. Be currently licensed as a master electrician and have been actively engaged in the electrical trade in that capacity immediately preceding the application;

(b) Possess:

1. The ability to read and write the English language; and

2. A general educational level at least adequate[~~satisfactory~~] to perform his or her duties;

(c) Submit a completed Form EL-11[~~SFM-EL-1~~], Application for Electrical Inspector Certification[~~Inspectors~~], which shall be:

1. Notarized; and

2. Received by the department[~~office~~] at least thirty (30) days prior to the next scheduled Electrical Advisory Committee meeting; and

(d) Submit with the application:

1. Proof of successful completion of the NCPCCI examination applicable to the certification sought, as established by Section 3(2)(a) and (3)(a) of this administrative regulation[~~A written statement of need for certification from the local official responsible for the electrical or building inspection program~~]; [~~and~~]

2. Except as established by subparagraph 4. of this paragraph, a fee of $100 dollars[~~in the form of a check or money order~~] payable to the Kentucky State Treasurer;

3. A recent passport-sized, color photograph of the applicant taken within the past six (6) months; and

4. The fee established by subparagraph 2. of this paragraph shall not apply to an electrical inspector employed by the department.

(2) If an otherwise qualified applicant is not able to demonstrate compliance with the experience requirements established in subsection (1)(a) of this section, the applicant may request to appear before the Electrical Advisory Committee to establish his or her background in and familiarity with electrical construction [~~familiarity~~]through other means. The department[~~Office of Housing, Buildings and Construction~~] with recommendations from the Electrical Advisory Committee shall:

(a) Review the documentation; and

(b) Approve the applicant if it is satisfied that the applicant's qualifications are substantially equivalent to the experience requirements established in subsection (1)(a) of this section[~~level~~

~~of exposure to construction practices is substantially equivalent~~].

(3) An applicant shall receive credit earned for an electrical course satisfactorily completed from an accredited vocational school or college on a year-for-year basis. Credit for education to replace an applicant's experience requirements shall be limited to a total of two (2) years.[~~(4) The Electrical Advisory Committee shall review an applicant for temporary certification to determine his eligibility to sit for the examination.~~

~~(5) Temporary certification shall expire at the end of nine (9) months from the time of initial certification and shall not be reissued.~~]

Section 5. [~~Examinations for Temporary Certification. (1) Following the review and acceptance of the applicant's qualifications by the Office of Housing, Buildings and Construction, the applicant shall pass the office's written examination for the class of temporary certification.~~

~~(2) An examination shall be:~~

~~(a) Administered within thirty (30) days after acceptance by the Office of Housing, Buildings and Construction at the office in Frankfort, Kentucky, unless another location is specifically designated; and~~

~~(b) Open book based on the National Electrical Code, which is incorporated by reference in 815 KAR 7:120 as part of the Kentucky Building Code.~~

~~(3) A grade of seventy-five (75) percent shall be considered passing. An applicant, otherwise qualified, who fails to make a passing score may reapply to be scheduled for the next examination date upon payment of an additional fee of fifty (50) dollars.~~

~~(4) An applicant shall not retake the examination more than three (3) times.~~

~~Section 6. Requirements for Full Certification as an Electrical Inspector: General and One (1) and Two (2) Family. (1) An applicant for full certification as an electrical inspector shall:~~

~~(a)1. Have at least five (5) years of experience immediately preceding the application in the installation and design of all types of residential, commercial and industrial wiring systems installed in accordance with the National Electrical Code;~~

~~2. Be a registered professional electrical engineer engaged in his profession for at least three (3) years;~~

~~(b) Possess:~~

~~1. The ability to read and write the English language; and~~

~~2. A general educational level satisfactory to perform his duties;~~

~~(c) Submit a completed Form SFM-EL-1, Application for Electrical Inspectors, which shall be:~~

~~1. Notarized; and~~

~~2. Received by the office at least thirty (30) days prior to the next scheduled Electrical Advisory Committee meeting; and~~

~~(d) Submit with the application:~~

~~1. A fee of $100 dollars in the form of a check or money order payable to the Kentucky State Treasurer; and~~

~~2. Proof of successful completion of the NCPCCI examination for:~~

~~a. Electrical inspector general; or~~

~~b. Electrical inspector one (1) and two (2) family.~~

~~(2) If an applicant is not able to demonstrate compliance with the experience requirements established in subsection (1)(a) of this section, the applicant may request to appear before the Electrical Advisory Committee to establish his background in electrical construction familiarity through other means. The Office of Housing, Buildings and Construction with recommendations from the Electrical Advisory Committee shall:~~

~~(a) Review the documentation; and~~

~~(b) Approve the applicant if it is satisfied that the level of exposure to construction practices is substantially equivalent.~~

~~(3) Following the review and approval of an applicant's qualifications and examination results by the electrical advisory committee, the office shall issue certification for the appropriate electrical inspector classification and the inspector shall be authorized to conduct inspections as specified in Section 3 of this administrative regulation.~~

~~(4) A fully-certified inspector shall, upon request, be placed on "inactive" status upon payment of fees and otherwise complying with this administrative regulation, including keeping current with continuing education hours. A person holding an inactive certificate shall not make an electrical inspection while his certificate is in inactive status.~~

~~Section 7.~~] Renewals of "General" and "One (1) and Two (2) Family" Certificates. (1) Certification shall:

(a) Be issued to an individual; and

(b) Not be issued to a corporation, partnership, company, or other entity.

(2) Each applicant seeking to renew his or her electrical inspector certification shall submit to the division:

(a) A completed Electrical Inspector Certification Renewal Application on Form EL-12;

(b) The renewal fee required by subsection (5) of this section;

(c) Proof of compliance with the continuing education requirements established in Section 6(1) of this administrative regulation;

(d) If the applicant is employed by a local government as an electrical inspector, documented proof of continued employment signed by the hiring authority responsible for administering the local jurisdiction's inspection and code enforcement program;

(e) For each local jurisdiction with which the applicant is contracted to act as an electrical inspector, a copy of the current contract naming the applicant and establishing the terms and conditions of his or her authority; and

(f) For each local jurisdiction with which the applicant is employed or contracted to act as an electrical inspector, a copy of the ordinance fixing the schedule of fees authorized to be charged for electrical inspections within that jurisdiction[~~the Renewal Application for Electrical Inspector Certification on Form SFM-EL-1A~~].

(3)(a) An applicant who has previously submitted a document required by subsection (2)(e) and (f) of this section in connection with a prior renewal shall not be required to resubmit that document with his or her application for renewal if it remains current and effective at the time of the current renewal.

(b) Within ten (10) days of the occurrence, a certified electrical inspector shall provide the division:

1. Notice of any establishment, change, or termination of the inspector's contract with a local jurisdiction;

2. A copy of any new or revised contract executed with a local jurisdiction;

3. Notice of the termination of employment by a local government as an electrical inspector;

4. Notice of new employment by a local government as an electrical inspector, signed by the hiring authority responsible for administering the local jurisdiction's inspection and code enforcement program; and

5. For any local jurisdiction with which the electrical inspector is employed or contracted, a copy of any ordinance amending the schedule of fees authorized to be charged for electrical inspections within that jurisdiction.

(4) Each electrical inspector certification[~~, except a temporary certificate,~~] shall expire on the last day of the inspector's birth month each year. The office shall mail each certified inspector, prior to the date of expiration, a renewal application form, and the certification shall be renewed subject to the provisions of this administrative regulation.

(5)[~~(4)~~] A renewal fee of fifty (50) dollars shall be paid by each certified electrical inspector on or before the last day of the inspector's birth month in each succeeding year to maintain certification.

(6)[~~(5)~~] Delinquent renewal fee. A certified electrical inspector who fails to submit the application and fee for renewal on or before the last day of his or her birth month shall pay a delinquent fee of fifty (50) dollars in addition to the renewal fee. If both fees are not paid and all required continuing education not completed within sixty (60)[~~180~~] days after the last day of the inspector's birth month, the certification shall be canceled and shall not be renewed.

(7)[(6)] Reinstatement. A certificate that has been revoked or canceled may be reinstated at the discretion of the commissioner upon petition demonstrating just cause why the petitioner could not have complied with the renewal requirements established by this section[to the executive director for good reason].

(8)[(7)] An applicant for reinstatement shall:

(a) Pay a reinstatement fee of $100;

(b) Comply with the requirements established by subsection (2) of this section;

(c)[and shall: (a)1.] Pay the delinquent renewal fee required by subsection (5) of this section[fees]; and

(d)1.[2.] Submit proof of continuing education required by Section 6(1) of this administrative regulation for each year the certificate was revoked or cancelled; or

2. Submit proof of having passed[(b) Pass] the NCPCCI examination applicable to the certification to be reinstated, as established by Section 3(2)(a) and (3)(a) of this administrative regulation, within the current year.

(9) The requirements of this section shall not apply to a state-employed electrical inspector.

Section 6[8]. Duties and Responsibilities of a Certified Electrical Inspector. (1) Each certified electrical inspector shall attend at least one (1) continuing education program of a minimum of twelve (12) hours each year. The program shall be approved by the department[Office of Housing, Buildings and Construction] with advice from the Electrical Advisory Committee in accordance with the requirements established by 815 KAR 35:100.

(2) Each electrical inspection shall be conducted in a manner to verify[made in] compliance with the code, the Uniform State Building Code incorporated by reference in 815 KAR 7:120 and 815 KAR 7:125, and the Kentucky Standards of Safety as adopted and incorporated by reference in 815 KAR 10:060[edition of the National Electrical Code, which is incorporated by reference in 815 KAR 7:120 as part of the Kentucky Building Code].

(3) In addition to the [National Electrical]code, the electrical inspector shall be familiar with the applicable building codes and[or] fire safety codes governing buildings in the area in which the inspector performs an inspection to determine the occupancy load of a facility.

(4) The electrical inspector shall make an inspection upon request of the electrical contractor.

(5) The electrical inspector shall comply with the requirements of 815 KAR 35:020.

(6)(a) A temporary construction service approval[approvals] shall receive a green sticker and a certificate of approval[compliance].

(b) For an installation subject to KRS 211.350, the electrical inspector shall not issue a certificate of approval[compliance] or otherwise release the property for the supply of electricity until he or she has received the local health department's "Initial Notice of Release" (Notice of Release for Temporary Electrical Service, Form PHPS-001) and has recorded its number upon the certificate of approval[compliance].

(7)[(6)] Except for manufactured homes, the electrical inspector shall make a rough-in and final inspection on a building's electrical system installation and other inspections necessary to approve the installation.

(a) Upon completion of the rough-in inspection, the inspector shall attach a red sticker with his or her signature and certification number on the main service equipment or at some other appropriate location.

(b) A "service only" approval may be issued by the inspector to provide temporary power for heating and lighting for the building during completion of construction and shall not authorize occupancy of the facility. The sticker issued for "service only" approval shall be yellow.

(c) Upon final approval of an electrical installation, the inspector shall:

1. Attach a green sticker to the main service equipment:

a. With his or her signature and certification number, name of the project, and location; and

b. Stating that the system has been inspected for compliance with the [National Electrical]code; and

2. Provide the owner or the owner's agent with a certificate of approval[compliance]. For an installation subject to KRS 211.350, the electrical inspector shall not issue a certificate of approval[compliance] or otherwise release the property for the supply of electricity until he or she has received the local health department's "Final Notice of Release" (Notice of Release for Permanent Electrical Service, Form PHPS-002) and has recorded its number upon the certificate of approval[compliance].

(8)[(7)] A red, yellow, or green sticker or a certificate of approval[compliance] to be used by the electrical inspector shall be of a type and format issued or approved by the department[office].

(9)[(8)] Each electrical inspector shall make and retain for a minimum of three (3) years a complete record of each inspection and make it[them] available to the department[office] upon request. The record shall contain, as a minimum[, the following information]:

(a) Sufficient information to identify the location of the structure inspected;

(b) The date of the inspection;

(c) The type of structure, whether residential, commercial, industrial, or other;

(d) The designation of a required permit and the agency granting the permit;

(e) The size and complexity of the structure; and

(f) Deficiencies in meeting code requirements and the action required to comply.

(10)[(9)] Violation of KRS 211.350(8)[(4)] by a certified electrical inspector shall constitute misconduct.

Section 7[9]. Complaints and Grievance Procedures. (1) A person may file a complaint against a certified electrical inspector if the person believes that an act or omission of the inspector in the performance of his or her duties is in violation of this administrative regulation or other law or has caused an undue hardship to the person.

(2) A complaint or allegation of misconduct shall be submitted in writing to the commissioner[executive director] and shall:

(a) Include the nature of the alleged misconduct, with specific details as to acts, names, dates, and witnesses; and

(b) Specify the action requested of the commissioner[executive director].

(3) Following an investigation, the commissioner[executive director] shall:

(a) Cause the matter to be heard and a recommendation rendered by the Electrical Advisory Committee;

(b) Set the matter for public hearing; or

(c) Take other appropriate action in accordance with KRS 227.495 to resolve or correct the matter.

Section 8[10]. Suspension and Revocation of Certification. The commissioner[executive director] shall revoke, suspend, or refuse to renew the certificate of an electrical inspector who is determined, by the commissioner[executive director] after having afforded the opportunity for a KRS Chapter 13B administrative hearing, to have:

(1) Engaged in an activity that[which] constitutes a conflict of interest, including:

(a) Work as an electrical contractor or electrician;

(b) Involvement in an activity in the electrical industry; or

(c) Having a pecuniary or associational interest in a business or other venture involved in an activity in the electrical industry;

(2) Engaged in fraud, deceit, or misrepresentation in obtaining certification;

(3) Been guilty of negligence, incompetence, or misconduct [as established by this administrative regulation] in the field of electrical inspection;

(4) Affixed or caused to be affixed a seal of approval or issued a certificate of approval for an electrical installation subject to [his]inspection if he or she has not personally inspected the installation and found it to be satisfactory in accordance with the code;

(5) Operated as an electrical inspector in a locality [where a court of competent jurisdiction has adjudged him to be]in conflict

with state or local laws, ordinances, or regulations;

(6) Knowingly overruled the proper findings of another electrical inspector or attempted to supplant, overrule, or otherwise invalidate the judgment of another electrical inspector without first obtaining express written consent from the designated inspector's office supervising the original inspector;[~~or~~]

(7) Failed to maintain accurate and adequate[~~Maintained inaccurate or inadequate~~] recordkeeping as required by Section 6[~~8~~] of this administrative regulation; or

(8) Violated any provision of KRS 227.491 or this administrative regulation.

Section 9[~~11~~]. Electrical Inspections by State-Employed[~~State Employed~~] Certified Electrical Inspectors. (1) State-owned property, including each building being constructed by the state under the authority of the Finance and Administration Cabinet, shall be inspected by a certified electrical inspector who is an employee of the state.

(2) A state-employed[~~state employed~~] certified electrical inspector shall inspect any electrical work subject to inspection within a local jurisdiction[~~, for a fee,~~] if a certified electrical inspector has not been made available by the local government.

(3) A state-employed[~~state employed~~] certified electrical inspector shall assert jurisdiction for the electrical inspection of a project subject to state plan review pursuant to[under the] Kentucky Building Code, 815 KAR 7:120.

(4) A state-employed[~~state employed~~] certified electrical inspector may inspect a state leased facility that is not otherwise subject to state inspection pursuant to this section, upon request.

Section 10[~~12~~]. Interpretations. If a provision of the [~~National Electrical~~]code is[~~can be~~] shown to be unreasonable or impractical as applied to a particular installation, and if deviation from strict compliance would not create a safety hazard because of a particular use or condition, an individual may request to appear before the Electrical Advisory Committee of the Department[~~Office~~] of Housing, Buildings and Construction to request a modification to[~~variance from~~] the code. Upon advice from the committee, the department[~~office~~] shall render its decision in the matter and the decision shall be appealable to the Board of Housing, Buildings and Construction in accordance with KRS 198B.070 and the Kentucky Building Code, 815 KAR 7:120, or Kentucky Residential Code, 815 KAR 7:125.

Section 11[~~13~~]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form EL-11[~~SFM-EL-1~~], "Application for Electrical Inspector Certification"[~~Inspectors~~], May 2015[~~, 2001"~~], Department[~~Office~~] for Housing, Buildings and Construction;

(b) Form EL-12[~~SFM-EL-1A~~], "Electrical Inspector Certification Renewal Application"[~~for Electrical Inspector Certification~~], May 2015[~~, 2001"~~], Department[~~Office~~] for Housing, Buildings and Construction;

(c) Form PHPS-001, "Notice of Release for Temporary Electrical Service", [~~(~~]May 1998 Edition[~~)~~], Department for Public Health; and

(d) Form PHPS-002, "Notice of Release for Permanent Electrical Service", [~~(~~]May 1998 Edition[~~)~~], Department for Public Health.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department[~~Office~~] of Housing, Buildings and Construction, Electrical Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412[~~5405~~], Monday through Friday, 8 a.m. to 4:30 p.m.

GARY A. FECK, Acting Commissioner
AMBROSE WILSON, IV, Secretary

APPROVED BY AGENCY: May 13, 2015

FILED WITH LRC: May 15, 2015 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 23, 2015, at 10:00 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 16, 2015, 2015 (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 June 30, 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: Michael T. Davis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365 ext. 144, fax 502-573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael T. Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for achieving and maintaining certification as an electrical inspector.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to implement KRS 198B.060 and 227.489.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 227.489 requires all electrical inspectors to be certified by the Department, and KRS 198B.060 requires all certified electrical inspectors to be employed by, or contracted for, or contracted with a local government having responsibility over buildings as set out in that statute as part of its building inspection program. This administrative regulation directly conforms to these provisions by establishing the requirements for certification and well as the requirements for demonstrating continued compliance with applicable statutes in order to maintain certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation directly implements the authorizing statutes and establishes the requirements and standards for certification of electrical inspectors.

(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 additional clarity of existing provisions through the correction or revision of non-substantive language that is out of date, confusing, or otherwise needed to ensure conformity with statutory language. In addition, this amendment revises existing references to the applicable certification examinations in order to conform to their correct names. This amendment also expands the current qualifications to become a certified inspector by recognizing extended experience as a master electrical contractor as an alternative to existing requirements. Next, this amendment omits redundant provisions related to temporary certifications, the requirements for which were substantially identical to those for regular certification and therefore unnecessary. Finally, this amendment clarifies additional documentation requirements already required for renewal of certification and necessary to verify compliance with other statutory requirements applicable to certified inspectors with respect to their authority to act within a local jurisdiction.

(b) The necessity of the amendment to this administrative regulation: To improve the administration of the Electrical Division's existing certification and renewal program by providing updated or clarifying language, providing better notice of the information needed for the renewal of a certification, and to provide a prospective applicant for certification to qualify for approval as an electrical inspector.

(c) How the amendment conforms to the content of the

authorizing statutes: The amendment directly conforms to the authorizing statutes by establishing the requirements for the certification of electrical inspectors and for the maintenance or renewal of that certification.

(d) How the amendment will assist in the effective administration of the statutes: this amendment is essential to ensuring the Department's ability to effectively administer its electrical certification and renewal program in accordance with applicable law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All certified electrical inspectors and prospective applicants to become a certified electrical inspector within the Commonwealth. Currently, there are 193 individuals certified as an electrical inspector, including six (6) state-employed inspectors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: No new actions are anticipated to be required as a result of this amendment, other than that the simplification of the renewal documentation requirements will result in less duplicative paperwork being filed with the Department upon renewal of certification. Otherwise, the requirements reflected in this amendment represent documentation already required by the Department and already provided in some form by affected individuals.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no increased costs anticipated as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Affected individuals will be able to enjoy expanded opportunities to become qualified for certification as an electrical inspector, as well as clearer guidelines to assist them in maintaining that certification.

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

(a) Initially: There are no anticipated additional costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs to administer these regulatory amendments on an ongoing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Any agency costs of implementation will be met with existing agency funds and the fee revenue already established by 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 amendment does not require any increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: See answer to question #7 above.

(9) TIERING: Is tiering applied? Yes, in part. Because this regulation applies to all certified electrical inspectors, it also applies to those individuals who are state-employed by the Department in that capacity. However, the Department separately monitors and retains confirmation of its own employees' compliance with ongoing requirements, and so it is not necessary for a state employee to also submit to the Department additional or duplicate proof of that compliance. In fact, the nature of the state inspector's employment renders most aspects of the renewal documentation requirements inapplicable or inappropriate. Finally, a state electrical inspector of the Department who otherwise continues to meet the requirements to maintain employment within his or her position description is not required to pay fees to the Department in order to maintain that employment. Accordingly, this amendment clarifies that the certification fee and renewal documentation requirements do not apply to a state-certified inspector already under the direct oversight and supervision of 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? The Department of Housing, Buildings and Construction, Electrical Division and, to an indirect extent, cities and counties implementing an electrical inspection program that employs or contracts with a certified electrical inspector.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 198B.060 and 227.489.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Not applicable to this amendment, which is not anticipated to result any change in revenues.

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

(c) How much will it cost to administer this program for the first year? This amendment is not anticipated to result in any change to the administrative costs of the Electrical Division's certified inspector program.

(d) How much will it cost to administer this program for subsequent years? This amendment is not anticipated to result in any change to the administrative costs of the Electrical Division's certified inspector program.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: Neutral.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Amendment)

900 KAR 5:020. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2.a.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2015-2017[~~2013- 2015~~] State Health Plan shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The "2015 - 2017[~~2013-2015~~] State Health Plan", May 2015[~~August 2013~~], is

incorporated by reference.

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

EMILY WHELAN PARENTO, Executive Director
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 13, 2015

FILED WITH LRC: May 14, 2015 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 22, 2015, at 9:00 a.m. in Auditorium A, 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 June 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 cancelled. 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 June 30, 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: Diona Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2015-2017 State Health Plan which shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of 216B.010-216B.130 by incorporating by reference the 2015-2017 State Health Plan, revised May 2015. The 2015-2017 State Health Plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.0440(2)(a)2.a. KRS 216B.015(28) requires that the State Health Plan be prepared triennially and updated annually.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

(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 incorporates by reference the 2015 - 2017 State Health Plan.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as KRS 216B.015(28) requires that the State Health Plan be prepared triennially and updated annually.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by incorporating by reference the 2015 -2017 State Health Plan.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide the 2015 -2017 State Health Plan.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 115 certificate of need applications are filed annually.

(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 which submit certificate of need applications will be subject to the criteria set forth in the 2015-2017 State Health Plan.

(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 to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities which submit certificate of need applications will be subject to the revised criteria set forth in the 2015-2017 State Health Plan.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not 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 amendment may impact any government owned, controlled or proposed health care facilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The authorizing statutes are KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No impact to revenues.

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

(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 (+/-): None
Expenditures (+/-): None
Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES
Kentucky Office of Health Benefit and Health Information Exchange
(Amendment)

900 KAR 10:010. Exchange Participation Requirements and Certification of Qualified Health Plans and Qualified Stand-Alone Dental Plans.

RELATES TO: KRS 194A.050(1), 42 U.S.C. 18022, 18031, 18042, 18054, 45 C.F.R. Parts 155, 156
STATUTORY AUTHORITY: KRS 194A.050(1)
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services,[~~Office of the~~] Kentucky Office of Health Benefit and Health Information Exchange, has responsibility to administer the state-based American Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures relating to the certification of a qualified health plan or a qualified stand-alone dental plan to be offered on the Kentucky Health Benefit Exchange, pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

Section 1. Definitions. (1) "Accreditation" means an accrediting entity recognized by HHS has reviewed the local performance of the health insurer's health insurance plans and assigned a level of accreditation.
(2) "Actuarial value" is defined by 45 C.F.R. 156.20[~~means the percentage of the total allowed costs of benefits paid by a health plan~~].
(3)[~~(2)~~] "Affordable Care Act" or "ACA" means the Patient Protection and Affordable Care Act, Public Law 111-148, enacted March 23, 2010, as amended by the Health Care and Education Reconciliation Act, Public Law 111-152, enacted March 30, 2010.
(4)[~~(3)~~] "Agent" is defined by KRS 304.9-020(1).
(5)[~~(4)~~] "Annual open enrollment period" is defined by 45 C.F.R. 155.410(e).
(6)[~~(5)~~] "Benefit year" means a calendar year for which a health plan provides coverage for health benefits.
(7)[~~(6)~~] "Catastrophic plan" means a health plan that is described in and meets the requirements of 45 C.F.R 156.155.
(8)[~~(7)~~] "Certificate of authority" is defined by KRS 304.1-110(1).
(9)[~~(8)~~] "Certification" means a determination by the Kentucky Office of Health Benefit and Health Information Exchange (KOHBHIE) that a health plan or a stand-alone dental plan has met the requirements established in Sections 2 through 21[~~19~~] of this administrative regulation.
(10)[~~(9)~~] "Child-only plan" means an individual health policy that meets the requirements of 45 C.F.R. 156.200(c)(2) and provides coverage:
(a) To an individual under twenty-one (21) years of age; or
(b) That does not restrict the age of the primary subscriber to an individual over age twenty-one (21)[~~and meets the requirements of 45 C.F.R 156.200(c)(2)~~].
(11)[~~(10)~~] "Consumer Operated and Oriented Plan" or "CO-OP" is defined by 45 C.F.R. 156.505[~~means a private, non-profit health insurance issuer established in Section 1322 of the Affordable Care Act, 42 U.S.C. 18042, that has a certificate of authority~~].
(12) "Cost-sharing reduction" or "CSR" means a reduction in cost sharing for an eligible individual enrolled in a silver level plan in an individual exchange or for an individual who is an Indian enrolled in a qualified health plan in an individual exchange.
(13)[~~(11)~~] "Dental insurer" means an insurer defined by KRS 304.17C-010(4), which offers a stand-alone dental[~~limited health service benefit~~] plan for dental services.
(14)[~~(12)~~] "Department of Health and Human Services" or "HHS" means the U.S. Department of Health and Human Services.
(15)[~~(13)~~] "Department of Insurance" or "DOI" is defined by KRS 304.1-050(2).
(16)[~~(14)~~] "Enrollee" means an eligible individual enrolled in a qualified health plan or qualified stand-alone dental plan.
(17)[~~(15)~~] "Essential community provider" means either a:
(a) Provider defined by 45 C.F.R. 156.235(c) that is determined and approved by HHS as an essential community provider for the Commonwealth of Kentucky; or
(b) Regional community services program for mental health or individuals with an intellectual disability established pursuant to KRS 210.370 through KRS 210.480, operating in Kentucky, and licensed pursuant to 902 KAR 20:091.
(18)[~~(16)~~] "Essential community provider category" means a provider as described in 45 C.F.R. 156.235(a)(2)(ii)(B)[~~Chapter 7: Instructions for the Essential Community Providers Application Section, as incorporated by reference in this administrative regulation~~].
(19)[~~(17)~~] "Essential health benefits" or "EHB" means the essential health benefits package referenced in 45 C.F.R. 156.20[~~benefits as identified by 42 U.S.C. 18022~~] and approved by the Secretary of HHS for the Commonwealth of Kentucky.
(20)[~~(18)~~] "Health plan" is defined by 42 U.S.C. 18021(b)(1).
(21)[~~(19)~~] "Health plan form" or "form" means an application, policy, certificate, contract, rider, endorsement, provider agreement, or risk sharing arrangement filed in accordance with 806 KAR 14:007.
(22)[~~(20)~~] "Indian" is defined by 25 U.S.C. 450b(d).
(23)[~~(21)~~] "Individual exchange" means the Kentucky Health Benefit Exchange that serves the individual health insurance market.
(24)[~~(22)~~] "Individual market" is defined by KRS 304.17A-005(26).
(25)[~~(23) "Initial open enrollment period" means the period beginning October 1, 2013, and extending through March 31, 2014, during which a qualified individual or qualified employee may enroll in health coverage through an exchange for the 2014 benefit year.~~
~~(24)~~] "Issuer" is defined by 45 C.F.R. 144.103.
(26)[~~(25)~~] "Kentucky Health Benefit Exchange" or "KHBE" means the Kentucky state-based exchange[~~conditionally~~] approved by HHS pursuant to 45 C.F.R. 155.105 to offer a QHP or SADP[~~beginning January 1, 2014~~], that includes an:
(a) Individual exchange; and
(b) SHOP[~~Small Business Health Options Program~~].
(27) "Kentucky Office of Health Benefit and Health Information Exchange", "KOHBHIE", or "office" means the office created to administer the Kentucky Health Benefit Exchange.
(28) "Market segment" means either small group or individual market.
(29)[~~(26)~~] "Metal level of coverage" means health care coverage provided within plus or minus two (2) percentage points of the full actuarial value as follows:
(a) Bronze level with an actuarial value of sixty (60) percent;
(b) Silver level with an actuarial value of seventy (70) percent;
(c) Gold level with an actuarial value of eighty (80) percent; and
(d) Platinum level with an actuarial value of ninety (90) percent.
(30)[~~(27)~~] "Multi-state plan" means a health plan that is offered under a contract with the U.S. Office of Personnel Management in accordance with Section 1334 of the Affordable Care Act, 42 U.S.C. 18054.
(31)[~~(28) "Office of the Kentucky Health Benefit Exchange" or "Office" means the office created to administer the Kentucky Health Benefit Exchange.~~
~~(29)~~] "Participating agent" means an agent who has been certified by the office to participate on the KHBE.

(32)[~~(30)~~] "Participation agreement" means an agreement between the office and the issuer to offer a QHP or qualified stand-alone dental plan on the KHBE.

(33)[~~(31)~~] "Pediatric dental essential health benefit" means a dental service to prevent disease and promote oral health, restore an oral structure to health and function, and treat an emergency condition provided to an individual under the age of twenty-one (21) years that meets the requirements of 45 C.F.R. 156.110(a)(10) and includes the benefits specified in 907 KAR 1:026.

(34)[~~(32)~~] "Plan management data template" means the data collection templates used to facilitate data submission through SERFF for certification of qualified health plan issuers,[~~and~~] qualified health plans, qualified stand-alone dental plan issuers, and qualified stand-alone dental plans as established in CMS Form Number CMS-10433, as amended.

(35)[~~(33)~~] "Plan year" means a consecutive twelve (12) month period during which a health plan provides coverage for health benefits.

(36)[~~(34)~~] "Premium" is defined by KRS 304.14-030.

(37)[~~(35)~~] "Provider network" is defined by KRS 304.17A-005(35).

(38)[~~(36) "Qualified dental plan" means a dental plan certified by the office that provides a limited scope of dental benefits as defined in 26 U.S.C. 9832(c)(2)(A), limited to a pediatric dental essential health benefit which complies with the requirements of 45 C.F.R. 156.110(a)(10).~~

~~(37)~~] "Qualified employee" means an individual employed by a qualified employer who has been offered health insurance coverage by the qualified employer through the SHOP.

(39)[~~(38)~~] "Qualified employer" means an employer that elects to make, at a minimum, all full-time employees of the employer eligible for one (1) or more QHPs in the small group market offered through the SHOP.

(40)[~~(39)~~] "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.

(41)[~~(40)~~] "Qualified individual" means an individual who has been determined eligible to enroll through the KHBE in a QHP or SADP in the individual market.

(42)[~~(41)~~] "Service area" means a geographical area in which an issuer may offer a QHP.

(43)[~~(42)~~] "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.

(44)[~~(43)~~] "Small group" is defined by KRS 304.17A-005(42) until superseded by 45 C.F.R. 155.20.

(45) "Spending account fact sheet" means a document that provides details about a health spending account, flexible spending account, or a health reimbursement account arrangement offered by the issuer as part of the benefits in a QHP.

(46)[~~(44)~~] "Stand-alone dental plan" or "SADP" means a dental plan as described by 45 C.F.R. 155.1065 that has been certified by the office to provide a limited scope of dental benefits as defined in 26 U.S.C. 9832(c)(2)(A), including a pediatric dental essential health benefit.

(47) "Statement of dental coverage" means a written statement for providing information to consumers about an SADP's coverage, benefits, and cost-sharing.

(48)[~~(45)~~] "Summary of Benefits and Coverage" or "SBC" means a standard format, created in accordance with 42 U.S.C. 300gg-15, for providing information to consumers about a health plan's coverage and benefits.

(49)[~~(46)~~] "System for Electronic Rate and Form Filing" or "SERFF" means an online system established and maintained by the National Association of Insurance Commissioners (NAIC) that enables an issuer to send and a state to receive, comment on, and approve or reject rate and form filings.

Section 2. QHP Issuer General Requirements. In order for an issuer to participate in the KHBE[~~beginning January 1, 2014~~], the issuer shall:

(1) Hold a certificate of authority and be in good standing with the Kentucky Department of Insurance;

(2) Be authorized by the office to participate on the KHBE;

(3) For the first year of participation in a new market segment, by April 1[~~of each year~~], submit Form KHBE-C1, Issuer Participation Intent Form, a nonbinding notice of intent to participate in the exchange during the next calendar year;

(4) Enter into a participation agreement with the office;

(5) Offer KHBE certified QHPs in the individual exchange or the SHOP exchange;

(6) Comply with benefit design standards as established in 45 C.F.R. 156.20;

(7) Provide coverage of the:

(a) Essential health benefits; or

(b) If the stand-alone pediatric dental essential health benefit is offered in the KHBE in each county within Kentucky in accordance with 45 C.F.R 155.1065, essential health benefits excluding pediatric dental essential health benefits;

(8)(a) Submit to the office[~~Implement and report on~~] a quality improvement strategy plan in compliance with 45 C.F.R. 156.200(b)(5) and 45 C.F.R. 156.1130[~~or strategies consistent with the standards of 42 U.S.C. 18031(g)~~];

(b) In the initial QHP certification process, submit an attestation to the office that the issuer shall comply with the quality requirements identified in 45 C.F.R. 156.200(b)(5) including:

1. Collection, disclosure, and report of information related to health care quality and outcomes in year two (2) of offering QHPs on the KHBE and annually thereafter; and

2. Implementation of an enrollee satisfaction survey in year two (2) of offering QHPs on the KHBE and annually thereafter;

(9) Comply with applicable standards described in 45 C.F.R. Part 153;

(10) For the individual exchange, offer at least a:

(a) QHP with a silver metal level of coverage;

(b) QHP with a gold metal level of coverage;

(c) Child-only plan; and

(d) Catastrophic plan;

(11) For the SHOP exchange, offer at least a:

(a) QHP with a silver metal level of coverage; and

(b) QHP with a gold metal level of coverage;

(12)[~~For the individual and SHOP exchange,~~] Offer no more than eight (8)[~~four (4)~~] QHPs within a specified metal level of coverage within a market segment. For the purposes of establishing the number of QHPs offered in a metal level, the office shall consider the same plan offered with dental benefits and offered without dental benefits as one (1) QHP;

(13) Not discriminate, with respect to a QHP, on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation;

(14) Assure that the non-discrimination requirements in 42 U.S.C. 300gg-5 are met;

(15) If participating in the small group market, comply with KHBE processes, procedures, and requirements established in accordance with 42 C.F.R. 155.705 for the small group market and in accordance with 900 KAR 10:020;

(16) Allow a registered participating agent to enroll qualified individuals, qualified employers, and qualified employees on KHBE in accordance with the requirements of 900 KAR 10:050[~~:~~

~~(a) Enroll individuals, employers, and employees in QHPs offered on the exchange;~~

~~(b) Enroll qualified individuals in a QHP in a manner that constitutes enrollment through the KHBE; and~~

~~(c) Assist individuals in applying for advance payments of premium tax credit and cost sharing reductions~~];

(17)(a) Offer a QHP in a statewide service area, except as allowed under paragraph (b) of this subsection; or

(b) Offer a QHP in a service area less than statewide if:

1. A QHP is available statewide;

2. The issuer's service area includes one (1) or more counties;

3. The issuer's service area is approved by the DOI; and

4. The issuer's service area is established in a nondiscriminatory manner without regard to:

a. Race;

b. Ethnicity;
c. Language;
d. Health status of an individual in a service area; or
e. A factor that excludes a high utilizing, high cost, or medically-underserved population;[~~and~~]
(18) Comply with the requirements of KRS Chapter 304; and
(19) Submit form KHBE-C2, Kentucky Health Benefit Exchange Attestations.

Section 3. QHP Rate and Benefit Information. (1) A QHP issuer shall:
(a) Comply with the provisions of 45 C.F.R. 156.210 and KRS 304.17A-095(4);
(b) Submit to DOI through the SERFF system:
1. Form filings in compliance with KRS 304.14-120 and applicable administrative regulations promulgated thereunder;
2. Rate filings in compliance with KRS 304.17A-095 and applicable administrative regulations promulgated thereunder; and
3. Plan management data templates;
(c) Receive approval from DOI for a rate filing prior to implementation of the approved rate; and
(d) For a rate increase, post the justification prominently on the QHP issuer's Web site.
(2) A CO-OP, multi-state plan, and qualified stand-alone dental plan shall comply with the requirements established in subsection (1) of this section.

Section 4. QHP Certification[~~and Recertification~~] Timeframes.
(1) The office shall take final action on the request for[~~:~~
~~(a)~~] certification no later than twenty-five (25) calendar days prior to the start of the annual open enrollment period[~~September 30~~] for the following plan year[~~; or~~
~~(b) Recertification of QHPs no later than September 15 for the following plan year~~].
(2) A QHP not certified by twenty-five (25) calendar days prior to the start of the annual open enrollment period[~~September 30 or recertified by September 15~~] shall not be offered on the exchange at any time during the following calendar year.

Section 5. Transparency in Coverage. (1) A QHP issuer shall provide the following information to the office in accordance with the standards established by subsection (2) of this section:
(a) Data as identified in 45 C.F.R. 155.1050(a) and 156.220[~~Claims payment policies and practices~~];
(b)[~~Periodic financial disclosures;~~
~~(c) Data on enrollment;~~
~~(d) Data on disenrollment;~~
~~(e) Data on the number of denied claims;~~
~~(f) Data on rating practices;~~
~~(g)~~] SBC written in English for each cost sharing reduction level in a QHP with the exception of zero cost sharing level for an Indian;
(c) SBC written in Spanish for each cost sharing reduction level in a QHP with the exception of zero cost sharing level for an Indian, with verification that the Spanish language version is a certified translation of the English version;
(d) If the plan includes a health reimbursement account, flexible spending account, or health savings account, a spending account fact sheet written in English for each cost sharing reduction level in a QHP consistent with the requirements in KRS 304.12-020 and 806 KAR 12:010;
(e) If the plan includes a health reimbursement account, flexible spending account, or health savings account, a spending account fact sheet written in Spanish for each cost sharing reduction level in a QHP with verification that the Spanish language version is a certified translation of the English version;
(f)[~~(h)~~] Information on cost-sharing and payments for out-of-network coverage; and
(g)[~~(i)~~] Information on enrollee rights under Title I of the Affordable Care Act.
(2) A QHP issuer shall:
(a) Submit, in an accurate and timely manner, to be determined by HHS, the information described in subsection (1)(a), (f), and (g) of this section to the KHBE, HHS, and DOI;[~~and~~]
(b) Provide public access to the information described in subsection (1) of this section;
(c) Provide the items described in subsection (1)(b) and (d) of this section to KHBE within five (5) calendar days of the date DOI has approved rate and form filings in SERFF; and
(d) Provide the items described in subsection (1)(c) and (e) of this section to KHBE within fourteen (14) calendar days of the date KHBE has approved the items described in paragraph (c) of this subsection.
(3) A QHP issuer shall ensure that the information submitted under subsection (1) of this section is provided in plain language as the term is defined by 45 C.F.R. 155.20.
(4)(a) A QHP issuer shall make available, in a timely manner, information about the amount of enrollee cost-sharing under the enrollee's plan or coverage relating to provision of a specific item or service by a participating provider upon the request of the enrollee.
(b) The information shall be made available to an enrollee through:
1. An Internet Web site; and
2. Other means if the enrollee does not have access to the Internet.
(5) A QHP issuer may provide the following information to KHBE in accordance with the standards established by subsection (2) of this section:
(a) SBC written in English for each zero cost sharing level for an Indian in a QHP; and
(b) SBC written in Spanish for each zero cost sharing level for an Indian in a QHP, with verification that the Spanish language version is a certified translation of the English version.

Section 6. Marketing and Benefit Design of QHPs. A QHP issuer and its officials, employees, agents, and representatives shall:
(1) Comply with issuer marketing practices provided under KRS Chapter 304.17A and 806 KAR 12:010; and
(2) Not employ marketing practices or benefit designs that will have the effect of discouraging the enrollment of individuals with complex health care needs in QHPs.

Section 7. Network Adequacy Standards. (1) A QHP issuer shall ensure that the provider network of a QHP:
(a) Is available to all enrollees within the QHP service area;
(b) Includes essential community providers in the QHP provider network in accordance with 45 C.F.R. 156.235 and meets the network adequacy standards for essential community providers as established in Section 8 of this administrative regulation;
(c) Maintains a network that is sufficient in number and types of providers, including providers that specialize in mental health and substance abuse services, to assure that all services will be provided in a timely manner;[~~and~~]
(d) Meets the reasonable network adequacy provisions of 45 C.F.R. 156.230 and KRS 304.17A-515; and
(e) If not a managed care plan, meets the reasonable network adequacy provisions of 45 C.F.R. 156.230 and KRS 304.17A-515.
(2) A QHP issuer shall make its provider directory for a QHP available:
(a) To the KHBE for online publication;
(b) To potential enrollees in hard copy upon request; and
(c) In accordance with KRS 304.17A-590.
(3) A QHP issuer shall identify in the QHP provider directory a provider that is not accepting new patients.

Section 8. Network Adequacy Standards for Essential Community Providers. A QHP issuer shall:
(1)(a) Demonstrate a provider network, which includes at least the minimum[~~twenty (20)~~] percent of available essential community providers in the QHP service area participate in the issuer's[~~issuers~~] provider network as required by 45 C.F.R. 156.235(a)(2)(i); and
(b) Offer a contract to:
1. At least one (1) essential community provider in each

essential community provider category in each county in the service area where an essential community provider in that category is available; and

2. Available Indian providers in the service area[~~, using the Model Indian Addendum as developed by The Centers for Medicare and Medicaid Services and identified in Supplementary Response: Inclusion of Essential Community Providers, incorporated by reference in this administrative regulation~~]; or

(2) If unable to comply with the requirements in subsection (1) of this section,[~~:~~

~~(a) Demonstrate a provider network which includes at least ten (10) percent of available essential community providers in the QHP service area; and~~

~~(b)~~] submit a supplementary response as identified in Supplementary Response: Inclusion of Essential Community Providers as incorporated by reference in this administrative regulation.

Section 9. Health Plan Applications and Notices. A QHP issuer shall provide an application, including the streamlined application designated by the office, and notices to enrollees pursuant to standards described in 45 C.F.R. 155.230.

Section 10. Consistency of Premium Rates Inside and Outside the KHBE for the Same QHP. A QHP issuer shall charge the same premium rate without regard to whether the plan is offered:

(1) Through the KHBE;

(2) By an issuer outside the KHBE; or

(3) Through a participating agent.

Section 11. Enrollment Periods for Qualified Individuals. (1) A QHP issuer participating in the individual market shall accept an enrollment during the open enrollment period or special enrollment period for a qualified individual participating in the individual market with effective dates of coverage established by the office in accordance with 45 C.F.R. 155.410(c)(1) and (f) and 45 C.F.R 155.420(b)[~~:~~

~~(a) Enroll a qualified individual during the initial and annual open enrollment periods described in 45 C.F.R 155.410(b) and (e) and comply with the effective dates of coverage established by the office in accordance with 45 C.F.R. 155.410(c)(1) and (f); and~~

~~(b) Make available, at a minimum, special enrollment periods described in 45 C.F.R. 155.420(d), for QHPs and comply with the effective dates of coverage established by the KHBE in accordance with 45 C.F.R 155.420(b)~~].

(2) A QHP issuer shall notify a qualified individual of the effective date of coverage.

(3) Premium invoices shall be generated to a qualified individual within five (5) business days from receipt of KHBE enrollment transactions.

(4) A QHP issuer shall allow a qualified individual a minimum of thirty (30) days from the date of the initial invoice to submit premium payment before coverage can be cancelled.

(5) A QHP issuer shall allow a qualified individual a minimum of thirty (30) days from the date of a corrected invoice to submit premium payment before coverage can be terminated.

(6) Notwithstanding the requirements of this section, coverage shall not be effective until premium payment is submitted by the individual.

(7) The issuer shall mail proof of coverage, including insurance identification cards, to enrollees within ten (10) calendar days of receipt of initial premium payment for ninety-nine (99) percent of enrollments.

Section 12. Enrollment Process for Qualified Individuals. (1) A QHP issuer shall process enrollment of an individual in accordance with this section.

(2) A QHP issuer participating in the individual market shall enroll a qualified individual if the KHBE:

(a) Notifies the QHP issuer that the individual is a qualified individual; and

(b) Transmits information to the QHP issuer in accordance with 45 C.F.R. 155.400(a).

(3) If an applicant initiates enrollment directly with the QHP issuer for enrollment in a plan offered through the KHBE, the QHP issuer shall either:

(a) Direct the individual to file an application with the KHBE in accordance with 45 C.F.R. 155.310; or

(b) Ensure the applicant received an eligibility determination for coverage through the KHBE through the KHBE Internet Web site.

(4) A QHP issuer shall accept enrollment information in accordance with the privacy and security requirements established by the office pursuant to 45 C.F.R. 155.260[~~and~~] in an electronic format that meets the requirements established by the office pursuant to[~~with~~] 45 C.F.R. 155.270.

(5) A QHP issuer shall follow the premium payment process established by the KHBE in accordance with 45 C.F.R. 155.240.

(6) A QHP issuer shall provide new enrollees with an enrollment information package that complies with the accessibility and readability requirements established by 45 C.F.R. 155.230(b).

(7) A QHP issuer shall reconcile enrollment files with the KHBE no less than once a month in accordance with 45 C.F.R. 155.400(d).

(8) A QHP issuer shall acknowledge receipt of enrollment information transmitted from the KHBE in accordance with KHBE requirements established by 45 C.F.R. 155.400(b)(2).

Section 13. Termination or Cancellation of Coverage for Qualified Individuals. (1) A QHP issuer may terminate coverage of an enrollee in accordance with 45 C.F.R. 155.430(b)(2).

(2) If an enrollee's coverage in a QHP is terminated by the issuer for any reason, the QHP issuer shall:

(a) Provide the enrollee with a notice of termination of coverage that includes the reason for termination at least thirty (30) days prior to the final day of coverage, in accordance with the effective date established pursuant to 45 C.F.R. 155.430(d);

(b) Notify the KHBE of the termination effective date and reason for termination; and

(c) Comply with the requirements of KRS 304.17A-240 to 304.17A-245.

(3) Termination of coverage of enrollees due to non-payment of premium in accordance with 45 C.F.R. 155.430(b)(2)(ii) shall:

(a) Include the grace period for enrollees receiving advance payments of the premium tax credits as described in 45 C.F.R. 156.270(d); and

(b) Be applied uniformly to enrollees in similar circumstances.

(4) Prior to termination of coverage, a QHP issuer shall provide a grace period of three (3) consecutive months if an enrollee receiving advance payments of the premium tax credit has previously paid at least one (1) full month's premium during the benefit year. During the grace period, the QHP issuer:

(a) 1. Shall pay claims for services provided to the enrollee in the first month of the grace period; and

2. May suspend payment of claims for services provided to the enrollee in the second and third months of the grace period;

(b) Shall notify the KHBE[~~HHS~~] of the non-payment of the premium due; and

(c) Shall notify providers of the possibility for denied claims for services provided to an enrollee in the second and third months of the grace period.

(5) For the three (3) months grace period described in subsection (4) of this section, a QHP issuer shall:

(a) Continue to collect advance payments of the premium tax credit on behalf of the enrollee from the U.S. Department of the Treasury; and

(b) Return advance payments of the premium tax credit paid on behalf of the enrollee for the second and third months of the grace period if the enrollee exhausts the grace period as described in subsection (7) of this section.

(6) If an enrollee is delinquent on premium payment, the QHP issuer shall provide the enrollee with a notice of the payment delinquency.

(7) If an enrollee receiving advance payments of the premium tax credit exhausts the three (3) month[~~months~~] grace period in subsection (4) of this section without paying the outstanding premiums, the QHP issuer shall terminate the enrollee's coverage

on the effective date of termination described in 45 C.F.R. 155.430(d)(4) if the QHP issuer meets the notice requirement specified in subsection (2) of this section.

(8) A QHP issuer shall maintain records in accordance with KHBE requirements established pursuant to 45 C.F.R. 155.430(c).

(9) A QHP issuer shall comply with the termination of coverage effective dates as described in 45 C.F.R. 155.430(d).

(10) A QHP issuer may cancel coverage of an enrollee in accordance with 45 C.F.R. 155.430(b)(2) and (e).

(11) If an enrollee's coverage in a QHP is cancelled by the issuer for any reason, the QHP issuer shall:

(a) Provide the enrollee with a notice of cancellation of coverage that includes the reason for cancellation within at least thirty (30) days of the action to cancel coverage, in accordance with the effective date established pursuant to 45 C.F.R. 155.430(d);

(b) Notify the KHBE of the cancellation effective date and reason for cancellation; and

(c) Comply with the requirements of KRS 304.17A-240 to 304.17A-245.

(12) Cancellation of coverage of enrollees due to non-payment of premium in accordance with 45 C.F.R. 155.430(b)(2)(ii) shall be applied uniformly to enrollees in similar circumstances.

(13) A QHP issuer shall comply with the cancellation of coverage effective dates as described in 45 C.F.R. 155.430(d).

(14) If coverage of an enrollee is terminated or cancelled by the KHBE for any reason, the QHP issuer shall provide the enrollee a notice of the termination or cancellation within fifteen (15) days of receipt of the transaction from the KHBE.

Section 14. Accreditation of QHP Issuers. (1) A QHP issuer shall:

(a) Be accredited on the basis of local performance of a QHP by an accrediting entity recognized by HHS in categories identified by 45 C.F.R. 156.275(a)(1); and

(b) Pursuant to 45 C.F.R. 156.275(a)(2) authorize the accrediting entity that accredits the QHP issuer to release to the KHBE and HHS:

1. A copy of the most recent accreditation survey; and

2. Accreditation survey-related information that HHS may require, including corrective action plans and summaries of findings.

(2)(a) A QHP issuer shall be accredited prior to the fourth year of QHP certification and in every subsequent year of certification thereafter in accordance with requirements and timeline identified under[~~by~~] 45 C.F.R. 155.1045.

(b) A QHP issuer[~~seeking certification of a QHP~~] that has not received accreditation[~~for the QHP~~] shall submit an attestation to the office that the issuer shall obtain[~~evidence to support that the issuer has a plan for obtaining~~] accreditation in accordance with[~~of the QHP within the timeline identified in~~] paragraph (a) of this subsection.

(3) The QHP issuer shall maintain accreditation so long as the QHP issuer offers QHPs.

Section 15.[~~Recertification, Non-renewal, and~~] Decertification of QHPs. (1)[~~A QHP shall be recertified in accordance with the requirements of this administrative regulation every two (2) years no later than September 15 for the following two (2) plan years.~~

~~(2) An issuer shall submit to the exchange a request for recertification of a QHP at least 120 days prior to an expiration of a certification.~~

~~(3) If a QHP issuer elects not to seek recertification with the office, the QHP issuer, at a minimum, shall:~~

~~(a) Notify the office of its decision prior to the beginning of the recertification process and follow the procedures adopted by the KHBE in accordance with 45 C.F.R. 155.1075;~~

~~(b) Provide benefits for enrollees through the final day of the plan or benefit year;~~

~~(c) Submit reports as required by the office for the final plan or benefit year of the certification;~~

~~(d) Provide notices to enrollees in accordance with Section 13 of this administrative regulation;~~

~~(e) Terminate coverage of enrollees in the QHP in accordance with 45 C.F.R. 156.270, as applicable; and~~

~~(f) Comply with requirements of KRS 304.17A-240 and 304.17A-245, as applicable.~~

~~(4)~~] If a QHP is decertified by the office pursuant to 45 C.F.R. 155.1080 or withdrawn by the issuer after certification, the QHP issuer shall terminate coverage of enrollees only after:

(a) The KHBE has provided notification as required by 45 C.F.R 155.1080(e);

(b) Enrollees have an opportunity to enroll in other coverage; and

(c) The QHP issuer has complied with the requirements of KRS 304.17A-240 and 304.17A-245, as applicable.

(2) If a QHP issuer fails to meet ongoing compliance requirements of Section 20 of this administrative regulation, the office may require the issuer to:

(a) Submit a corrective action plan to address deficiencies to ongoing compliance requirements within thirty (30) days of notification of the deficiency; and

(b) Submit evidence of compliance with the corrective action plan within the timeframes established in the office approved corrective plan.

(3) If the office finds that the QHP issuer failed to meet the requirements of subsection (2) of this section, the office may implement a prohibition against new enrollments on KHBE for the QHP issuer and market segment out of compliance or may decertify all plans offered by the QHP issuer within the market segment.

Section 16. General Requirements for a Stand-alone Dental Plan. (1) In order for a dental insurer to participate in the KHBE[~~beginning January 1, 2014~~] and offer a stand-alone dental plan, the dental insurer shall:

(a) Hold a certificate of authority that would permit the issuer to offer dental plans and be in good standing with the Kentucky Department of Insurance;

(b) Be authorized by the office to participate on the KHBE;

(c) For the first year of participation in a new market segment, by April 1[~~of each year~~], submit Form KHBE-C1, Issuer Participation Intent Form, a nonbinding notice of intent to participate in the exchange during the next calendar year;

(d) Enter into a participation agreement with the office;

(e) Offer a[~~pediatric~~] dental plan certified by the office in accordance with this administrative regulation in the individual exchange or SHOP exchange that shall:

1. Comply with the requirements of KRS Chapter 304 Subtitle17C;

2. Submit to DOI through the SERFF system:

a. Form filings in compliance with KRS Chapter 304;

b. Rate filings in compliance with KRS 304.17-380; and

c. Dental plan management data templates;

(f) Offer a stand-alone dental plan that shall:

1. Provide the[~~Be limited to a~~] pediatric dental essential health benefits[~~benefit~~] required by 42 U.S.C. 18022(b)(1)(J) for individuals up to twenty-one (21) years of age;

2. Pursuant to 45 C.F.R. 156.150, provide within a variation of plus or minus two (2) percentage points:

a. A low level of coverage with an actuarial value of seventy (70) percent; and

b. A high level of coverage with an actuarial value of eighty five (85) percent; and

3. Have an annual limitation on cost-sharing for a stand-alone dental plan covering the pediatric dental EHB under 45 C.F.R. 155.1065 at or below:

a. $350[~~$1,000~~] for a plan with one (1) child enrollee; or

b. $700[~~$2,000~~] for a plan with two (2) or more child enrollees;

(g) Comply with the:

1. Provider network adequacy requirements identified by KRS 304.17C-040 and maintain a network that is sufficient in number and types of dental providers to assure that all dental services will be accessible without unreasonable delay in accordance with 45 C.F.R. 156.230;

2. Requirements for stand-alone dental plans referenced in 45

C.F.R. 156 Subpart E; and

3. Essential community provider requirement in 45 C.F.R. 156.235;

(h) Not discriminate, with respect to a pediatric dental plan, on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation; and

(i) Make its provider directory for a QHP available:

1. To the KHBE for online publication;

2. To potential enrollees in hard copy upon request; and

3. In accordance with KRS 304.17A-590.

(2) A dental insurer offering a stand-alone dental plan participating in the KHBE shall provide the following information to the office[~~beginning January 1, 2014~~]:

(a) Statement of dental coverage written in English consistent with the requirements in KRS 304.12-020 and 806 KAR 12:010;

(b) Statement of dental coverage written in Spanish with verification that the Spanish language version is a certified translation of the English version;

(c) The item described in paragraph (a) of this subsection within five (5) calendar days of the date DOI has approved rate and form filings in SERFF; and

(d) The item described in paragraph (b) of this subsection within fourteen (14) calendar days of the date KHBE has approved the items described in paragraph (a) of this subsection[~~May offer a stand-alone dental plan which includes coverage for individuals regardless of age which includes at a minimum a pediatric dental essential health benefit required by 42 U.S.C. 18022(b)(1)(J) coverage for individuals up to twenty-one (21) years of age; and~~

~~(b) If electing to offer the plan specified in paragraph (a) of this subsection, shall comply with the requirements of subsection (1) of this section~~].

Section 17. Essential health benefits for individuals three (3) years of age and up to twenty-one (21) years of age. The KHBE shall ensure that an individual three (3) years of age and up to age twenty-one (21) years of age eligible to enroll in a QHP shall obtain coverage for pediatric dental coverage.

Section 18. Enforcement. The DOI shall be responsible for enforcing the requirements of KRS Chapter 304 and any administrative regulations promulgated thereunder against any issuer.

Section 19. Timeframes for Transactions. (1) QHP issuers shall generate a required acknowledgement and process all KHBE initiated transactions within forty-eight (48) hours of receipt of a complete electronic transaction from the KHBE for ninety-five (95) percent of enrollments.

(2) QHP issuers shall provide effectuation transactions to the KHBE within forty-eight (48) hours of receipt of the initial premium payment and issuer initiated cancellation and termination transactions within forty-eight (48) hours of the cancellation or termination of coverage for ninety-five (95) percent of cancellations and terminations.

Section 20. On-going Compliance. The office shall be responsible for enforcing the requirements referenced in 45 C.F.R. 155.1010(a)(2).

Section 21. Issuer Appeals. (1) An issuer may appeal the office's decision to:

(a) Deny certification of a QHP;

(b) Implement a prohibition against new enrollments by a QHP issuer in a market segment[~~Deny recertification of a QHP~~]; or

(c) Decertify a QHP.

(2) An issuer appeal identified in subsection (1) of this section shall be made to the office in accordance with KRS Chapter 13B.

Section 22.[~~20.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a)[~~"Chapter 7: Instructions for the Essential Community Providers Application Section", April 2013 version;~~

~~(b)~~] "Form KHBE-C1, Issuer Participation Intent Form", May, 2015;

(b) "Form KHBE-C2, Kentucky Health Benefit Exchange Attestations", May, 2015[~~revised October, 2013~~]; and

(c) "Supplementary Response: Inclusion of Essential Community Providers", May 2015[~~April 2013 version~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the[~~Office of the~~] Kentucky Office of Health Benefit and Health Information Exchange, 12 Mill Creek Park, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at www.healthbenefitexchange.ky.gov.

CARRIE BANAHAN, Executive Director
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 13, 2015

FILED WITH LRC: May 14, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 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 June 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 June 30, 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 address tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria for certification as a qualified health plan or a qualified dental plan to be offered on the Kentucky Health Benefit Exchange as required by 45 C.F.R. Parts 155 and 156.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform issuers of the requirements for certification of a health plan as a qualified health plan or certification of a dental plan as a qualified dental plan to be offered on the Kentucky Health Benefit Exchange.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary so that issuers are aware of the requirements for certification of a health plan as a qualified health plan or dental plan as a qualified dental plan to be offered on the Kentucky Health Benefit Exchange as required by 45 C.F.R. Parts 155 and 156.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed requirements for certification of a health plan as a qualified health plan or certification of a dental plan as a qualified dental plan to be offered on the Kentucky 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: The amendments to this administrative regulation clarify policy regarding submission of Summary of Benefits and Coverage, Spending Account Fact Sheets, Statement of Dental Coverage, and program attestations by issuers as well as

timeframes for processing electronic transactions to or from KHBE. Plans are certified for one (1) year and must complete the certification process no later than twenty-five (25) calendar days prior to the start of annual open enrollment. Issuers failing to meet ongoing compliance requirements may be required to submit a corrective plan and if they continue to fail to meet requirements may face a prohibition of new enrollments on KHBE or the plans may be decertified. Issuers may now offer up to eight (8) plans in each metal level within a market segment.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to conform with new federal rules issued and to all issuer to offer more plans on KHBE.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statues by providing information regarding the certification process of qualified health plans and stand-alone dental plans for participation on KHBE.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist issuers by providing information regarding the certification process of qualified health plans and stand-alone dental plans for participation on KHBE.

(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 fifteen (15) issuers that may request certification of a health plan as a qualified health plan or certification of a dental plan as a qualified dental plan to be offered on the Kentucky Health Benefit Exchange.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will submit information electronically through the SERFF system related to rate and form filings to the Department of Insurance for review by DOI and KHBE.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): $1,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit each issuer that may request certification of a health plan as a qualified health plan or certification of a dental plan as a qualified dental plan to be offered on the Kentucky Health Benefit by providing detailed instructions regarding certification of Qualified Health Plans.

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

(a) Initially: No additional costs will be incurred to implement this administrative regulation.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Kentucky Office of Health Benefit and Health Information Exchange existing budget. No new funding will be needed to implement the provisions of this regulation.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of the Kentucky Health Benefit Exchange within the Cabinet for Health and Family Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 42 U.S.C. § 18031, and 45 C.F.R. Parts 155 and 156.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. Section 18031 and 45 C.F.R. Parts 155 and 156.

2. State compliance standards. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet, and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures relating to the certification of a qualified health plan to be offered on the Kentucky Health Benefit Exchange, pursuant to, and in accordance with 42 U.S.C. Section 18031 and 45 C.F.R. Parts 155 and 156.

3. Minimum or uniform standards contained in the federal mandate. The Affordable Care Act establishes the creation of the American Health Benefit Exchange as identified in Section 1311(a) of the Affordable Care Act. The "Kentucky Health Benefit Exchange" (KHBE) is the Kentucky state-based exchange conditionally approved by HHS established by 45 C.F.R. 155.105 to offer a QHP in Kentucky beginning January 1, 2014. An Exchange must make qualified health plans available to qualified individuals and qualified employers. At a minimum, an Exchange must implement procedures for the certification, recertification, and decertification of health plans as qualified health plans. The Affordable Care Act allows for Exchanges to certify health plans as qualified health plans. This certification may be done if: the health plan meets the rules for certification by the U. S. Department of Health and Human Services; and

the Exchange determines that making such health plan available through the Exchange is in the interests of qualified individuals and qualified employers in the state or states in which the Exchange operates. The Exchange must require health plans seeking

certification as qualified health plans to submit a justification for any premium increase prior to implementation of the increase. These plans must prominently post such information on their websites.

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
Kentucky Office of Health Benefit and Health Information Exchange
(Amendment)

900 KAR 10:020. KHBE[~~Kentucky Health Benefit Exchange~~] Small Business Health Options Program.

RELATES TO: KRS 194A.050(1), 42 U.S.C. 18031, 45 C.F.R. Parts 155, 156

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services,[~~Office of the~~] Kentucky Office of Health Benefit and Health Information Exchange, has responsibility to administer the state-based American Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures relating to the operation of a Small Business Health Options Program in accordance with 42 U.S.C. 18031 and 45 C.F.R. parts 155 and 156.

Section 1. Definitions. (1) "Agent" is defined by KRS 304.9-020(1).

(2) "Annual open enrollment period" is defined by 45 C.F.R. 155.410(e).

(3) "Annual renewal date" means the date following twelve (12) months from the first day of the first coverage month and every twelve (12) months thereafter.

(4) "Children's Health Insurance Program" or "CHIP" is defined by 42 C.F.R. 457.10.

(5) "COBRA" means continuation of coverage under 29 U.S.C. Part 6.

(6) "Department of Health and Human Services" or "HHS" means the U.S. Department of Health and Human Services.

(7) "Employer identification number" means a unique numerical identifier which is used to identify a business, partnership, or other entity.

(8) "Full-time employee" is defined by 45 C.F.R. 155.20.

(9) "Full-time equivalent employee" means the number of employees determined by using the method set forth in section 4980H(c)(2) of the Internal Revenue Code, 26 U.S.C. 4980H(c)(2).

(10) "Group participation rate" means the minimum percentage of all eligible individuals or employees of an employer that is required to be enrolled[~~number of eligible employees enrolled in a group health plan in relation to the number of employees eligible to enroll in the group health plan~~].

(11) "Health plan" is defined by 42 U.S.C. 18021(b)(1).

(12) "Indian" is defined by 25 U.S.C. 450b(d).

(13) "Initial open enrollment period" means the enrollment period in which a qualified employer first enrolls in coverage through the Small Business Health Options Program (SHOP)[~~beginning October 1, 2013 and extending through March 31, 2014, during which a qualified individual or qualified employee may enroll in health coverage through an exchange for the 2014 benefit year~~].

(14) "Kentucky Health Benefit Exchange" or "KHBE" means the Kentucky state-based exchange[~~conditionally~~] approved by HHS pursuant to 45 C.F.R. 155.105 to offer a QHP or stand-alone dental plan (SADP)[~~beginning January 1, 2014~~], that includes an:

(a) Individual exchange; and

(b) Small Business Health Options Program.

(15) "Kentucky Health Insurance Premium Payment Program" or "KHIPP" means a Kentucky Medicaid program that pays the costs of some or all of the employee portion of employer-sponsored health insurance premiums.

(16) "Kentucky Office of Health Benefit and Health Information Exchange", "KOHBHIE", or "office" means the office created to administer the Kentucky Health Benefit Exchange.

(17) "Medicaid" means coverage in accordance with Title XIX of the Social Security Act, 42 U.S.C. sections 1396 et seq. as amended.[~~(17) "Medicare advantage plan" means a Medicare program established under 42 U.S.C. 1395w-21, which provides Medicare Part A and B benefits through a private insurer.~~]

(18) "Metal level of coverage" means health care coverage provided within plus or minus two (2) percentage points of the full actuarial value as follows:

(a) Bronze level with an actuarial value of sixty (60) percent;

(b) Silver level with an actuarial value of seventy (70) percent;

(c) Gold level with an actuarial value of eighty (80) percent; and

(d) Platinum level with an actuarial value of ninety (90) percent.

(19) "Minimum essential coverage" is defined by 26 C.F.R. 1.5000A-2.

(20) "Newly qualified employee" means an employee who becomes eligible to participate in the employer's group health plan outside of a qualified employer's initial or annual enrollment period.

(21) "Plan year" means a consecutive twelve (12) month period during which a health plan provides coverage for health benefits.

(22)[~~(21)~~] "Premium" is defined by KRS 304.14-030.

(23)[~~(22)~~] "Qualified employee" means an individual employed by a qualified employer who has been offered health insurance coverage by the qualified employer through the SHOP.

(24)[~~(23)~~] "Qualified employer" means an employer that elects to make, at a minimum, all full-time employees of the employer eligible for one (1) or more QHPs in the small group market offered through the SHOP.

(25)[~~(24)~~] "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.

(26)[~~(25)~~] "Qualifying event" means an event that triggers a special enrollment period for an individual to enroll in health insurance coverage[~~described in Section 9(1) of this administrative regulation~~].

(27)[~~(26)~~] "Reference plan" means[~~the selection of~~] a single health plan on which an employer will base its employee premium contribution and an employee is[~~employees are~~] then able to select the reference plan or another health plan[~~elect other plans~~] and pay the premium differential.

(28)[~~(27) "Service area" means a geographical area in which an issuer may offer a QHP.~~

~~(28) "Shared responsibility payment" means a penalty imposed for failing to meet the requirement to maintain minimum essential coverage in accordance with 26 U.S.C. 5000A.~~

~~(29)~~] "SHOP" means a Small Business Health Options Program operated by the KHBE through which a qualified employer can provide a qualified employee and the employee's dependents with access to one (1) or more QHPs or SADPs.

(29)[~~(30)~~] "Small employer" means for a plan year beginning:

(a) Before January 1, 2016, an employer who employed an average of fifty (50) or fewer full-time employees on business days during the preceding calendar year; or

(b) On or after January 1, 2016, an employer who employed an average of at least one (1) but no more than 100 full-time equivalent employees on business days during the preceding calendar year and who employs at least one (1) employee on the first day of the plan year.

(30)[~~(31)~~] "Special enrollment period" means a period during

which a qualified employee who experiences certain qualifying events may enroll in, or change enrollment in, a QHP through the KHBE outside the initial and annual open enrollment periods.

(31) "Stand-alone dental plan" or "SADP" means a dental plan as described by 45 C.F.R. 155.1065 that has been certified by the office to provide a limited scope of dental benefits as defined in 26 U.S.C. 9832(c)(2)(A), including a pediatric dental essential health benefit.

(32) "TRICARE" means the Department of Defense administered health care program serving active uniformed service members, retirees, and their families.

(33) "Waiting period" means the period before coverage for an employee or dependent who is otherwise eligible to enroll under the terms of a group health plan can become effective.

Section 2. Employer Eligibility[and Participation Requirements]. (1) An employer shall be a qualified employer and eligible to purchase coverage through SHOP if the employer[Beginning October 1, 2013, and thereafter, a small employer may submit an application to purchase health insurance coverage for its qualified employees through the SHOP if the employer is a small employer that]:

(a) Meets the eligibility requirements established in 45 C.F.R. 155.710(b);

(b) Has a valid federal employer identification number;[and]

(c) Has at least one (1) common law employee that shall not include an individual described in 29 C.F.R. 2510.3-3(c); and

(d) Except as provided in 45 C.F.R. 147.104(b((1)(i):

1. Meets[Has] a group participation rate of at least seventy-five (75) percent that shall be calculated in accordance with subsection (5)[(6)] of this section; and

2. Contributes a minimum of fifty (50) percent toward the premium of any qualified employee in accordance with Section 6 of this administrative regulation[, except as provided in 45 C.F.R. 147.104(b)(1)(i)].

(2) A small employer participating in more than one (1) SHOP and meeting the criteria in subsection (1)[(a)] of this section shall offer coverage to its full-time employees whose primary work site is in Kentucky.

(3) An[A small] employer shall apply to enroll in a QHP or SADP[submit Form KHBE-E10, Small Business Health Options (SHOP) Insurance Application for Employers, to participate in SHOP]:

(a) Via the internet[KHBE Web site] at www.kynect.ky.gov;

(b) By telephone by contacting the office contact center at 1-800-459-6328[KHBE customer service center];

(c)[By mail; or (d)] In person; or

(d) By mailing a completed Form KHBE-E10, Small Business Health Options (SHOP) Insurance Application for Employers, to kynect SHOP, PO Box 2012, Frankfort, Kentucky 40602.

(4) If the information submitted by a small employer is inconsistent with the eligibility standards in this section, the employer shall have thirty (30) days after a notification of the inconsistency to present documentation to support the employer's application or resolve the inconsistency[A qualified employer who ceases to be a small employer solely by reason of an increase in the number of employees shall be eligible to participate in the SHOP until the employer:

(a) Fails to otherwise meet the eligibility criteria of this section; or

(b) Chooses to no longer purchase health insurance coverage for qualified employees through the SHOP.

(5) As part of the verification of an application of the employer, a small employer shall submit:

(a) An employee census that includes the name, address, and social security number of all eligible employees;

(b) Proof of a federal employer identification number; and

(c) Copy of its most recent Employer's Quarterly Unemployment Wage and Tax Report, if applicable].

(5) An employee participation rate shall be calculated as the number of qualified employees accepting coverage under the employer's group health plan divided by the number of qualified employees offered coverage, excluding from the calculation any employee who is enrolled in coverage through:[(6) A calculation of a group participation rate shall not include in the count of eligible employees an employee:]

(a) Another employer's plan[Enrolled in:

1. A group health plan offered by a second employer;

2. A group health plan offered through the spouse of the employee];

(b)[3.] Medicare[, including a Medicare advantage plan];

(c)[4.] Medicaid[or CHIP];

(d)[5.] TRICARE[or other veteran's health coverage;

6. A parent's health plan];

(e) Other[7.] coverage identified in 45 C.F.R. 156.602; or

(f)[8.] Coverage recognized by HHS as meeting the requirement for minimum essential coverage under 45 C.F.R. 156.604[;

(b) Issued a certificate of exemption from the shared responsibility payment by KHBE or HHS; or

(c) Not residing in the service area of at least one (1) QHP offered by the employer].

(6)[(7)] If a small employer's group participation rate falls below the requirement in subsection (1)(d) of this section during a plan year, the qualified small employer shall be eligible to participate in the SHOP through the remainder of the plan year.

(7) A qualified employer who ceases to be a small employer by reason of an increase in the number of employees shall be eligible to participate in SHOP until the employer:

(a) Fails to otherwise meet the eligibility criteria of this section; or

(b) Chooses to no longer purchase health coverage through the SHOP[(8) If the information submitted by a small employer is inconsistent with the eligibility standards in this section, the employer shall have thirty (30) days after a notification of the inconsistency to present documentation to support the employer's application or resolve the inconsistency.

(9) A qualified small employer participating in the SHOP shall:

(a) Disseminate information to its qualified employees about the process to enroll in a QHP through the SHOP;

(b) Make a contribution toward the premium of any qualified employee in accordance with Section 4 of this administrative regulation;

(c) Remit to the KHBE, employer and employee contributions upon receipt of an invoice from the KHBE; and

(d) Qualified employers participating in the SHOP shall provide the KHBE with information about dependents or employees whose eligibility status for coverage purchased through the employer in the SHOP has changed.

(10) A small employer may designate an agent to:

(a) Perform an employer function on behalf of the employer; or

(b) Assist an employee with enrollment and plan selection.

(11) A small employer participating in a SHOP may be eligible for small employer health insurance tax credits in accordance with 26 U.S.C. 45R].

Section 3. Employee Eligibility. (1) An employee shall be a qualified employee eligible to enroll in a QHP or SADP through the SHOP if the employee receives an offer of coverage from a qualified employer.

(2) A qualified employee shall be eligible to enroll a dependent or spouse in a QHP through SHOP if the offer of coverage from a qualified employer includes an offer of dependent or spousal coverage and the qualified employee is enrolled in the QHP.

(3) A qualified employee shall be able to enroll a dependent or spouse in an SADP if the offer of coverage from a qualified employer includes an offer of dependent or spousal coverage in an SADP; and

(a) The qualified employee is enrolled in an SADP; or

(b) If the qualified employee is not enrolled in an SADP, only the qualified spouse or dependent of the qualified employee who is three (3) years of age up to twenty-one (21) years of age may enroll in an SADP.

(4) An employee shall apply to enroll in a QHP or SADP:

(a) Via the internet at www.kynect.ky.gov;

(b) By contacting the office contact center at 1-800-459-6328;

(c) In person; or

(d) By mailing a completed Form KYBE-E11, Small Business Health Options (SHOP) Insurance Application for Employees, to kynect SHOP, PO Box 2102, Frankfort, Kentucky 40602.

(5) If the information submitted by an employee is inconsistent with the eligibility standards in this section, the employee shall have thirty (30) days after a notification of the inconsistency to present documentation to support the employee's application or resolve the inconsistency.

(6) A qualified employee who does not want to enroll in a QHP offered by a qualified employer shall waive coverage.

(7) A qualified employee waiving coverage shall:

(a) Wait until the next annual open enrollment period, pursuant to Section 10 of this administrative regulation, to enroll in coverage; or

(b) If the employee experiences a qualifying event, enroll during a special enrollment period pursuant to Section 12 of this administrative regulation.

Section 4. Employer Participation Requirements. (1) A qualified employer shall submit the following information to the SHOP:

(a) An employee census that includes the name, address, birth date, and social security number of a qualified employee;

(b) If offering dependent or spousal coverage, the name, address, and birth date of the dependent or spouse;

(c) General employer information that shall include the:

1. Business legal name;

2. Primary business address; and

3. Federal employer identification number;

(d) The number of qualified employees and the total number of employees employed by the qualified employer;

(e) Whether the employer shall offer dependent or spousal health coverage;

(f) The name and primary phone number for the primary contact for the qualified employer; and

(g) Whether the employer has an agent or kynector, and if so, the name of the agent or kynector.

(2) A qualified employer shall provide the SHOP:

(a) A copy of its most recently filed Employer's Quarterly Unemployment Wage and Tax Report, if applicable; or

(b) If in business for less than three (3) months, a copy of a business filing with the Kentucky Secretary of State.

Section 5. Employer Selection of Qualified Health Plans. (1) A qualified[~~small~~] employer shall make available to a qualified employee:

(a) A single QHP;

(b) All available QHPs at a single metal level of coverage;[~~or~~]

(c) If metal levels are contiguous, one (1) or more QHPs at more than one (1) metal level of coverage; or

(d) All available QHPs from one (1) or more issuer.

(2) Unless each QHP offered to a qualified employee has an embedded pediatric dental benefit, a qualified employer shall make available to a qualified employee at least one (1) pediatric stand-alone dental plan[~~A qualified employer may apply for coverage through the SHOP for its qualified employees at any time in a year.~~

~~(3) The employer's plan year shall consist of the twelve (12) month period beginning with the qualified employer's effective date of coverage~~].

Section 6.[~~4.~~] Minimum Contribution. (1) [~~If~~] A small employer who selects only one (1) QHP to offer to a qualified employee in accordance with Section 5[~~3~~] of this administrative regulation[~~, the small employer~~] shall:

(a) Define a percentage contribution of at least fifty (50) percent toward the[~~a~~] premium for employee-only coverage under the QHP, except as provided for in 45 C.F.R. 147.104(b)(1)(i); and

(b) Apply the employer contribution determined in paragraph (a) of this subsection toward the[~~a~~] QHP selected by the employee.

(2)[~~If~~] A small employer who selects more than one (1) QHP to offer to a qualified employee in accordance with Section 5[~~3~~] of this administrative regulation[~~, the small employer~~] shall:

(a) Apply the employer contribution determined in accordance with subsection (1)(a) of this section to the QHP selected by an employee; or

(b) If a reference plan is selected by the employer, make a percentage contribution[~~Select a QHP to serve as a reference plan on which a contribution shall be based;~~

~~(b) Make a percentage contribution~~] of at least fifty (50) percent toward the[~~a~~] premium for employee-only coverage under the reference plan[~~; and~~

~~(c) Apply the employer contribution determined in paragraph (b) of this subsection toward a QHP selected by the employee~~].

(3) An[~~If a small~~] employer who elects to provide dependent or spousal coverage[~~, the small employer~~] may make a contribution toward a premium for dependent or spousal coverage.

(4) An employer who elected to provide coverage for an SADP may make a contribution toward a premium for:

(a) Employee coverage; or

(b) Employee coverage and dependent or spousal coverage.

Section 7. Employer Selection of Coverage Period. (1) Subject to subsection (2) of this section, a qualified employer shall elect to offer health insurance coverage through the SHOP for a qualified employee at any time during the calendar year after:

(a) Submitting the information required in Section 4 of this administrative regulation;

(b) Selecting a QHP or QHPs to offer to qualified employees as provided in Section 5 of this administrative regulation; and

(c) Meeting the minimum contribution requirement in Section 6 of this administrative regulation.

(2) If a qualified employer fails to meet the minimum participation rate specified in Section 2(1)(d) of this administrative regulation or the minimum contribution requirement specified in Section 6 of this administrative regulation, the qualified employer may elect to offer coverage to a qualified employee during an enrollment period from November 15 through December 15 of each year.

(3) A qualified employer may apply for coverage through the SHOP for its qualified employees at any time during the year.

(4) A qualified employer's plan year shall be a twelve (12) month period beginning on the coverage effective date for its qualified employees.

(5) A qualified employer shall not change its offer of coverage to its qualified employees after a qualified employee has made a QHP selection during an initial or annual open enrollment period.

Section 8. Enrollment Periods for a Qualified Employee. (1) A qualified employee shall enroll in a QHP or SADP or change a QHP or SADP only during:

(a) An initial open enrollment period described in this section;

(b) For a newly qualified employee, an enrollment period described in Section 11 of this administrative regulation;

(c) An annual open enrollment period described in Section 10 of this administrative regulation; or

(d) A special enrollment period described in Section 12 of this administrative regulation.

(2) An initial open enrollment period shall:

(a) Begin on a day chosen by the employer if the employer has provided the information required in Section 4 of this administrative regulation;

(b) Be a minimum of ten (10) days; and

(c) End on the tenth day of a calendar month.

(3) An effective date of coverage for a qualified employee enrollment during an initial open enrollment period shall be the first day of the month following the end of the open enrollment period.

(4) Unless an employee changes coverage due to a qualifying event, a premium shall not change until the employer's annual renewal date.

Section 9.[~~5.~~] Annual Employer Election Period. (1) On an annual basis, a small employer shall have a thirty (30) day period prior to the completion of the employer's plan year and before the annual open enrollment to change the employer's participation in the SHOP for the next plan year.

(2) During the employer annual election period, a small

employer may change the:

(a)[~~Method by which the qualified employer makes QHPs available to qualified employees in accordance with Section 3 of this administrative regulation;~~

~~(b)~~] Employer contribution towards the premium of a qualified employee made in accordance with Section 6[4] of this administrative regulation;

(b)[~~and (c)~~] QHP or QHPs offered to a qualified employee[~~employees~~] in accordance with Section 5[~~3~~] of this administrative regulation; and

(c) SADP or SADPs offered to a qualified employee in accordance with Section 5 of this administrative regulation.

[~~Section 6. Employee Eligibility. (1) An employee shall be eligible to enroll in a QHP through the SHOP if the employee receives an offer of coverage from a qualified employer.~~

~~(2) An employee shall submit Form KYBE-E11, Small Business Health Options (SHOP) Insurance Application for Employees, to enroll in a QHP:~~

~~(a) Via the internet at www.kynect.ky.gov;~~

~~(b) By telephone by calling the KHBE customer service center;~~

~~(c) By mail; or~~

~~(d) In person.~~

~~(3) If the information submitted by an employee is inconsistent with the eligibility standards in this section, the employee shall have thirty (30) days after a notification of the inconsistency to present documentation to support the employee's application or resolve the inconsistency.~~

~~(4) A qualified employee may designate an individual or organization as an authorized representative.~~

~~(5) An eligible employee who does not want to enroll in a QHP offered by a qualified employer shall waive coverage.~~

~~(6) A small employer shall be notified if a qualified employee enrolled in a QHP terminates coverage in the QHP.~~

~~Section 7. Enrollment and Effective Dates of Coverage. (1) A qualified employee shall select a QHP or change a QHP offered by a qualified employer in accordance with Section 3 of this administrative regulation during:~~

~~(a) The initial open enrollment period;~~

~~(b) An annual open enrollment period as set forth in Section 8 of this administrative regulation;~~

~~(c) A special enrollment period set forth in Section 9 of this administrative regulation; or~~

~~(d) An enrollment period outside of the employer's open enrollment period as set forth in Section 8(3) of this administrative regulation, for a qualified employee who is newly eligible.~~

~~(2) The length of an initial open enrollment period and annual open enrollment period shall be:~~

~~(a) Thirty (30) days; and~~

~~(b) At the request of a small employer, extended up to a maximum of fifteen (15) additional days.~~

~~(3) Coverage in a QHP shall be effective:~~

~~(a)1. If plan selection is made prior to December 15, 2013, during the initial open enrollment period, January 1, 2014;~~

~~2. If open enrollment ends between the first and 15th day of any month, the first day of the following month; or~~

~~3. If open enrollment ends between the 16th and the last day of any month, the first day of the second following month; and~~

~~(b) Upon receipt of the full first month's premium from a small employer.~~

~~(4) For a renewal, the effective date of coverage shall be an employer's annual renewal date.~~

~~(5) For a special enrollment period, the effective date of coverage shall be in accordance with Section 9(5) and (6) of this administrative regulation.~~

~~(6)(a) Except for the death of an employee or dependent of an employee, the effective date for cancellation of coverage shall be the last day of the month during which an issuer terminates an employee's or dependent of an employee's coverage.~~

~~(b) The effective date for cancellation of coverage for the death of an employee or dependent of an employee shall be the date of death.~~

~~(7) Unless an employee changes coverage due to a qualifying event, a premium shall not change until the employer's annual renewal date.~~]

Section 10.[~~8.~~] Annual Open Enrollment Period. (1) A qualified employee shall select a QHP or change a QHP[~~QHPs~~] during an annual open enrollment period that shall be:

(a) No less than thirty (30) days; and

(b) Prior to the end of the employer's plan year.

(2) If a qualified employee enrolled in a QHP remains eligible for coverage, the qualified employee shall remain enrolled in the QHP selected the previous year unless:

(a) The qualified employee enrolls in another QHP; or

(b) The QHP is no longer available to the qualified employee.

Section 11. Enrollment Period and Coverage Effective Dates for a Newly Qualified Employee. (1) A newly qualified employee shall be eligible for an enrollment period beginning on the first day of becoming a newly qualified employee, regardless of whether the employee is subject to a waiting period.

(2) An enrollment period for a newly qualified employee shall be at least thirty (30) days.

(3) If a newly qualified employee is subject to a waiting period in excess of forty-five (45) days, the duration of the employee's enrollment period shall extend until fifteen (15) days before the conclusion of the waiting period if the employee selected a plan on the first day of becoming eligible.

(4) An effective date of coverage for a newly qualified employee shall be:

(a) On the first day of the month; and

1. Subject to an effective date of coverage determined in accordance with subsection (5) of this section; or

2. If subject to a waiting period consistent with 45 C.F.R. 147.116, the effective date of coverage may be on the first day of a later month if the effective date complies with 45 C.F.R. 147.116.

(5) The effective date of coverage shall be:

(a) For a plan selection made between the first and the fifteenth of any month, the first day of the following month; or

(b) For a plan selection made between the sixteenth and the last day of any month, the first day of the following second month[~~(3)(a) A newly added employee who becomes eligible after the beginning of the plan year and prior to the annual enrollment period shall have thirty (30) days prior to the date the newly added employee becomes eligible for employer-sponsored coverage to enroll in a QHP.~~

~~(b) The effective date of coverage of a newly added employee shall be the first day of the month following the month the newly added employee becomes eligible for employer-sponsored coverage~~].

Section 12.[~~9.~~] Special Enrollment Period. (1) A qualified employee,[~~or~~] dependent of a qualified employee, or spouse of a qualified employee may enroll in a QHP or an SADP or a qualified employee, dependent of a qualified employee, or spouse of qualified employee may change a QHP or a SADP[~~QHPs~~] during a special enrollment period if:

(a) The qualified employee or dependent of a qualified employee loses minimal essential coverage;

(b) The qualified employee gains a dependent through marriage, birth, adoption, or placement for adoption;

(c) The qualified employee or dependent of the qualified employee enrolls or fails to enroll in a QHP due to an error, misrepresentation, or inaction of an officer, employee, or agent of the KHBE[~~or HHS~~];

(d) The qualified employee or dependent of the qualified employee demonstrates to the KHBE that the QHP in which the qualified employee or dependent of the qualified employee is enrolled substantially violated a material provision of its contract in relation to the enrollee;

(e) The qualified employee or dependent of the qualified employee gains access to new QHPs as a result of a permanent move;

(f) The qualified employee or dependent of the qualified

employee demonstrates that the qualified employee or dependent of an employee meets other exceptional circumstances;

(g) The qualified employee is an Indian who may change from one (1) QHP to another QHP one (1) time per month;

(h) The qualified employee or dependent of the qualified employee loses eligibility for coverage under Medicaid or CHIP; or

(i) The qualified employee or dependent of a qualified employee becomes eligible for premium assistance through KHIPP.

(2) A qualified employee or dependent of a qualified employee shall have thirty (30) days from the date of a triggering event described in subsection (1)(a) through (g) of this section to select a QHP through the SHOP.

(3) A qualified employee or dependent of a qualified employee shall have sixty (60) days from the date of a triggering event described in subsection (1)(h) or (i) of this section to select a QHP through the SHOP.

(4) A dependent of a qualified employee shall not be eligible for a special enrollment period if a small employer does not offer coverage to a dependent.

(5) Except as provided in subsection (6) of this section, the effective date of coverage for an enrollment during a special enrollment period shall be, if a qualified employee selects a QHP:

(a) Between the first and the fifteenth day of any month, the first day of the following month; or

(b) Between the sixteenth and the last day of any month, the first day of the second following month.

(6)(a) For a birth, adoption, or placement for adoption, the effective date of coverage shall be the date of birth, adoption, or placement for adoption.

(b) For a marriage, or if a qualified employee loses minimum essential coverage as described in subsection (7) and (8) of this section, the effective date of coverage shall be the first day of the following month.

(7) Loss of minimum essential coverage shall include those circumstances described in 26 C.F.R. 54.9801–6(a)(3)(i) through (iii).

(8) Loss of minimum essential coverage shall not include termination or loss due to:

(a) Failure to pay premiums on a timely basis, including[~~COBRA~~] premiums prior to expiration of COBRA coverage; or

(b) A situation allowing for a rescission as specified in 45 C.F.R. 147.128.

Section 13. Effective Dates for Cancellation of Coverage. (1) Except for the death of an employee or dependent or spouse of an employee, the effective date for cancellation of coverage shall be:

(a) The last day of the month during which an employer terminates an employee's or dependent or spouse of an employee's coverage; or

(b) The last day of the month in which an employee requests to terminate their own or their dependent's or spouse's coverage.

(2) The effective date for cancellation of coverage for the death of an employee or dependent or spouse of an employee shall be the date of death.

Section 14.[~~10.~~] Employer Voluntary and Involuntary Termination from SHOP. (1)(a) An employer may terminate its participation in SHOP at any time and for any reason by providing written notice to KHBE.

(b) The earliest effective date of termination shall be the last day of the calendar month following the calendar month in which notice is given.

(2) An employer may be terminated from participation in SHOP if the employer:

(a) Fails to meet the minimum contribution requirements established in Section 4 of this administrative regulation;

(b) Fails to meet the employer eligibility requirements established in Section 2 of this administrative regulation;

(c) Fails to pay the total premium due within the grace period described in KRS 304.17A-243; or

(d) Commits fraud or misrepresentation.

(3) The effective date of employer termination from participation in the SHOP shall be:

(a) The date of notification of termination for failure to meet minimum contribution requirements under subsection (2)(a) of this section;

(b) The last day of the plan year, if the condition in subsection (2)(b) of this section is met;

(c) The date premium was due, if the condition in subsection (2)(c) of this section is met; or

(d) The last day of the calendar month following the month in which an employer shall be notified of the termination by the KHBE, if the condition in subsection (2)(d) of this section is met.

(4) Coverage terminated under subsection (2)(c) of this section for nonpayment of premium shall be reinstated upon request of the employer one (1) time during a plan year if the employer:

(a) Requests reinstatement by the end of the month following the month of termination; and

(b) Pays all premiums:

1. From the month of termination through the month reinstatement is requested; and

2. For the month following the request for reinstatement.

(5) If coverage is reinstated pursuant to subsection (4) of this section, there shall be no lapse in coverage.

Section 15.[~~11.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form KHBE-E10, Small Business Health Options Program (SHOP) Insurance Application for Employers", revised 8-30-13; and

(b) "Form KHBE-E11, Small Business Health Options Program (SHOP) Insurance Application for Employees", revised 8-30-13.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Health Benefit Exchange, 12 Mill Creek Park, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at www.healthbenefitexchange.ky.gov.

CARRIE BANAHAN, Executive Director
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 13, 2015

FILED WITH LRC: May 14, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 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 June 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 June 30, 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 address tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the policies and procedures relating to the operation of a Small Business Health Options Program in accordance with 42 U.S.C. Section 18031 and 45 C.F.R. parts 155 and 156.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the policies and procedures relating to the operation of a Small Business Health Options Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary so that small businesses are aware of the small business health options program which will allow them to enroll employees in qualified health plans offered on the Kentucky Health Benefit Exchange as required by 45 C.F.R. Parts 155 and 156 and qualify for small employer health insurance tax credits pursuant to 26 U.S.C. 45R.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed requirements for the small business health options program and how small businesses may enroll employees in qualified plans to be offered on the Kentucky Health Benefit Exchange to comply with the statute and qualify for small employer health insurance tax credits pursuant to 26 U.S.C. 45R.

(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 to this administrative regulation seek to clarify policy regarding waiting periods for newly hired employees by establishing waiting periods and effective dates, changes the open enrollment periods by establishing a minimum of ten (10) days and ending on the tenth day of any month, changes the methodology for calculating the group participation rate, and provides clarification for employees and dependents enrollment in stand-alone dental plans.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to conform with federal rules issued February 27, 2015 and to conform to system changes that will be effective May, 2015.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statues by providing information regarding eligibility and enrollment to employers and their employees who want to purchase health coverage through the Small Business Health Options Program.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides detailed information to employers and employees on the requirements to enroll in health coverage through the Small Business Health Options Program.

(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 2,500 small businesses that may purchase health insurance for their employees on the Kentucky Health Benefit Exchange and potentially qualify for small employer health insurance tax credits.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will be able to submit an application online to purchase health insurance coverage for their employees through the Exchange, provide supporting documentation, and contribute at least fifty (50) percent of the premium towards an employee coverage.

(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 individual agent or business entity for participation on the KHBE.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit each small business as it may ease the administrative burden of administering their health insurance program and may benefit certain employers through health insurance tax credits.

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

(a) Initially: No additional costs will be incurred to implement this administrative regulation.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Kentucky Office of Health Benefit and Health Information Exchange existing budget. No new funding will be needed to implement the provisions of this regulation.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Kentucky Office of Health Benefit and Health Information Exchange within the Cabinet for Health and Family Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 42 U.S.C. § 18031, and 45 C.F.R. Part 155 and 156.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. Section 18031 and 45 C.F.R. Part 155 and 156.

2. State compliance standards. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet, and to implement programs

mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures relating to the operation of a Small Business Health Options Program in accordance with 42 U.S.C. Section 18031 and 45 C.F.R. parts 155 and 156.

3. Minimum or uniform standards contained in the federal mandate. The Affordable Care Act establishes the creation of the American Health Benefit Exchange as identified in Section 1311(a) of the Affordable Care Act. The "Kentucky Health Benefit Exchange" (KHBE) is the Kentucky state-based exchange conditionally approved by HHS established by 45 C.F.R. 155.105. An Exchange must establish a Small Business Health Options Program (SHOP). A SHOP is designed to assist qualified small employers in the state in enrolling their employees in qualified health plans in the state's small group market.

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
Kentucky Office of the Health Benefit and Health Information Exchange
(Amendment)

900 KAR 10:050. Individual Agent[~~or Business Entity~~] Participation with the Kentucky Health Benefit Exchange.

RELATES TO: KRS 194A.050(1), 42 U.S.C. 18031, 45 C.F.R. Part 155

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Kentucky Office of[~~the Kentucky~~] Health Benefit and Health Information Exchange, has responsibility to administer the state-based American Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet, and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures relating to the registration of an[~~a business entity or~~] individual agent in accordance with 42 U.S.C. 18031 and 45 C.F.R. Part 155.

Section 1. Definitions. (1) "Advanced payment of premium tax credits" or "APTC" means payment of the tax credits authorized by 26 U.S.C. 36B and its implementing regulations, which are provided on an advance basis to an eligible individual enrolled in a qualified health plan through an exchange in accordance with section 1412 of the Affordable Care Act, 42 U.S.C. 18082.

(2) "Agent" is defined by KRS 304.9-020(1).

(3) "Business entity" is defined by KRS 304.9-020(5).

(4) "Certified application counselor" or "CAC" means an individual employed by, or a volunteer of, an entity designated by the office and the Department for Medicaid Services.

(5) "Consultant" is defined in KRS 304.9-040.

(6) "Cost-sharing reductions" or "CSR" means a reduction in cost sharing for an eligible individual enrolled in a silver level plan in an exchange or for an individual who is an Indian enrolled in a qualified health plan in an exchange.

(7)[~~(6)~~] "Date of the notice" means the date on the notice plus five (5) calendar days.

(8)[~~(7)~~] "Department of Insurance" or "DOI" is defined by KRS 304.1-050(2).

(9) "Indian" is defined by 25 U.S.C. 450b(d).

(10)[~~(8)~~] "Individual market" is defined by KRS 304.17A-005(26).

(11)[~~(9)~~] "In-person assister" means an entity performing functions described in 45 C.F.R. 155.205 selected by the office[~~of KHBE~~].

(12)[~~(10)~~] "Insurance affordability program" means one (1) of the following:

(a) A state Medicaid program under title XIX of the Social Security Act, 42 U.S.C. 301 et seq.;

(b) A state children's health insurance program (CHIP) under title XXI of the Social Security Act, 42 U.S.C. 301 et seq.;

(c) A program that makes coverage in a qualified health plan through the exchange with advance payments of the premium tax credit established under section 36B of the Internal Revenue Code, 26 U.S.C. 36B, available to qualified individuals; or

(d) A program that makes available coverage in a qualified health plan through the exchange with cost-sharing reductions established under section 1402 of the Affordable Care Act, 42 U.S.C. 18071.

(13)[~~(11)~~] "Issuer" is defined by 45 C.F.R. 144.103.

(14)[~~(12)~~] "Kentucky Health Benefit Exchange" or "KHBE" means the Kentucky state-based exchange[~~conditionally~~] approved by HHS pursuant to 45 C.F.R. 155.105 to offer a QHP or stand-alone dental plan (SADP)[~~beginning January 1, 2014~~], that includes an:

(a) Individual exchange; and

(b) Small Business Health Options Program (SHOP).

(15)[~~(13)~~] "Kentucky Insurance Code" means KRS Chapter 304 and associated administrative regulations.

(16) "Kentucky Office of Health Benefit and Health Information Exchange" or "office" means the office created to administer the Kentucky Health Benefit Exchange.

(17)[~~(14)~~] "Kentucky Online Gateway" means the system for authentication services for users requesting access to the KHBE portal.

(18)[~~(15)~~] "Kynectors" means CACs, in-person assisters, or navigators.

(19) "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.

(20)[~~(16)~~] "Navigator" means an entity as described in 45 C.F.R. 155.210 selected by the Office of KHBE.

(21)[~~(17) "Office of the Kentucky Health Benefit Exchange" or "office" means the office created to administer the Kentucky Health Benefit Exchange.~~

~~(18)~~] "Participating agent" means an agent who has been certified by the office to participate on the KHBE.

(22)[~~(19)~~] "Qualified employee" means an individual employed by a qualified employer who has been offered health insurance coverage by the qualified employer through the SHOP.

(23)[~~(20)~~] "Qualified employer" means an employer that elects to make, at a minimum, all full-time employees of the employer eligible for one (1) or more QHPs or SADPs in the small group market offered through the SHOP.

(24)[~~(21)~~] "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.

(25)[~~(22)~~] "Qualified individual" means an individual who has been determined eligible to enroll through the KHBE in a QHP or SADP in the individual market.

(26) "SHOP" means a Small Business Health Options Program operated by the KHBE through which a qualified employer can provide a qualified employee and the employee's dependents with access to one (1) or more QHPs or SADPs.

(27)[~~(23)~~] "Small group" is defined by KRS 304.17A-005(42) until superseded by 45 C.F.R. 155.1065.

(28) "Stand-alone dental plan" or "SADP" means a dental plan as described by 45 C.F.R. 155.1065 that has been certified by the office to provide a limited scope of dental benefits as defined in 26 U.S.C. 9832(c)(2)(A), including a pediatric dental essential health benefit.

(29)[~~(24)~~] "Training" means the training established by the office for individual agents and kynectors.

(30) "Web broker" means an individual engaged in the

activities described in 45 C.F.R. 155.220(c)(3).

Section 2. Requirements to be a Participating Individual Agent[or Business Entity].[(1)] An individual agent seeking to be a participating agent shall:

(1)[(a)] Be licensed by DOI with a health line of authority;

(2)[(b)] Complete the office approved agent training in accordance with 45 C.F.R. 155.220(d)(2);

(3)[(c)] Sign an individual agent participation agreement;

(4)[(d)] Comply with the privacy and security standards of 45 C.F.R. 155.260;

(5)[(e) 1.] Except for an employee of an issuer or an individual agent directly contracted with an issuer:

(a) Maintain an appointment with at least two (2) QHP or SADP issuers participating on the KHBE; or

(b)[2.] Maintain a designation with a business entity having an appointment with at least two (2) QHP or SADP issuers participating on the KHBE;[and]

(6)[(f)] Register with the KHBE through the Kentucky Online Gateway; and

(7) Not serve as a web broker or consultant while assisting individuals with the activities described in Section 3 of this administrative regulation[(2) A business entity licensed as an agent with a health line of authority seeking to participate with the KHBE shall:

(a) Select an individual to serve as the participating business entity representative who shall:

1. Register with KHBE through the Kentucky Online Gateway as the individual authorized by the business entity;

2. Serve as a primary contact for the office;

3. Ensure that the business entity signs a participation agreement with the office; and

4. Be responsible for ensuring that only an active Kentucky licensed agent designated with the business entity is provided access to the KHBE through the Kentucky Online Gateway;

(b) Designate the individual agents who shall participate on the KHBE through the participating business entity and who shall:

1. Complete the agent training provided by the office or an approved party;

2. Sign an agent participation agreement;

3. Comply with the privacy and security standards of 45 C.F.R. 155.260; and

4. Register with the KHBE through the Kentucky Online Gateway; and

(c) Maintain an appointment with at least two (2) QHP issuers participating on the KHBE].

Section 3. Permitted Activities of a Participating Individual Agent[or Business Entity]. (1) Upon completion of the registration requirements as set forth in Section 2 of this administrative regulation, a participating individual agent[or business entity] may:

(a) Enroll a qualified individual in any QHP or SADP offered by an issuer with which the individual agent has the appropriate designation or appointment as defined in Section 2(5) of this administrative regulation through the KHBE in the individual market;

(b) Assist qualified employers in selecting a QHP or SADP and enroll qualified employees in a QHP or SADP offered by an issuer with which the individual agent has the appropriate designation or appointment as defined in Section 2(5) of this administrative regulation through the KHBE in the small group market; or

(c) Assist an individual in applying for advance payments of the premium tax credit and cost-sharing reductions.

(2) A qualified individual may be enrolled in a QHP or SADP through the KHBE by a participating individual agent[or business entity] if the participating individual agent[or business entity] ensures the applicant's completion of an application as described in 42 C.F.R. 155.405.

(3) A participating individual agent[or business entity] shall:

(a) Disclose to potential applicants any relationships the individual agent[or business entity] has with QHP or SADP issuers, insurance affordability programs, or other potential conflicts of interest identified by the office; and

(b) Not:

1. Impose any charge or fee on an applicant for assistance in completing an application for, or enrolling in, a QHP, an SADP, or an insurance affordability program[or enrolling in a QHP];

2. Provide compensation or a referral fee to a kynector; and

3. Enter into an exclusive referral agreement with a kynector.

(4) If the office finds noncompliance with the terms and conditions of the individual agent participation agreement[, business entity participation agreement,] or an administrative regulation of the office, the office shall withdraw an agent's[or business entity's] registration and participation with the KHBE after:

(a) Giving notice to the participating individual agent[or participating business entity]; and

(b) An opportunity to respond in accordance with Section 5 of this administrative regulation.

Section 4. Renewal of Participation and Registration with the office. To maintain registration with the office, a participating individual agent[or participating business entity] shall:

(1) Comply with annual training prescribed by the office;

(2) Sign an agent[or business entity] participation agreement;[and]

(3) Maintain licensure, appointments, and designations as identified in Section 2 of this administrative regulation;

(4) Comply with the requirements of 45 C.F.R. 155.220; and

(5) Comply with 900 KAR Chapter 10.

Section 5. Withdrawal of Registration and Appeals. (1)(a) Except as provided in subsection (2) of this section, if the office finds noncompliance with the terms and conditions of an individual agent participation agreement[, a business entity participation agreement,] or an administrative regulation of the office, the office shall:

1. Provide the participating individual agent[or the participating business entity] with notice that the applicable registration shall be withdrawn as of the date of notice;

2. Allow the participating individual agent[or participating business entity] an opportunity to submit evidence of compliance or additional information within ten (10) business days;

3. Review any information submitted by the participating individual agent[or participating business entity]; and

4. Based on a review of the information provided, issue a decision to uphold the withdrawal or reinstate the applicable registration of a participating individual agent[or participating business entity].

(b) A participating individual agent[or participating business entity] shall have the right to appeal a decision to withdraw registration in accordance with paragraph (a) of this subsection through the office.

(2)(a) If the health line of authority or licensure of an agent[or business entity] is suspended, revoked, or expired, the registration of the agent[or business entity] shall be withdrawn by the office based on DOI's administrative action.

(b) Any appeal or request of an action by DOI pursuant to paragraph (a) of this subsection shall be made to DOI in accordance with the Kentucky Insurance Code.

(3) After one (1) year following a decision to withdraw the registration of a participating individual agent[or participating business entity], the individual agent[or business entity] may reapply in accordance with Section 2 of this administrative regulation.

CARRIE BANAHAN, Executive Director
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 13, 2015

FILED WITH LRC: May 14, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 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 June 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 June 30, 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 address tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the policies and procedures of the Kentucky Office of Health Benefit and Health Information Exchange relating to the registration of an individual agent 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 inform individual agents of the registration requirements for participation on the Kentucky Health Benefit Exchange.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary to provide the registration requirements for individual agents seeking to participate on the Kentucky Health Benefit Exchange as required by 45 C.F.R. Parts 155 and 156.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed information about the registration requirements for individual agents seeking to participate on the Kentucky Health Benefit Exchange to comply with 42 U.S.C. 18031 and 45 C.F.R. Part 155.

(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 to this administrative regulation clarify that the regulation is specific to an individual agent and not a business entity, an employee of an issuer or an individual agent directly contracted with an issuer will not be required to maintain an appointment with other issuers, include references to dental plans as well as health plans, specify an agent cannot serve as a web broker or consultant, and specify an individual agent cannot charge a fee for assisting an applicant in the application and enrollment process.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to establish that the regulation is specific to individual agents and not a business entity, an employee of an issuer or an individual agent directly contracted with an issuer not be required to maintain an appointment with other issuers, include references to dental plans as well as health plans, specify an agent cannot serve as a web broker or consultant, and specify an individual agent cannot charge a fee for assisting an applicant in the application and enrollment process.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statues by providing registration requirements for those agents seeking to participate on the Kentucky Health Benefit Exchange.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides detailed requirements for individual agents seeking to participate on the Kentucky Health Benefit Exchange.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect approximately 7,500 individual agents that may request to be registered to participate on the Kentucky Health Benefit Exchange.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each individual agent will be licensed by DOI, complete KOHBHIE training, sign a participation agreement, meet privacy and security standards, register with KHBE through the Kentucky Online Gateway, and maintain an appointment with at least two (2) QHP issuers participating on the KHBE or be a captive agent of an issuer.

(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 individual agent or business entity for participation on the KHBE.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit each individual agent that seeks to participate on the Kentucky Health Benefit by providing detailed instructions regarding the registration requirements.

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

(a) Initially: No additional costs will be incurred to implement this administrative regulation.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Kentucky Office of Health Benefit and Health Information Exchange existing budget. No new funding will be needed to implement the provisions of this regulation.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Kentucky Office of Health Benefit and Health Information Exchange within the Cabinet for Health and Family Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 42 U.S.C. § 18031, and 45 C.F.R. 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. Part 155.

2. State compliance standards. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet, and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures of the Kentucky Office of Health Benefit and Health Information Exchange relating to the registration of a an individual agent 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 Qualified Health Plan (QHP) in Kentucky beginning January 1, 2014. An Exchange must make qualified health plans available to qualified individuals and qualified employers. At a minimum, an Exchange must implement procedures for participation of individual agents seeking to participate on the Exchange. This registration may be done if the individual agent is licensed by DOI, completes KOHBHIE training, signs a participation agreement, meets privacy and security standards, registers with KHBE through the Kentucky Online Gateway, and maintains an appointment with at least two (2) QHP issuers participating on the KHBE or is a captive agent of an issuer.

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
Kentucky Office of Health Benefit and Health Information Exchange
(Amendment)

900 KAR 10:100. Appeals of Eligibility Determinations for KHBE Participation and Insurance Affordability Programs.

RELATES TO: KRS 194A.050(1), 42 U.S.C. 18031, 45 C.F.R. 155.500-155.555

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Kentucky Office of[~~the Kentucky~~] Health Benefit and Health Information Exchange, has responsibility to administer the state-based American Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures relating to appeals of eligibility determinations for KHBE participation and insurance affordability programs in accordance with 42 U.S.C. 18031 and 45 C.F.R. 155.500 to 155.555.

Section 1. Definitions. (1) "Advanced payment of premium tax credits" or "APTC" means payment of the tax credits authorized by 26 U.S.C. 36B and its implementing regulations, which are provided on an advance basis to an eligible individual enrolled in a qualified health plan through an exchange in accordance with section 1412 of the Affordable Care Act, 42 U.S.C. 18082.

(2) "Adverse witness" means a person who gives unfavorable evidence against the party that called him or her as its witness.

(3) "Appeal record" means the official record of hearing as defined by KRS 13B.130(1) through (10).

(4) "Appeal request" means a clear expression, either orally or in writing, by an applicant or[~~,~~] enrollee[~~, employer, or small business employer or employee~~] to have an eligibility determination or redetermination contained in a notice issued in accordance with 45 C.F.R. 155.310(g) or 45 C.F.R. 330(e)(1)(ii).

(5) "Appellant" means the applicant or enrollee who is requesting an appeal.

(6) "Applicant" means an individual who is seeking eligibility for himself or herself through an application submitted to the KHBE for at least one (1) of the following:

(a) Enrollment in a qualified health plan (QHP) in the individual exchange or stand-alone dental plan (SADP) in the individual exchange through the KHBE; or

(b) Medicaid or KCHIP, if applicable.

(7)[~~"Authorized representative" means:~~

~~(a) For an enrollee or applicant who is authorized by Kentucky law to provide written consent, an individual or entity acting on behalf of, and with written consent from, the enrollee or applicant; or~~

~~(b) A legal guardian.~~

~~(8)~~] "Cost-sharing reduction" or "CSR" means a reduction in cost sharing for an eligible individual enrolled in a silver level plan in an exchange or for an individual who is an Indian enrolled in a qualified health plan in an exchange.

(8)[~~(9)~~] "DAH" means the Division of Administrative Hearings of the Cabinet for Health and Family Services.

(9)[~~(10)~~] "DCBS" means the Department for Community Based Services.

(10) " Desk Review" means an administrative review of:

(a) Information submitted as part of the application process;

(b) Any supporting documentation used to determine or redetermine an appellant's eligibility; and

(c) Any additional information submitted for consideration as part of the appeal request.

(11) "Department of Health and Human Services" or "HHS" means the U.S. Department of Health and Human Services.

(12) "Enrollee" means an eligible individual enrolled in a qualified health plan or stand-alone dental plan on the individual exchange.

(13) "Exemption" means an exemption from the shared responsibility payment.

(14) "Final order" is defined by KRS 13B.010(6).

(15) "Hearing" is defined by KRS 13B.010(2).

(16) "Hearing officer" means a hearing officer employed by DAH.

(17) "Indian" is defined by 25 U.S.C. 450b(d).

(18) "Judicial review" means a court's review of factual or legal findings of an administrative body.

(19) "Kentucky Children's Health Insurance Program" or "KCHIP" means the separate child health program established by the Commonwealth of Kentucky under 42 U.S.C. 1397aa to 1397mm in accordance with implementing regulations at 42 C.F.R. Part 457.

(20) "Kentucky Health Benefit Exchange" or "KHBE" means the Kentucky state-based exchange[~~conditionally~~] approved by

HHS pursuant to 45 C.F.R. 155.105 to offer a QHP or SADP[~~beginning January 1, 2014,~~] that includes[~~an~~]:

(a) An individual exchange; and

(b) A Small Business Health Options Program.

(21) "Kentucky Office of Health Benefit and Health Information Exchange", "KOHBHIE", or "office" means the office created to administer the Kentucky Health Benefit Exchange.

(22) "MAGI-based income" is defined by 42 C.F.R 435.603(e).

(23)[~~(22)~~] "Personally identifiable information" means any data about an individual that could potentially identify that individual.

(24)[~~(23)~~] "Qualified health plan" or "QHP" means a health plan that meets the standards described in 45 C.F.R. 156.200 to 156.295 and that has in effect a certification issued by the office.

(25)[~~(24)~~] "Recommended order" is defined by KRS 13B.010(5).

(26) "Stand-alone dental plan" or "SADP" means a dental plan as described by 45 C.F.R. 155.1065 that has been certified by the office to provide a limited scope of dental benefits as defined in 26 U.S.C. 9832(c)(2)(A), including a pediatric dental essential health benefit.

(27)[~~(25)~~] "Tax filer" is defined by 45 C.F.R. 155.300.

(28)[~~(26)~~] "Vacate" means to set aside a previous action.

Section 2. Right to Appeal an Individual Eligibility Determination or Redetermination. (1) An applicant or an enrollee shall have the right to make an appeal request of:

(a) An eligibility determination made in accordance with 45 C.F.R. 155.300 to 155.355 and 900 KAR 10:030, including:

1. An initial determination of eligibility for enrollment in a QHP or SADP, including the amount of APTC and CSR, made in accordance with the standards specified in 45 C.F.R. 155.305(a) through (h); or

2. A redetermination of eligibility, including the amount of APTC and CSR, made in accordance with 45 C.F.R. 155.330 and 155.335;

(b) A failure by the KHBE to provide timely notice of an eligibility determination pursuant to 45 C.F.R. 155.310(g), 155.330(e)(1)(ii), 155.335(h)(1)(ii) or 155.610(i);

(c) A denial of a request to vacate dismissal made by DAH in accordance with 45 C.F.R. 155.530(d)(2), made pursuant to Section 9(3) of this administrative regulation; or

(d) An eligibility determination for an exemption made in accordance with 45 C.F.R. 155.605.

(2) An appeal request that fails to meet the criteria in subsection (1) of this section shall not be considered an acceptable appeal request, and KOHBHIE shall send written notice by certified mail, return receipt requested, to the appellant to:

(a) State the appeal request has not been accepted and explain the nature of the defect in the appeal request; and

(b) Explain that the applicant or enrollee may cure the defect and resubmit the appeal request by the due date within ninety (90) days of the notice of action.

(3) Upon exhaustion of the appeal process established in this administrative regulation, an appellant shall have the right to:

(a) Appeal to HHS according to regulations adopted by the secretary of HHS; and

(b) Seek a judicial review of an appeal decision pursuant to KRS 13B.140.

(4)[~~(3)~~] The state Medicaid agency shall retain authority for an appeal of a Medicaid or a KCHIP MAGI-based income determination of eligibility.

(5)[~~(4)~~] The DAH shall conduct an appeal of an individual eligibility determination, except for an eligibility determination for an exemption made in accordance with 45 C.F.R. 155.605.

(6)[~~(5)~~] An appeal of an eligibility determination of an exemption shall be conducted by HHS.

Section 3. Designation of a Representative. (1) To the extent allowable by law, an appellant may represent himself or herself or be represented during an appeal process by:

(a) Legal counsel;

(b) An authorized representative as set forth in 900 KAR 10:030;

(c) A relative;

(d) A friend; or

(e) Another individual not listed in paragraph (a), (b), (c), or (d) of this subsection.

(2) KOHBHIE[~~KHBE~~] shall designate a representative to act on behalf of the office[~~KHBE~~] for the hearing.

Section 4. Notice of Appeal Rights. (1) An applicant or an enrollee shall be notified of a right to appeal, timeframe to file an appeal, and how to file an appeal at the time:

(a) The applicant submits an application; and

(b) A notice of eligibility determination is sent by KHBE under 45 C.F.R. 155.310(g), 155.330(e)(1)(ii), or by HHS under 45 C.F.R. 155.610(i).

(2) A notice described in subsection (1) of this section shall include:

(a) An explanation of the applicant or enrollee's appeal rights in accordance with this administrative regulation;

(b) A description of the procedure and timeframe within which to request an appeal;

(c) Information on the applicant or enrollee's right to represent himself or herself or to be represented by legal counsel or other authorized person as identified in Section 3 of this administrative regulation;

(d) An explanation of the circumstances under which the appellant's eligibility may be maintained or reinstated pending an appeal decision in accordance with Section 8 of this administrative regulation; and

(e) An explanation that an appeal decision for one (1) household member may result in a:

1. Change in eligibility for another household member; or

2. Redetermination of eligibility in accordance with 900 KAR 10:030.

Section 5. Appeal Requests. (1) An applicant or an enrollee may submit an appeal request:

(a) By phone by contacting the kynect contact center;

(b) By mail to the KOHBHIE[~~KHBE~~];

(c) In person at a local DCBS office; or

(d) Via the internet at kynect.ky.gov.

(2) Upon request, the KOHBHIE[~~KHBE~~] or the DAH shall assist an applicant or enrollee in filing an appeal.

(3) An applicant or enrollee's right to appeal shall not be limited or interfered with by an employee or agent of the KOHBHIE[~~KHBE~~].

(4) An applicant or enrollee shall have thirty (30) days from the date of notice of an eligibility determination or redetermination to submit an appeal request.

(5) The date of notice shall be five (5) calendar days after the date on the notice unless an applicant or enrollee shows that the notice was not received within the five (5) day period.

Section 6. Informal Resolution. (1) After receiving an appeal request, KOHBHIE[~~the Office of the Kentucky Health Benefit Exchange~~] shall:

(a) Conduct a desk review of an appeal prior to sending the appeal to the DAH; and

(b) Complete the review within fifteen (15) calendar[~~ten (10)~~] days of receipt of the appeal request.

(2)[~~The desk review shall consider information submitted during the application process and any supporting documentation used to determine or redetermine an appellant's eligibility.~~

~~(3)~~] An appellant shall:

(a) Have the right to a hearing if the appellant is dissatisfied with the outcome of the informal resolution process; and

(b) Not have to provide duplicative information or documentation previously provided during the application process.

(3)[~~(4)~~] The outcome of an informal resolution shall be final and binding and the appeal shall not advance to a hearing if the appellant:

(a) Is satisfied with the outcome of the informal resolution process: and

(b) Withdraws his or her appeal request in accordance with

Section 12 of this administrative regulation.

(4) If an appellant is dissatisfied with the outcome of the informal resolution process, KOHBHIE shall send:

(a) The appeal request to DAH no later than five (5) business days of the completion of the informal resolution process;

(b) A written notice by certified mail, return receipt requested, to the appellant that includes:

1. Notification that the appeal request has been sent to DAH for a hearing;

2. Information regarding the appellant's eligibility pending appeal in accordance with Section 8 of this administrative regulation; and

3. An explanation that any APTCs paid on behalf of a tax filer pending appeal are subject to reconciliation under 26 C.F.R. 1.36B-4.

Section 7. Acknowledgement of Appeal Request and Eligibility Record by DAH. (1) A request for an appeal[~~shall be~~] sent by KOHBHIE to the DAH[~~no later than ten (10) days of receipt of the appeal request.~~

~~(2) A request for an appeal~~] shall be reviewed by DAH to ensure that the appeal request is valid.

(2)[~~(3)~~] Upon receipt of a valid appeal request, the DAH shall:

(a) Send timely notice to the appellant of receipt of the valid appeal request by certified mail, return receipt requested, to include[~~:~~

~~1. Information regarding the appellant's eligibility pending appeal in accordance with Section 8 of this administrative regulation;~~

~~2. An explanation that any APTCs paid on behalf of a tax filer pending appeal are subject to reconciliation under 26 C.F.R. 1.36B-4; and~~

~~3.~~] the hearing requirements contained in Section 10 of this administrative regulation; and

(b)[~~Send timely notice of the appeal request to the KHBE and, if applicable, instructions to provide eligibility pending appeal pursuant to Section 8 of this administrative regulation; and~~

~~(c)~~] Confirm receipt of the records transferred by KOHBHIE[~~KHBE~~] pursuant to subsection (5) of this section.

(3)[~~(4)~~] The DAH shall consider an appeal request valid if the request:

(a) Was incorrectly delivered or mailed to a department or division of the Cabinet for Health and Family Services; and

(b) Is otherwise valid.

(4)[~~(5)~~] Upon receipt of an appeal request that is not valid, the DAH shall:

(a) Send written notice to the appellant and KOHBHIE that the appeal request has not been accepted and of the nature of the defect in the appeal request; and

(b) Accept an amended appeal request as valid that meets the requirements of this administrative regulation.

[~~(6) Upon receipt of a notice under subsection (5)(b) of this section, the KHBE shall submit the appellant's eligibility record to the DAH.~~]

Section 8. Eligibility Pending Appeal. (1) An appellant who has submitted an acceptable request as described in Section 2 of this administrative regulation[~~a valid appeal~~] of a redetermination of eligibility in accordance with Section 5 of this administrative regulation shall be considered eligible while the appeal is pending.

(2) If a tax filer or appellant accepts eligibility pending an appeal of an eligibility redetermination, the appellant's eligibility for an APTC or CSR or enrollment in a QHP or SADP as applicable shall be continued in accordance with the level of eligibility immediately before the redetermination being appealed.

(3) An appellant may waive receipt of APTCs pending the outcome of an appeal.

(4) The continued receipt of APTCs during an appeal may impact the amount owed or due by an appellant during the reconciliation process set forth in 26 C.F.R. 1.36B-4, depending upon the appeal decision.

(5) Eligibility pending appeal shall not be applicable to an appellant appealing an initial denial of eligibility for APTCs.

Section 9. Dismissal of an Appeal. (1) An appeal shall be [~~administratively~~] dismissed by DAH[~~without the need for a final order~~] if the appellant:

(a) Withdraws the appeal request in accordance with Section 12 of this administrative regulation;

(b) Fails to appear at a scheduled hearing without good cause;

(c) Fails to submit a valid appeal request as specified in Section 5 of this administrative regulation; or

(d) Dies while the appeal is pending.

(2) If an appeal is[~~administratively~~] dismissed in accordance with subsection (1) of this section, DAH shall provide timely written notice:

(a) To the appellant and KOKBHIE that includes:

1. The reason for the[~~administrative~~] dismissal;

2. An explanation of the effect of the[~~administrative~~] dismissal on the appellant's eligibility; and

3. An explanation of how the appellant may show good cause why the[~~administrative~~] dismissal should be[~~administratively~~] vacated in accordance with subsection (3)(a) of this section; and

(b) To the appellant and KOHBHIE[~~KHBE agency~~] that includes:

1. The eligibility determination to be implemented; and

2. Discontinuing eligibility provided under Section 8 of this administrative regulation, if applicable.

(3) DAH shall:

(a) Vacate a[~~an administrative~~] dismissal under this section and proceed with the appeal if the appellant makes a written request within thirty (30) days of the date of the notice of the[~~administrative~~] dismissal showing good cause why the[~~administrative~~] dismissal should be vacated; and

(b) Provide timely written notice of the recommendation to the secretary of the Cabinet for Health and Family Services to deny the request to vacate a[~~an administrative~~] dismissal to the appellant, if the request is denied.

Section 10. Hearing Requirements. (1) DAH shall provide written notice to an appellant and KOHBHIE prior to a hearing with the acknowledgement of appeal request to include:

(a) Date;

(b) Time;

(c) Location;

(d) Format of the hearing; and

(e) The requirements in KRS 13B.050.

(2) An appellant shall have the opportunity to:

(a) Review the appeal record, including all documents and records to be used at the hearing, prior to the date of the hearing and during the hearing;

(b) Bring witnesses to testify;

(c) Establish all relevant facts and circumstances;

(d) Present an argument without undue interference; and

(e) Question or refute any testimony or evidence, including the opportunity to confront and cross-examine an adverse witness.

(3) The DAH shall:

(a) Consider the information used to determine an appellant's eligibility;

(b) Consider additional relevant evidence presented during the course of the appeal, including at the hearing; and

(c) Review the appeal without deference to a prior decision in the appeal case.

(4) A hearing shall be conducted:

(a) In accordance with the requirements of KRS 13B.080 and KRS 13B.090;

(b) At a reasonable date, time, and location or format;

(c) After notice of the hearing provided pursuant to subsection (1) of this section;

(d) Consistent with subsection (3) of this section; and

(e) By one (1) or more impartial hearing officers[~~officials~~] who have not been directly involved in the eligibility determination or any prior appeal decision in the same matter.

(5) Unless a request is made by an appellant for an in person hearing, the hearing shall be conducted via telephone.

Section 11. Expedited Appeals. (1) An appellant shall have the

right to an expedited appeal if:

(a) There is an immediate need for a health service; and

(b) The standard appeal process described in Section 10 of this administrative regulation could seriously endanger the appellant's life, health, or ability to attain, maintain, or regain maximum function.

(2) An expedited appeal shall be requested in the same manner as a standard appeal as set forth in Section 5 of this administrative regulation.

(3) If an expedited appeal is requested, an appellant shall submit evidence of the reason for the expedited appeal.

(4) If an appeal request under this section is denied by the DAH, the DAH shall:

(a) Conduct the appeal under the standard appeal process as set forth in Section 10 of this administrative regulation;

(b) Inform the appellant through electronic or oral notification, if possible, of the denial within the timeframes established by the secretary of HHS; and

(c) If notification is oral, follow up with the appellant by written notice.

(5) A written notice pursuant to subsection (4)(c) of this section shall include:

(a) The reason for the denial;

(b) An explanation that the appeal request will be transferred to the standard process described in Section 10 of this administrative regulation; and

(c) An explanation of the appellant's rights under the standard process in Section 10 of this administrative regulation.

Section 12. Withdrawal of an Appeal. If an appellant wants to withdraw an appeal, the appellant shall withdraw a request for an appeal:

(1) In writing to KOHBHIE;

(2) By phone by contacting the kynect contact center;

(3) Orally to KOHBHIE staff during an informal resolution process described in section 6 of this administrative regulation; or

(4)[~~(3)~~] Orally to the hearing officer during an appeal proceeding.

Section 13. Hearing Decision. (1) After the hearing is concluded or a decision is made not to reverse a[~~an administrative~~] dismissal of an appeal, the hearing officer shall issue a recommended order in accordance with the requirements of KRS 13B.110.

(2) A recommended order rendered by the DAH shall be based only on the:

(a) Information and evidence specified in 45 C.F.R. 155.535(e);

(b) Eligibility requirements in 900 KAR 10:030;[~~and~~]

(c) Eligibility requirements under 45 C.F.R. 155.300 to 155.355; and

(d) Record of the appeal and hearing.

(3) A recommended order shall:

(a) Be sent to the appellant and the appellant's authorized representative, if applicable, and KOHBHIE[~~KBHE~~];

(b) State the decision;

(c) Include a plain language description of the effect of the decision on an appellant's eligibility;

(d) Summarize the facts relevant to the appeal;

(e) Identify the legal basis, including an administrative regulation that supports the decision; and

(f) State the effective date of the decision.

(4) If either the appellant or KOHBHIE[~~KHBE~~] is dissatisfied with the recommended order, either party shall have fifteen (15) days from the date the recommended order is mailed to file exceptions to the recommendations with the secretary of the Cabinet for Health and Family Services.

(5) The secretary of the Cabinet for Health and Family Services shall consider the appeal record, including the recommended order and any exceptions filed to a recommended order, in accordance with KRS 13B.120.

(6) The secretary of the Cabinet for Health and Family Services shall:

(a) Accept the recommended order of the hearing officer and adopt it as the agency's final order;

(b) Reject or modify, in whole or in part, the recommended order; or

(c) Remand the matter, in whole or in part, to the hearing officer for further proceedings as appropriate.

(7) The secretary of the Cabinet for Health and Family Services shall:

(a) Issue written notice of the final order to the appellant which includes the appellant's rights to a judicial review afforded under KRS 13B.140 within ninety (90) days of the date an appeal request under Section 5 of this administrative regulation is received;

(b) In the case of an appeal request submitted under Section 11 of this administrative regulation that is determined to meet the criteria for an expedited appeal, issue the final order as expeditiously as:

1. The appellant's health condition requires; and

2. Reasonably possible, consistent with the timeframe established by the secretary of HHS; and

(c) Provide notice of the appeal decision and instructions to cease pended eligibility to:

1. The appellant, if applicable; and

2. KOHBHIE[~~KHBE~~].

(8) Upon receipt of a notice described in subsection (7) of this section, the KOHBHIE[~~KHBE~~] shall:

(a) Implement the appeal decision:

1. Retroactive to the date the incorrect eligibility determination was made; or

2. At a time determined under 45 C.F.R. 155.330(f); and

(b) Redetermine the eligibility of a household member who has not appealed an eligibility determination but whose eligibility may be affected by the appeal decision, in accordance with the standards described in:

1. 900 KAR 10:030; and

2. 45 C.F.R. 155.305.

Section 14. Right to Appeal to HHS. (1) If an appellant disagrees with an appeal decision made in accordance with Section 13 of this administrative regulation or notice of denial of a request to vacate a dismissal under Section 9(3)(b) of this administrative regulation, the appellant may request an appeal from HHS within thirty (30) days of the date of the appeal notice.

(2) Upon receipt of a notice of an appeal under subsection (1) of this section, DAH shall transmit via secure electronic interface the appellant's appeal record, including the appellant's eligibility record received from KOHBHIE[~~KHBE~~], to HHS.

(3) An applicant or an enrollee denied a request for an exemption by HHS under 45 C.F.R. 155.625(b) may appeal the decision to HHS.

Section 15. Release of Records. (1) An appellant shall have access to the information used by the KHBE to determine his or her eligibility.

(2) An appellant shall have access to his or her appeal record:

(a) Upon written request;

(b) At a place and time convenient to the appellant; and

(c) Subject to all applicable federal and state laws regarding privacy, confidentiality, disclosure, and personally identifiable information.

(3) The public shall have access to an appeal decision, subject to all applicable federal and state laws regarding privacy, confidentiality, disclosure, and personally identifiable information.

CARRIE BANAHAN, Executive Director
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 13, 2015

FILED WITH LRC: May 14, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 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 June 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 June 30, 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 address tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the policies and procedures relating to appeals of eligibility determinations for KHBE participation and insurance affordability programs in accordance with 42 U.S.C. 18031 and 45 C.F.R. 155.500 to 155.555

(b) The necessity of this administrative regulation: This administrative regulation is necessary to develop the policies and procedures that will be used for an individual seeking to appeal a decision of the Kentucky Health Benefit Exchange regarding eligibility

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statues by providing information so that individuals seeking to file an appeal of an eligibility determination issued by the Kentucky Health Benefit Exchange are informed of the steps necessary to file an appeal and the subsequent actions of the Cabinet related to the appeal.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed information to individuals seeking to file an appeal of an eligibility determination issued by the Kentucky Health Benefit Exchange so that they may avail themselves of their rights to an appeal.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will provide more details of the informal review process, clarify that an appeal request can be submitted for both a QHP and a Stand-Alone Dental plan, and provide details related to the process KOHBHIE will use to notify appellants of unacceptable appeal request.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this administrative regulation so that individuals seeking to file an appeal of eligibility determination issued by the Kentucky Health Benefits Exchange have the most accurate information related to the steps necessary to file an appeal and the subsequent action of the Cabinet related to the appeal.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statues by continuing to provide information so that individuals seeking to file an appeal of an eligibility determination issued by the Kentucky Health Benefit Exchange are informed of the steps necessary to file an appeal and the subsequent actions of the Cabinet related to the appeal.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation provides more detailed information to individuals seeking to file an appeal of an eligibility determination issued by the Kentucky Health Benefit Exchange so that they may avail themselves of their rights to an appeal.

(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 500 individuals that may file an appeal of their determination of eligibility issued by the Kentucky Health Benefit Exchange.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each individual seeking to file an appeal of a determination of eligibility issued by the Kentucky Health Benefit Exchange must file a request for an appeal pursuant to this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): 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 an appeal of an eligibility determination issued by the Kentucky Health Benefit Exchange by providing detailed instructions regarding the appeals process.

(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 policies and procedures relating an appeal of a determination of eligibility issued by the Kentucky Health Benefit Exchange, pursuant to, and in accordance with 42 U.S.C. Section 18031 and 45 C.F.R. Parts 155 and 156.

3. Minimum or uniform standards contained in the federal mandate. The Affordable Care Act establishes the creation of the American Health Benefit Exchange as identified in Section 1311(a) of the Affordable Care Act. The "Kentucky Health Benefit Exchange" (KHBE) is the Kentucky state-based exchange approved by HHS established by 45 C.F.R. 155.105 to offer a QHP or SADP in Kentucky An Exchange must develop policies and procedures related to individual appeals of eligibility determinations issued by KHBE.

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
(Amendment)

902 KAR 45:120. Inspection and permit fees:[; permit fees;] hotels, manufactured or mobile home communities, recreational vehicle communities, youth camps, and private water supplies.

RELATES TO: KRS 211.180, 219.021, 219.041, 219.340, 219.350, 219.390[, 2000 Ky. Acts ch. 549, part I.A. 41]

STATUTORY AUTHORITY: KRS 194A.050(1), 211.180(2), 219.041(1), 219.340(1)[, 2000 Ky. Acts ch. 549, part I.A. 41]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1), 211.180(2), and 219.041(1)[, and 2000 Ky. Acts ch. 549, part I.A. 41] authorize the Secretary for the Cabinet for Health and Family Services to establish by administrative regulation a schedule of reasonable fees to be paid by hotels, manufactured or mobile home communities, recreational vehicle communities, youth camps, and private water supplies to cover the cost of inspection and sampling activities carried out by the Cabinet for Health and Family Services. This administrative regulation establishes the permit and inspection fees to be charged to hotels, manufactured or mobile home communities, recreational vehicle communities, youth camps, and private water supplies.

Section 1. Fees for Inspections. An annual fee shall be assessed for an inspection conducted by the cabinet or its representative of a hotel, manufactured or mobile home community, recreational vehicle community, or youth camp, or for sampling of a private water supply according to the following schedule:

(1) A hotel with:

(a) One (1) to twenty-five (25) rooms – $150[fifty-three (53) dollars];

(b) Twenty-six (26) to fifty (50) rooms - $190[ninety (90) dollars];

(c) Fifty-one (51) to 100 rooms - $225[ninety-five (95) dollars];

(d) 101 rooms to 200 rooms - $270[$100];

(e) 201 rooms to 300 rooms - $300[$110];

(f) 301 to 400 rooms – $350[$120]; or

(g) 401 or more rooms - $400[$130];

(2) Youth camps:

(a) Day youth camp - seventy-five (75)[forty (40)] dollars;

(b) Primitive youth camp - fifty (50)[forty (40)] dollars; or

(c) Residential youth camp with:

1. One (1) to twenty (20) beds - $150[forty (40) dollars];

2. Twenty-one (21) to fifty (50) beds - $190[fifty (50) dollars]; or

3. Fifty-one (51) or more beds - $225;

(3) A manufactured or mobile home community or recreational vehicle community – seventy-five (75) dollars; or

(4)[sixty (60) dollars; or (3)] Sampling of private water supply – fifty (50)[fifteen (15)] dollars.

Section 2. Permit Fees for Hotels and Manufactured or Mobile Home Communities and Recreational Vehicle Communities. (1) An application for an annual permit to operate a hotel shall be accompanied by a fee of sixty (60) dollars.

(2) The fee for an annual[a] permit to operate a manufactured or mobile home park, or recreational vehicle park shall depend on the number of spaces in the park as set forth in the following schedule:

(a) One (1) to ten (10) spaces - fifty (50) dollars;

(b) Eleven (11) to fifty (50) spaces - $185[$150];

(c) Fifty-one (51) to 100 spaces - $195[$160];

(d) 101 to 200 spaces - $225[$170]; or

(e) 201 or more spaces - $250[$180].

(3) An application for a permit to construct or alter a manufactured or mobile home community or recreational vehicle community shall be accompanied by a fee of sixty (60)[forty-seven (47)] dollars.

Section 3. Payment of Fees.[(1)] Fees shall be paid to the local health department having jurisdiction. Fees received by local health departments shall be deposited in the Kentucky State Treasury. Inspection fees shall be submitted with the application for a permit to operate.

Section 4. Exemptions. (1) A facility operated by the Cabinet for Health and Family Services or the Justice Cabinet shall be exempt from the payment of inspection fees.

(2) If a local health department samples a private water supply as part of an investigation of illness, the sample shall be taken without charging a fee.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 13, 2015

FILED WITH LRC: May 14, 2015 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 22, 2015, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 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 June 30, 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: This administrative regulation contains the permit and inspection fees for mobile and manufactured home communities, recreational vehicle communities, hotels, youth camps, and private water supplies.

(b) The necessity of this administrative regulation: This regulation is necessary to outline the fees required for permits and inspections for hotels, manufactured or mobile home communities, recreational vehicle communities, youth camps, and private water supplies to cover the cost of inspection and sampling activities carried out by the Cabinet for Health and Family Services, pursuant to KRS 194A.050(1), 211.180(2), and 219.041(1).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes require these facilities (hotels, mobile home communities, RV communities, and youth camps) to be permitted before they can operate. The statutes also require the cabinet to provide these permits and inspections and a schedule of reasonable fees to cover the cost of these services. This administrative regulation outlines what those fees are and how they are to be collected.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the permit and inspection fees for hotels, mobile and manufactured home parks, recreational vehicle parks, youth camps, and private water supplies. This assists in the effective administration of the statutes, which require such permits and inspections and an established schedule of fees.

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

(a) How the amendment will change this existing administrative regulation: The amendment to the regulation increases the permit and inspection fees where allowed in the authorizing statutes to decrease the deficit these programs are currently operating under.

(b) The necessity of the amendment to this administrative regulation: The cost of operating the inspection programs is $2.4 million per year. Fees collected currently cover less than twenty (20) percent of this cost, leaving the balance of operational costs to be paid by local tax dollars. Local health agencies are no longer able to bear the cost of providing these programs without additional support. Fees have not been increased since 2001. Given that these programs are protective of public health and of the industries that they regulate, it is appropriate for the regulated entities to help bear the burden of the costs of the program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment increases the reasonable set of fees to cover part of the cost of inspection, permitting, and sampling activities carried out as required by the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment increases some of the permit, inspection, and collection fees for hotels, mobile and manufactured home parks, recreational vehicle parks, youth camps, and private water supplies, as allowed by statute. These costs allow the permitting and inspection programs to operate, also as required by statute. Although the fees will still not cover the inspection and permitting programs in their entirety, the increase will help offset the costs to local health departments and local communities, allowing the use of local tax dollars for other necessary health operations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Hotels – 1,865

Mobile Home and Recreational Vehicle Communities – 2,142

Youth Camps – 230

Water Samples – Varies with requested service

County Health Departments – 120

Kentucky Department for Public Health

(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 would pay a nominal fee increase for their permit to operate and for the inspectional oversight of their businesses. People who request water samples to be tested by the local health departments currently have to pay only a fraction of the cost of utilizing a private company. Raising the fees slightly will allow those who need water tested to continue to get the service at a very low rate. These fees have not been raised since 2001 and are being raised to offset the operational cost deficits that are currently being offset by local tax dollars. These programs are operated and the fees are collected by local health departments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): Hotels will pay an inspection fee increase of ninety-seven (97) dollars - $270 more per year, based on size. The annual permit fee is not increased by this amendment. The annual permit fees for operating a manufactured or mobile home park or R/V park will increase by 0 - seventy (70) dollars, based on the number of spaces in the park and pursuant to KRS 219.340(1). The permit fee to construct or alter such park will increase by thirteen (13) dollars. This amendment includes a new fee for the inspection of a manufactured or mobile home community or recreational vehicle community at seventy (75) dollars. Youth camps will pay an inspection fee increase of ten (10) dollars - $165, depending on the type of camp and size. The fee for the sampling and testing of a private water supply will increase thirty-five (35) dollars. The proposed fees are consistent with or lower than those of the same programs in surrounding states. Local health departments will incur no additional costs, but will generate revenue to operate local programs.

(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 which provides for inspections to monitor their compliance with state and federal laws. This oversight provides regulated entities some measure of liability protection and helps ensure that their customers are protected from unsafe and unsanitary conditions. These programs also assure that all regulated entities operate under and by the same standards of practice, further protecting business interests. Local health departments collect these fees and will benefit from the revenue generated by the fee increase.

(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 as an administrative regulation is already in place which sets permit and inspection fees for these entities. The increased fees will require nothing new of the administrative body.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The fees collected will continue to be used to implement and enforce this administrative regulation and offset the cost of program operations. Local tax dollars and some general fund dollars also help to offset the costs of these programs.

(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 and inspection fees to cover part of the cost of these programs, currently operating at a deficit. There will be no additional costs to administer this program given that there is already a mechanism in place to collect fees and issue permits.

(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 and inspection fees for regulated entities in order to better support the cost of the inspection and permitting program. These fees have not been raised since 2001.

(9) TIERING: Is tiering applied? Yes. Smaller entities required to comply with this administrative regulation pay a smaller fee. The fees for hotel and residential youth camp inspections increase with the entity size and corresponding inspection time.

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 agencies impacted by this regulation will be the 120 County Health Departments and the Department for Public Health Environmental Management Branch, as they perform these inspections and operate the permitting program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 211.180, 219.021, 219.041, 219.340, 219.350, and 219.390.

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? Between the mobile home/RV Communities, hotels, youth camps and private water samples, this amendment will generate approximately $338,558 in 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? The revenue generated by this amendment, will be dependent on the number of mobile home/RV communities, hotels, youth camps, and requested water samples. If numbers remain consistent for these entities, an increase of $338,558 annually would continue to be realized.

(c) How much will it cost to administer this program for the first year? This permitting and inspection program currently costs $2.4 million per year to administer. This amendment will not increase or decrease this cost. However, it will help ease the burden on local governments' taxpayers, who have been making up the deficit under which this program operates.

(d) How much will it cost to administer this program for subsequent years? There is expected to be an increase in the cost to administer this program over the years as the general cost of operating increases.

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 1:055. Payments for primary care center, federally-qualified health center, federally-qualified health center look-alike, and rural health clinic services.

RELATES TO: KRS 205.560, 216B.010, 216B.105, 216B.130, 216B.990, 42 C.F.R. 413, 438.60, 491, Subpart A, 440.130, 440.230, 447.3251, 45 C.F.R. 74.27, 48 C.F.R. Part 31, 42 U.S.C. 1396a, b, d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(1), 216B.042, 42 U.S.C. 1396a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with 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 Services' reimbursement policies for primary care center, federally-qualified health center, federally-qualified health center look-alike, and rural health clinic services.

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

(2) "Alternative payment methodology" or "APM" means a reimbursement that is an alternative to the standard reimbursement established in Section 3 of this administrative regulation in accordance with 42 U.S.C. 1396a(bb)(6)[~~"Allowable costs" means costs that are incurred by a federally-qualified health center, federally-qualified health center look-alike, rural health clinic, or primary care center that are reasonable in amount and proper and necessary for the efficient delivery of services~~].

(3) "Audit" means an examination that[~~, which~~] may be full or limited in scope[~~,~~] of a federally-qualified health center's, federally-qualified health center look-alike's, rural health clinic's, or primary care center's:

(a) Financial transactions, accounts, and reports; and

(b) Compliance with applicable Medicare and Medicaid regulations, manual instructions, and directives.

(4) "Base year" means the first full fiscal year following the effective date of an FQHC's, FQHC look-alike's, or RHC's enrollment in the Medicaid program in which the FQHC, FQHC look-alike, or RHC has reached its maximum hours per day, days per week, and weeks per year of intended operation.

(5) "Certified psychologist with autonomous functioning" means an individual who is a certified psychologist with autonomous functioning pursuant to KRS 319.056.

(6) "Certified social worker" means an individual who meets the requirements established in KRS 335.080.

(7) "Change in scope of service" means a change in the type, intensity, duration, or amount of service.

(8)[~~(5) "Clinical psychologist" is defined by 42 C.F.R. 410.71(d).~~

~~(6)~~] "Department" means the Department for Medicaid Services or its designated agent.

(9)[~~(7)~~] "Enrollee" means a recipient who is enrolled with a managed care organization for the purpose of receiving Medicaid or KCHIP covered services.

(10)[~~(8)~~] "Federal financial participation" is defined in 42 C.F.R. 400.203.

(11)[~~(9)~~] "Federally-qualified health center" or "FQHC" is defined in 42 C.F.R. 405.2401.

(12)[~~(10)~~] "Federally-qualified health center look-alike" or "FQHC look-alike" means an entity that is currently approved by the United States Department of Health and Human Services, Health Resources and Services Administration, and the Centers for Medicare and Medicaid Services to be a federally-qualified health center look-alike.

(13) "Final PPS rate" means an all-inclusive reimbursement

amount per visit for an FQHC, FQHC look-alike, or RHC that:

(a) Is unique to the FQHC, FQHC look-alike, or RHC;

(b) Encompasses reimbursement for all services rendered during the visit;

(c) Is based on:

1. Twelve (12) full months of Medicaid cost report data in which the FQHC, FQHC look-alike, or RHC has reached its maximum hours per day, days per week, and weeks per year of intended operation:

a. Submitted to the department by the FQHC, FQHC look-alike, or RHC; and

b. That has been reviewed and approved by the department; and

2. A paid claims listing corresponding to the twelve (12) full months of Medicaid cost report data in which the FQHC, FQHC look-alike, or RHC has reached its maximum hours per day, days per week, and weeks per year of intended operation; and

(d) Is established by the department.

(14)[~~(11)~~] "Health care provider" means, for:

(a) A primary care center, an FQHC, an FQHC look-alike, or an RHC:

1. A licensed physician;

2. A licensed osteopathic physician;

3. A licensed podiatrist;

4. A licensed optometrist;

5. An[~~A licensed or certified~~] advanced practice registered nurse;

6. A licensed dentist or oral surgeon;

7. A physician assistant;

8. A licensed clinical social worker;[~~or~~]

9. A licensed[~~clinical~~] psychologist;

10. A licensed marriage and family therapist;

11. A licensed professional clinical counselor;

12. A licensed psychological practitioner;

13. A certified psychologist with autonomous functioning; or

14. A practitioner authorized pursuant to 907 KAR 1:054 to provide services in a PCC, an FQHC, an FQHC look-alike, or an RHC who is not listed in subparagraphs 1 through 13 of this paragraph; or

(b)[~~An FQHC, FQHC look-alike, or RHC:~~

~~1. A provider or practitioner listed in paragraph (a) of this subsection; or~~

~~2. Contingent upon approval of a state plan amendment by the Centers for Medicare and Medicaid Services, a:~~

~~a. Licensed professional clinical counselor; or~~

~~b. Licensed marriage and family therapist; or~~

~~(c)~~] An FQHC or FQHC look-alike, in addition to the professionals established in paragraph (a) of this subsection:

1. A resident in the presence of a teaching physician; or

2. A resident without the presence of a teaching physician if:

a. The services are furnished in an FQHC or FQHC look-alike in which the time spent by the resident in performing patient care is included in determining any intermediary payment to a hospital in accordance with 42 C.F.R. 413.75 through 413.83;

b. The resident furnishing the service without the presence of a teaching physician has completed more than six (6) months of an approved residency program;

c. The teaching physician:

(i) Does not direct the care of more than four (4) residents at any given time; and

(ii) Directs care from a proximity that constitutes immediate availability; and

d. The teaching physician:

(i) Has no other responsibilities at the time;

(ii) Has management responsibility for any recipient seen by the resident;

(iii) Ensures that the services furnished are appropriate;

(iv) Reviews with the resident, during or immediately after each visit by a recipient, the recipient's medical history, physical examination, diagnosis, and record of tests or therapies; and

(v) Documents the extent of the teaching physician's participation in the review and direction of the services furnished to each recipient.

(15)[~~(12)~~] "Interim PPS rate" means an all-inclusive per visit[~~a~~] reimbursement amount established by the department to pay an FQHC, FQHC look-alike, or an RHC[~~, or a PCC~~] for covered services prior to the establishment of a final PPS rate.

(16)[~~(13)~~] "Licensed clinical social worker" means an individual who is currently licensed in accordance with KRS 335.100.

(17)[~~(14)~~] "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(18)[~~(15)~~] "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(19) "Licensed psychological practitioner" means an individual who meets the requirements established in KRS 319.053.

(20)[~~(16)~~] "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.

(21) "Medical Group Management Association Medical Directorship and On-Call Compensation Survey" means a report developed and owned by the Medical Group Management Association that:

(a) Highlights the critical relationship between medical director compensation and time spent in the medical director function;

(b) Aligns medical director compensation with time spent as medical director; and

(c) Contains tables illustrating the relationship of medical director salary to time spent in the medical director function.

(22)[~~(17)~~] "Medical Group Management Association Physician Compensation and Production Survey Report" means a report developed and owned by the Medical Group Management Association that[~~which~~]:

(a) Highlights the critical relationship between physician salaries and productivity;

(b) Is used to align physician salaries and benefits with provider production; and

(c) Contains:

1. Performance ratios illustrating the relationship between compensation and production; and

2. Comprehensive and summary data tables that cover many specialties.

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

(24)[~~(19)~~] "Medicare Economic Index" or "MEI" means the economic index referred to in 42 U.S.C. 1395u(b)(3)(L).

(25) "Paid claims listing" means a report of claims paid by the department for a given FQHC, FQHC look-alike, or RHC.

(26)[~~(20)~~] "Parent facility" means a federally-qualified health center, federally-qualified health center look-alike, or primary care center that is:

(a) Licensed and operating with a unique Kentucky Medicaid program provider number;

(b) Operating under the same management as a satellite facility; and

(c) The original facility which existed prior to the existence of a satellite facility.

(27)[~~(21)~~] "PCC" or "primary care center" means an entity that is currently licensed as a PCC in accordance with 902 KAR 20:058.

(28)[~~(22)~~] "Percentage increase in the MEI" is defined in 42 U.S.C. 1395u(i)(3).

(29)[~~(23)~~] "Physician assistant" is defined by KRS 311.840(3).

(30)[~~(24)~~] "PPS" means prospective payment system.

(31)[~~(25)~~] "Rate year" means, for the purposes of the MEI, the twelve (12) month period beginning July 1 of each year for which a rate is established for an FQHC, FQHC look-alike, or RHC[~~, or a PCC~~] under the prospective payment system.

(32)[~~(26)~~] "Reasonable cost" means:

(a) A cost as determined by the:

1.[~~(a)~~] Applicable Medicare cost reimbursement principles established in 42 C.F.R. Part 413, 45 C.F.R. 74.27, and 48 C.F.R. Part 31; and

2.[~~(b)~~] Medical Group Management Association Physician Compensation and Production Survey Report for the applicable

year and region; and

(b) Costs determined to be reasonable in accordance with a comprehensive desk review or audit.

(33)[(27)] "Recipient" is defined by KRS 205.8451(9).

(34)[(28)] "RHC" or "rural health clinic" is defined in 42 C.F.R. 405.2401(b).

(35)[(29)] "Satellite facility" means a federally-qualified health center, federally-qualified health center look-alike, or primary care center that:

(a) Is at a different location than the parent facility; and

(b) Operates under the same management as the parent facility.

(36)[(30)] "Telehealth" means two (2)-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 telecommunication equipment that includes, at a minimum, audio and video equipment.

(37)[(31)] "Visit" means an[a face-to-face] encounter:

(a)[or encounter which occurs via Telehealth] Between a recipient or enrollee and a health care provider during which an FQHC, FQHC look-alike, or RHC service is delivered; and

(b) Which occurs:

1. In person; or

2. Via telehealth if authorized by 907 KAR 3:170.

Section 2. Provider Participation Requirements. (1)(a) A participating FQHC, FQHC look-alike, RHC, or PCC shall be currently:

1. Enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

2. Except as established in paragraph (c) of this subsection, participating in the Kentucky Medicaid program in accordance with 907 KAR 1:671.

(b) A satellite facility of an FQHC, an FQHC look-alike, or a PCC shall:

1. Be currently listed on the parent facility's license in accordance with 902 KAR 20:058;

2. Comply with the requirements regarding extensions established in 902 KAR 20:058; and

3. Comply with 907 KAR 1:671.

(c) In accordance with 907 KAR 17:015, Section 3(3), an FQHC, FQHC look-alike, RHC, or PCC that provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(2)(a) To be initially enrolled with the department, an:

1. FQHC or[,] FQHC look-alike[, or RHC] shall:

a.[1.] Enroll in accordance with 907 KAR 1:672; and

b.[2.] Submit to the department proof of its FQHC or FQHC look-alike designation issued by the Centers for Medicare and Medicaid Services; or

2. RHC shall:

a. Enroll in accordance with 907 KAR 1:672; and

b. Submit to the department proof of its RHC license issued by the Cabinet for Health and Family Services Office of Inspector General[certification by the United States Department of Health and Human Services, Health Resources and Services Administration as an FQHC, FQHC look-alike, or RHC].

(b) To remain enrolled and participating in the Kentucky Medicaid program, an:

1. FQHC or[,] FQHC look-alike[, or RHC] shall:

a.[1.] Comply with the enrollment requirements established in 907 KAR 1:672;

b.[2.] Comply with the participation requirements established in 907 KAR 1:671; and

c.[3.] Annually submit to the department proof of its FQHC or FQHC look-alike designation issued by the Centers for Medicare and Medicaid Services; or

2. RHC shall:

a. Comply with the enrollment requirements established in 907 KAR 1:672;

b. Comply with the participation requirements established in 907 KAR 1:671; and

c. Annually submit to the department proof of its RHC license issued by the Cabinet for Health and Family Services Office of Inspector General[certification by the United States Department of Health and Human Services, Health Resources and Services Administration as an FQHC, FQHC look-alike, or RHC to the department].

(c) The requirements established in paragraphs (a) and (b) of this subsection shall apply to a satellite facility of an FQHC or FQHC look-alike.

(3)(a) An FQHC or[,] FQHC look-alike[, or PCC] that operates multiple satellite facilities shall:

1.[(a)] List each satellite facility on the parent facility's license in accordance with 902 KAR 20:058; and

2.[(b)] Consolidate claims and cost report data of its satellite facilities with the parent facility.

(b) A PCC that operates multiple satellite facilities shall list each satellite facility on the parent facility's license in accordance with 902 KAR 20:058.

(4) An FQHC, FQHC look-alike, RHC, or PCC that has been terminated from federal participation shall be terminated from Kentucky Medicaid program participation.

(5) A participating:

(a) FQHC and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of an FQHC;

(b) FQHC look-alike and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of an FQHC look-alike;

(c) RHC and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of an RHC; or

(d) PCC and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of a PCC[PPC].

(6) An FQHC, FQHC look-alike, RHC, or PCC performing laboratory services shall meet the requirements established in 907 KAR 1:028 and 907 KAR 1:575.

Section 3. Standard Reimbursement for an FQHC, FQHC look-alike, or RHC for a Visit by a Recipient Who is not an Enrollee and that is Covered by the Department. (1) Except as established in Section 5 or Section 9 of this administrative regulation, for a visit by a recipient who is not an enrollee and that is covered by the department, the department shall reimburse:

(a) An FQHC, FQHC look-alike, or RHC a final PPS rate[an all-inclusive encounter rate per patient visit in accordance with a prospective payment system (PPS)] as required by 42 U.S.C. 1396a(bb)[1396a(aa)]; or

(b) A satellite facility of an FQHC or FQHC look-alike a final PPS rate[an all-inclusive encounter rate per patient visit in accordance with a prospective payment system (PPS)] as required by 42 U.S.C. 1396a(bb)[1396a(aa)].

(2) Costs related to outpatient drugs or pharmacy services shall be excluded from the PPS rate[all-inclusive encounter rate per patient visit] referenced in subsection (1) of this section.

(3) The department shall calculate a final PPS rate for a new FQHC, FQHC look-alike, or RHC in accordance with Section 4 of this administrative regulation.

(4) The department shall adjust a final PPS rate[per visit]:

(a) By the percentage increase in the MEI applicable to FQHC, FQHC look-alike, or RHC services on July 1 of each year;[and]

(b) In accordance with Section 10[8] of this administrative regulation:

1. Upon request and documentation by an FQHC, FQHC look-alike, or RHC that there has been a change in scope of services; or

2. Upon review and determination by the department that there has been a change in scope of services; and

(c) If necessary as a result of a desk review or audit.

(5) A final PPS rate established in accordance with this administrative regulation shall not be subject to an end of the year

cost settlement.

Section 4. Establishment of a Final PPS Rate for a New FQHC, FQHC look-alike, or RHC.

(1)(a) The department shall establish a final PPS rate to reimburse a new FQHC, FQHC look-alike, or RHC 100 percent of its reasonable cost of providing Medicaid covered services utilizing information from[~~during~~] the FQHC's, FQHC look-alike's, or RHC's base year upon completion of a comprehensive desk review or audit of an FQHC's, FQHC look-alike's, or RHC's Universal Cost Report.

(b) Except for a time frame in which the department reimburses an FQHC, FQHC look-alike, or RHC an interim PPS rate, the[~~initial and subsequent~~] final PPS rate established for an FQHC, FQHC look-alike, or RHC shall:

1. Be prospective; and

2. Not settled to cost.

(2)[~~(a)~~] The department shall determine the reasonable costs of an FQHC, FQHC look-alike, or RHC based on the:

(a) Universal Cost Report:

1. Submitted by the FQHC, FQHC look-alike, or RHC to the department and prepared by the FQHC, FQHC look-alike, or RHC in accordance with the Universal Cost Report Instructions; and

2. That[~~which~~] contains twelve (12) full months of operating data for the first full fiscal year of operations that the FQHC, FQHC look-alike, or RHC has reached its maximum hours per day, days per week, and weeks per year of intended operation;

(b) Department's review of the Universal Cost Report referenced in paragraph (a) of this subsection; and

(c) Costs and visits as adjusted by the department for full-time operation for a facility that is not in operation at least forty (40) hours per week[~~most recently submitted to the department by the FQHC, FQHC look-alike, or RHC.~~

~~(b) The base rate referenced in subsection (1)(a) of this section shall be based on the reasonable cost determination made by the department pursuant to paragraph (a) of this subsection~~].

(3)(a)[~~Until an FQHC, FQHC look-alike, or RHC submits a Medicaid cost report containing twelve (12) full months of operating data for the facility's base year, the department shall reimburse the FQHC, FQHC look-alike, or RHC an interim rate equal to the all-inclusive per visit rate established for the FQHC, FQHC look-alike, or RHC by Medicare.~~

~~(b) An FQHC, FQHC look-alike, or RHC shall provide the department with a copy of the Medicare rate letter for the rates in effect during the FQHC's, FQHC look-alike's, or RHC's interim period.~~

~~(c)1. The department shall adjust an interim rate for an FQHC, FQHC look-alike, or RHC based on the establishment of the final rate.~~

~~2. All claims submitted to the department and paid by the department based on the interim rate shall be adjusted to comport with the final rate.~~

~~(4)(a)~~] An FQHC, FQHC look-alike, or RHC shall submit a Universal Cost Report to the department by the end of the fifth month following the end of the FQHC's, FQHC look-alike's, or RHC's first full fiscal year that the FQHC, FQHC look-alike, or RHC has reached its maximum hours per day, days per week, and weeks per year of intended operation.

(b) The department shall:

1. Review the Universal Cost Report referenced in paragraph (a) of this subsection submitted by an FQHC, FQHC look-alike, or RHC within ninety (90) business days of receiving the Universal Cost Report; and

2. Notify the FQHC, FQHC look-alike, or RHC of the[~~:~~

~~a.~~] necessity of the FQHC, FQHC look-alike, or RHC to submit additional documentation if necessary[~~;~~

~~b. Final rate established;~~

~~c. Appeal rights regarding the final rate; and~~

~~d. Estimated time for determining a final rate if a final rate is not established within ninety (90) days~~].

(c)1. If additional documentation is necessary to establish a final PPS rate, the FQHC, FQHC look-alike, or RHC shall:

a. Provide the additional documentation to the department within thirty (30) days of the notification of need for additional documentation; or

b. Request an extension beyond thirty (30) days to provide the additional documentation.

2. The department shall grant no more than one (1) extension.

3. An extension shall not exceed thirty (30) days.

(d)1. If the department requests additional documentation from an FQHC, FQHC look-alike, or RHC but does not receive additional documentation or an extension request within thirty (30) days, the department shall reimburse the FQHC, FQHC look-alike, or RHC based on the Medicaid physician fee schedule applied to physician services pursuant to 907 KAR 3:010 until:

a.[~~1.~~] The additional documentation has been received by the department; and

b.[~~2.~~] The department has established a final PPS rate.

2. If an FQHC, FQHC look-alike, or RHC does not submit a Universal Cost Report to the department, the department shall reimburse the FQHC, FQHC look-alike, or RHC based on the Medicaid physician fee schedule applied to physician services pursuant to 907 KAR 3:010 until the FQHC, FQHC look-alike, or RHC submits a Universal Cost Report to the department.

(e) The department shall review an FQHC's, FQHC look-alike's, or RHC's paid claims listing for the period of time corresponding to the FQHC's, FQHC look-alike's, or RHC's cost report period of time referenced in paragraph (a) of this subsection.

(f)1. If an FQHC, FQHC look-alike, or RHC has submitted all necessary information to the department, within forty-five (45) days of reviewing the FQHC's, FQHC look-alike's, or RHC's paid claims listing, the department shall:

a. Establish a final PPS rate for the FQHC, FQHC look-alike, or RHC; and

b. Notify the FQHC, FQHC look-alike, or RHC in writing of the FQHC's, FQHC look-alike's, or RHC's:

(i) Final PPS rate; and

(ii) Appeal rights regarding the PPS final rate.

2. To allow adequate time for claim adjudication, a paid claims listing shall not be requested until at least fourteen (14) months after an FQHC's, FQHC look-alike's, or RHC's fiscal year end.

3. If an FQHC, FQHC look-alike, or RHC has not submitted all necessary information to the department to establish a final PPS rate, the department shall continue to pay the FQHC, FQHC look-alike, or RHC based on the Medicaid physician fee schedule applied to physician services pursuant to 907 KAR 3:010.

(4) Along with a Universal Cost Report, an FQHC, FQHC look-alike, or RHC shall submit to the department a written statement of the FQHC's, FQHC look-alike's, or RHC's maximum hours per day, days per week, and weeks per year of operation.

Section 5. Interim Reimbursement for a New FQHC, FQHC Look-alike, or RHC.

(1)(a) Until a final PPS rate is established for an FQHC, FQHC look-alike, or RHC, the department shall reimburse the FQHC, FQHC look-alike, or RHC an interim PPS rate based on the average final PPS rates of entities with similar caseloads.

(b) To identify an entity with a similar caseload, the department shall consider:

1. Entity type (FQHC, FQHC look-alike, or RHC);

2. Managed care organization region;

3. Operating hours per day, days per week, and weeks per year; and

4. Specialty services, obstetrical services, or hospital-based entities, if applicable.

(2) If no entity with a similar caseload exists, the department shall establish an interim PPS rate using cost reporting methods.

(3) After the department establishes a final PPS rate for an FQHC, FQHC look-alike, or RHC, the department shall retroactively adjust reimbursement to the FQHC, FQHC look-alike, or RHC that was made on an interim basis to comport with the final PPS rate.

(4) An FQHC, FQHC look-alike, or RHC, upon enrolling with the Medicaid Program, shall submit in writing to the department a statement stating the FQHC's, FQHC look-alike's, or RHC's maximum hours per day, days per week, and weeks per year of

operation.

Section 6. Reimbursement for Services or Drugs Provided to an Enrollee by a PCC That is Not an FQHC, FQHC Look-Alike, or RHC and that are Covered by an MCO. (1) For a service or drug provided to an enrollee by a PCC that is not an FQHC, FQHC look-alike, or RHC and that is covered by an MCO, the PCC's reimbursement shall be the reimbursement established pursuant to an agreement between the PCC and the managed care organization with whom the enrollee is enrolled.

(2) The department shall not supplement the reimbursement referenced in subsection (1) of this section.

Section 7.[~~6.~~] Reimbursement for Services or Drugs Provided to a Recipient by a PCC That is Not an FQHC, FQHC Look-Alike, or RHC and that are Covered by the Department. (1)(a) For a service or drug provided to a recipient that is not an enrollee by a PCC that is not an FQHC, FQHC look-alike, or RHC, the department shall reimburse the rate or reimbursement established for the service or drug on the current Kentucky-specific Medicare Physician Fee Schedule[~~ established for Kentucky~~].

(b)1. If no rate or reimbursement exists on the Kentucky-specific Medicare Physician's Fee schedule for a service or drug referenced in paragraph (a) of this subsection, the department shall reimburse for the service or drug the same amount that the department reimburses for the service or drug pursuant to the applicable administrative regulation established in Title 907 KAR.

2. For example, if no reimbursement exists on the current Kentucky-specific Medicare Physician Fee Schedule for a dental service, the department shall reimburse for the dental service pursuant to 907 KAR 1:626.

(2) The reimbursement referenced in subsection (1) of this section shall not exceed the federal upper payment limit determined in accordance with 42 C.F.R. 447.321.

(3)(a) The coverage provisions and requirements established in 907 KAR 3:005[~~1:054~~] shall apply to a service or drug provided by a PCC.

(b) If a Medicare coverage provision or requirement exists regarding a given service or drug that contradicts a provision or requirement established in 907 KAR 3:005[~~1:054~~], the provision or requirement established in 907 KAR 3:005[~~1:054~~] shall supersede the Medicare provision or requirement.

Section 8.[~~7.~~] Supplemental Reimbursement for FQHC Visits, FQHC Look-Alike Visits, and RHC Visits. If a managed care organization's reimbursement to an FQHC, FQHC look-alike, or RHC for a visit by an enrollee to the FQHC, FQHC look-alike, or RHC is less than what the FQHC, FQHC look-alike, or RHC would receive pursuant to Sections 3,[~~and~~] 4, 5, or 9 of this administrative regulation, the department shall supplement the reimbursement made by the managed care organization in a manner that:

(1) Equals the difference between what the managed care organization reimbursed and what the reimbursement would have been if it had been made in accordance with Sections 3,[~~and~~] 4, 5, or 9 of this administrative regulation;

(2) Is in accordance with 42 U.S.C. 1396a(bb)(5)(A); and

(3) Ensures that total reimbursement does not exceed the federal upper payment limit in accordance with[~~:~~

~~(a)~~] 42 C.F.R. 447.304[~~; and~~

~~(b) 42 C.F.R. 447.321~~].

Section 9. Alternative Payment Methodology for an FQHC, FQHC Look-alike, or RHC.

(1)(a) The department shall pay to an FQHC, FQHC look-alike, or RHC, for which a final PPS rate exists, an alternative payment methodology if the FQHC, FQHC look-alike, or RHC notifies the department in writing that it requests to receive the alternate reimbursement.

(b)1. The APM shall equal 125 percent of the Medicare upper payment limit for rural health clinics in effect on September 30, 2014.

2. The APM referenced in subparagraph 1 of this paragraph shall not be adjusted for inflation.

(2)(a) An APM established in this section shall be effective for dates of service beginning with the date requested in writing by an FQHC, FQHC look-alike, or RHC except as established in paragraph (b) of this subsection.

(b) An APM effective date shall not precede the date in which the department received the written request for the APM.

Section 10.[~~8.~~] Change in Scope and Final PPS Rate Adjustment. (1)(a) If an FQHC, FQHC look-alike, or RHC changes its scope of services after the base year, the department shall adjust the FQHC's, FQHC look-alike's, or RHC's final PPS rate if the change in scope qualifies for an adjustment in accordance with this section upon departmental review and approval of the change in scope.

(b) An adjustment to a final PPS rate resulting from a change in scope that occurred after an FQHC's, FQHC look-alike's, or RHC's base year shall be[~~retroactively~~] effective to the date that the[~~FQHC, FQHC look-alike, or RHC applied for the~~] change in scope occurred.

(c)1. A revised PPS rate shall be calculated in accordance with the MAP 100501.

2. There shall be no rebasing regarding a revised PPS rate.

(2) A change in scope of service shall be restricted to:

(a) Adding or deleting a covered service;

(b) Increasing or decreasing the intensity of a covered service pursuant to subsection (5) of this section; or

(c) A statutory or regulatory change that materially impacts the costs or visits of an FQHC, FQHC look-alike, or RHC.

(3) The following items individually shall not constitute a change in scope:

(a) A general increase or decrease in the costs of existing services;

(b) A reduction or an expansion of[~~office~~] hours per day, days per week, or weeks per year;

(c) An addition of a new site that provides the same Medicaid covered services;

(d) A wage increase;

(e) A renovation or other capital expenditure;

(f) A change in ownership; or

(g) An addition or deletion of a service provided by a non-licensed professional or specialist.

(4)(a) An addition of a covered service shall be restricted to the addition of a licensed professional staff member who can perform a Medicaid covered service that is not currently being performed within the FQHC, FQHC look-alike, or RHC by a licensed professional employed or contracted by the facility.

(b) The deletion of a covered service shall be restricted to the deletion of a licensed professional staff member who can perform a Medicaid covered service that was being performed within the FQHC, FQHC look-alike, or RHC by the licensed professional staff member.

(5) A change in intensity shall:

(a) Include a material change;

(b) Increase or decrease the existing final PPS rate by at least five (5) percent; and

(c) Last at least twelve (12) months.

(6) The department shall consider a change in scope request due to a statutory or regulatory change that materially impacts the costs of visits at an FQHC, FQHC look-alike, or RHC if:

(a) A government entity imposes a mandatory minimum wage increase and the increase was:

1. Not included in the calculation of the final PPS rate; or

2. Subsequently included in the MEI applied yearly; or

(b)1. A new licensure requirement or modification of an existing requirement by the state results in a change that affects all facilities within the class.

2. A provider shall document that an increase or decrease in the cost of a visit occurred as a result of a licensure requirement or policy modification.

(7) A requested change in scope shall:

(a) Increase or decrease the existing final PPS rate by at least five (5) percent;[~~and~~]

(b) Last at least twelve (12) months; and

(c) Be submitted to the department in writing.

(8)(a) An FQHC, FQHC look-alike, or RHC that requests a change in scope shall submit[~~For a change in scope that is effective during a base year for determining an FQHC's, FQHC look-alike's, or RHC's final PPS rate, the base year costs associated with the change in scope shall not be duplicated when determining the revised PPS rate due to the change in scope.~~

~~(9)~~] the following documents[~~shall be submitted~~] to the department within six (6) months of the requested effective date of a change in scope:

1.[~~(a)~~] A narrative describing the change in scope;

2.[~~(b)~~] A projected Universal Cost Report containing twelve (12) months of projected cost report data for the interim PPS rate change;

3.[~~and (c)~~] A completed MAP 100501, Prospective Payment System Rate Adjustment, completed according to the Instructions for Completing the MAP 100501 Form; and

4. A signed letter requesting the change in scope.

(b) If the department does not receive the documentation required regarding a change in scope within six (6) months after the requested effective date of a change in scope, the change in scope shall be denied.

(c)1.[~~(10)~~] The department shall:

a.[~~(a)~~] Review the documentation listed in this subsection[~~(9) of this section~~]; and

b.[~~(b)~~] Notify the FQHC, FQHC look-alike, or RHC in writing of the:

(i) Approval or denial of the request for change in scope within ninety (90) business days from the date the department received the request; or

(ii) Need for additional documentation from the FQHC, FQHC look-alike, or RHC to establish a PPS interim PPS rate associated with the change in scope.

2.[~~(11)(a)~~] If the department requests additional documentation to calculate the interim PPS rate for a change in scope, the FQHC, FQHC look-alike, or RHC shall:

a.[~~1.~~] Provide the additional documentation to the department within thirty (30) days of the notification of need for additional documentation; or

b.[~~2.~~] Request an extension beyond thirty (30) days to provide the additional documentation.

3.a.[~~(b)1.~~] The department shall grant no more than one (1) extension.

b.[~~2.~~] An extension shall not exceed thirty (30) days.

4. If the department approves the request for a change in scope and receives all of the necessary documentation from an FQHC, FQHC look-alike, or RHC within the timelines established in this section, the department shall establish an interim PPS rate for the FQHC, FQHC look-alike, or RHC based on the projected costs contained in the Universal Cost Report referenced in paragraph (a)2 of this subsection.

(9)(a) To establish a PPS final rate resulting from a change in scope, the department shall use a Universal Cost Report submitted by the FQHC, FQHC look-alike, or RHC to the department that contains twelve (12) months of cost data beginning with the effective date of the change in scope.

(b) Within six (6) months of the end of the twelve (12) month cost data period referenced in paragraph (a) of this subsection, the FQHC, FQHC look-alike, or RHC shall submit to the department the Universal Cost Report containing cost data corresponding to the twelve (12) month cost data period associated with the change in scope.

(c) The department shall:

1. Review the Universal Cost Report referenced in paragraph (a) of this subsection submitted by an FQHC, FQHC look-alike, or RHC within ninety (90) business days of receiving the Universal Cost Report; and

2. Notify the FQHC, FQHC look-alike, or RHC of the necessity of the FQHC, FQHC look-alike, or RHC to submit additional documentation if necessary.

(d)1. If additional documentation is necessary to establish a PPS final rate, the FQHC, FQHC look-alike, or RHC shall:

a. Provide the additional documentation to the department within thirty (30) days of the notification of need for additional documentation; or

b. Request an extension beyond thirty (30) days to provide the additional documentation.

2. The department shall grant no more than one (1) extension.

3. An extension shall not exceed thirty (30) days.

(e)1. If the department requests additional documentation from an FQHC, FQHC look-alike, or RHC but does not receive additional documentation or an extension request within thirty (30) days, the department shall reimburse the FQHC, FQHC look-alike, or RHC the FQHC's, FQHC look-alike's, or RHC's PPS final rate that was in effect prior to the FQHC's, FQHC look-alike's, or RHC's request for a change in scope until:

a. The additional documentation has been received by the department; and

b. The department establishes a new final PPS rate associated with the change in scope.

2. If an FQHC, FQHC look-alike, or RHC does not submit a Universal Cost Report to the department in accordance with paragraph (b) of this subsection, the department shall:

a. Not issue a new PPS final rate associated with the change in scope; and

b. Revert to paying the FHQC, FQHC look-alike, or RHC the FQHC's, FQHC look-alike's, or RHC's PPS final rate that was in effect prior to the FQHC, FQHC look-alike, or RHC requesting a change in scope.

(f)1. If any service included in a change in scope is a service that can be identified on a paid claims listing, the department shall review the FQHC's, FQHC look-alike's, or RHC's paid claims listing for the period of time corresponding to the FQHC's, FQHC look-alike's, or RHC's cost report period of time referenced in paragraphs (a) and (b) of this subsection.

2. If an FQHC, FQHC look-alike, or RHC has submitted all necessary information to the department, within forty-five (45) days of reviewing the FQHC's, FQHC look-alike's, or RHC's paid claims listing, the department shall:

a. Establish a final PPS rate, resulting from the change in scope, for the FQHC, FQHC look-alike, or RHC; and

b. Notify the FQHC, FQHC look-alike, or RHC in writing of the FQHC's, FQHC look-alike's, or RHC's:

(i) Final PPS rate; and

(ii) Appeal rights regarding the PPS final rate.

3. To allow adequate time for claim adjudication, a paid claims listing shall not be requested until at least fourteen (14) months after the end of the FQHC's, FQHC look-alike's, or RHC's cost report period associated with the change in scope.

(g)1. If no service included in a change in scope can be identified on a paid claims listing, and the department has received a Universal Cost Report referenced in paragraphs (a) and (b) of this subsection, and no additional documentation is needed from the FQHC, FQHC look-alike, or RHC, the department shall:

a. Not review a paid claims listing in establishing a new PPS final rate for an FQHC, FQHC look-alike, or RHC resulting from the change in scope; and

b. Establish a new PPS final rate for an FQHC, FQHC look-alike, or RHC resulting from the change in scope within ninety (90) days of receiving the Universal Cost Report.

Section 11.[~~9.~~] Limitations and Exclusions. (1)(a) Except for a case in which a recipient or enrollee, subsequent to the first encounter at an FQHC, FQHC look-alike, or RHC, suffers an illness or injury requiring additional diagnosis or treatment, an encounter with more than one (1) health care provider or multiple encounters with the same health care provider which take place on the same day and at a single location shall constitute a single visit.

(b) The limit established in paragraph (a) of this subsection shall:

1. Apply to an FQHC, FQHC look-alike, or RHC; and

2. Not apply to a PCC that is not an FQHC, FQHC look-alike, or RHC.

(2)(a) Except as established in paragraph (b) of this subsection, a vaccine available without charge to an FQHC, FQHC look-alike, RHC, or PCC through the department's Vaccines for

Children Program and the administration of the vaccine shall not be reported as a cost to the Medicaid Program.

(b) Adult flu vaccine costs shall be allowed as Medicaid costs reported on a Universal Cost Report.

(3) The department shall not reimburse for services provided by an FQHC, FQHC look-alike, or RHC to a recipient in a hospital.

Section 12.[~~10.~~] Out-of-State Providers. (1) Except as established in subsection (2) of this section, reimbursement to an out-of-state FQHC, FQHC look-alike, or RHC shall be based on the rate on file with the FQHC's, FQHC look-alike's, or RHC's state Medicaid agency.

(2) If an out-of-state FQHC's, FQHC look-alike's, or RHC's reimbursement is an APM, the department's reimbursement to the out-of-state FQHC, FQHC look-alike, or RHC shall:

(a) Not be the APM the FQHC, FQHC look-alike, or RHC receives in its state; and

(b) Be the final PPS rate that the FQHC, FQHC look-alike, or RHC would receive in its state if it were not receiving an APM.

Section 13.[~~11.~~] 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)[~~A policy established in this administrative regulation shall be null and void if the~~] Centers for Medicare and Medicaid Services' approval for the reimbursement[~~Services:~~

~~(1) Denies federal financial participation for the policy; or~~

~~(2) Disapproves the policy~~].

Section 14. 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)(a) 907 KAR 1:054; or

(b) 907 KAR 1:082; and

(2) This administrative regulation.

Section 15.[~~12.~~] Appeal Rights.[~~(1) An appeal of a negative action taken by the department regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.~~

~~(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 FQHC, FQHC look-alike, PCC, or RHC may appeal a department decision as to the application of this administrative regulation as it impacts the facility's reimbursement rate in accordance with 907 KAR 1:671.

Section 16.[~~13.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP 100501, Prospective Payment System Rate Adjustment", February 2013 edition;[~~and~~]

(b) "Instructions for Completing the MAP 100501 Form", February 2013 edition;

(c) "Universal Cost Report", May 2015; and

(d) "Universal Cost Report Instructions", May 2015.

(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 a.m. to 4:30 p.m.

LISA LEE, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 13, 2015

FILED WITH LRC: May 14, 2015 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 22, 2015 at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing June 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 June 30, 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: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services (DMS) reimbursement policies for Medicaid covered services provided by a federally-qualified health center (FQHC), rural health clinic (RHC), or primary care center (PCC) that is not an FQHC, FQHC look-alike, or RHC. An FQHC or FQHC look-alike is a federally-recognized entity that serves a population that is medically underserved. An RHC is a federally-recognized entity that is designated or certified by the secretary of the Department of Health and Human Services as being located in an area that is a health professional shortage area or medically underserved area. A PCC is an entity whose licensure requirements are established by the Cabinet for Health and Family Services Office of Inspector General pursuant to 902 KAR 20:058 and are not federally-recognized as being equivalent to an FQHC.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish the Department for Medicaid Services (DMS) reimbursement policies for Medicaid covered services provided by an FQHC, RHC, or PCC (that is not an FQHC, FQHC look-alike, or RHC.)

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by reimbursing for Medicaid covered services provided by an FQHC, RHC, or PCC in a manner which ensures the receipt of federal funding for the reimbursement.

(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 reimbursing for Medicaid covered services provided by an FQHC, RHC, or PCC in a manner which ensures the receipt of federal funding for the reimbursement.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes an alternative reimbursement option (an alternative payment methodology or APM) for FQHCs, FQHC look-alikes, or rural health clinics which choose to receive such reimbursement; amends the reimbursement methodology for a new FQHC, FQHC-look-alike, or RHC and elaborates on the process for establishing reimbursement for such a facility; incorporates by reference specific documents – Universal Cost Report and Universal Cost Report Instructions – used in establishing reimbursement for a new FQHC, FQHC look-alike, or RHC; elaborates on the process and requirements related to requesting and establishing a new reimbursement due to a change in scope (of services); establishes that DMS will not pay an APM for an out-of-state FQHC, FQHC look-alike, or RCH; clarifies that managed care organizations are not required to reimburse in the same way for FQHC, FQHC look-alike, or RHC services as DMS reimburses; inserts definitions for clarity; and clarifies miscellaneous provisions.

(b) The necessity of the amendment to this administrative

regulation: The alternative reimbursement option (an APM) is necessary to maintain the viability of a handful of FQHCs/RHCs whose current reimbursement is well below the average of others in Kentucky. Reimbursement for these entities is federally mandated. The federally-mandated model (which is customized for each entity) was introduced in 2001, but over time the reimbursement for a few such facilities participating in Kentucky's Medicaid program has proved to be significantly lower than the other entities and is at a level that threatens the viability of the entities. Consequently, DMS proposed to the Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides federal funding to Medicaid programs – an APM to help sustain the entities and which would be available to all entities. The APM is a rate equal to 125 percent of the Medicare PPS rate for rural health clinics in effect as of September 30, 2014. Any FQHC, FQHC look-alike, or RHC can choose this option; however, DMS only anticipates that the few RHCs whose current prospective payment system (PPS) encounter rate is lower than the alternative will actually choose the alternative. CMS has approved the alternative reimbursement. The amendments regarding interim reimbursement for new FQHCs, FQHC look-alikes, and RHCs are necessary to comply with a mandate by CMS. The elaboration on the process of establishing reimbursement for a new FQHC, FQHC look-alike, or RHC as well as elaboration on changing reimbursement due to a change in scope are necessary for clarity. Not offering the APM option to out-of-state FQHCs, FQHC look-alikes, or RHCs is necessary to ensure that only in-state facilities are eligible for the enhanced reimbursement. Incorporating by reference the Universal Cost Report and Universal Cost Report Instructions is necessary to ensure that entities use the correct documents to report costs. Other amendments are necessary for clarity.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by helping sustain FQHCs/FQHC look-alikes/RHCs whose current reimbursement is inadequate to survive and in order to ensure Medicaid recipient access to services.

(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 helping sustain FQHCs/FQHC look-alikes/RHCs whose current reimbursement is inadequate to survive and in order to ensure Medicaid recipient access to services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There were thirty-five (35) FQHCs/FQHC look-alikes, 152 RHCs, and sixty-four (64) PCCs enrolled in Kentucky's Medicaid Program as of March 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 take to comply with this administrative regulation or amendment. Any FQHC, FQHC look-alike, or RHC that wishes to receive the alternative reimbursement must submit a written request to DMS expressing the request to receive the alternative reimbursement.

(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). Any FQHC, FQHC look-alike, or RHC that chooses to receive the alternative reimbursement will receive increased Medicaid reimbursement if the entity's current reimbursement is lesser than the alternative reimbursement.

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

(a) Initially: The costs of the amendment is indeterminable as it depends on how many, if any, FQHCs/FQHC look-alikes/RHCs elect to receive the APM, and how soon, and upon the difference in current reimbursement for such an entity compared to the APM.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund the 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. Neither an increase in fees nor funding is necessary to implement the amendment.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10)(B) and 42 U.S.C. 1396a(a)(30)(A).

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

3. Minimum or uniform standards contained in the federal mandate. 42 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 base of authorized behavioral health practitioners 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? This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Neither stricter nor additional standards nor responsibilities are imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(30)(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? DMS projects no revenue will initially be generated by the amendment to this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS projects no revenue will be generated in subsequent years by the amendment to this administrative regulation.

(c) How much will it cost to administer this program for the first year? The costs of the amendment is indeterminable as it depends on how many, if any, FQHCs/FQHC look-alikes/RHCs elect to receive the alternative reimbursement, and how soon, and upon the difference in current reimbursement for such an entity compared to the alternative reimbursement.

(d) How much will it cost to administer this program for subsequent years? The response stated in (c) also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)

921 KAR 3:060. Administrative disqualification hearings and penalties.

RELATES TO: KRS 205.231, 7 C.F.R. 273.15, 273.17, 7 U.S.C. 2015

STATUTORY AUTHORITY: KRS Chapter 13B, 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 273.16

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires each state to administer a Supplemental Nutrition Assistance Program (SNAP). 7 C.F.R. 273.16 requires the agency administering SNAP to provide a hearing process for individuals accused of intentionally violating a SNAP regulation and to implement penalties and disqualifications for such violations. KRS Chapter 13B establishes the hearing process to be followed in the Commonwealth. This administrative regulation establishes the procedures used by the cabinet in determining if an intentional program violation (IPV) has occurred and the penalties that shall be applied for an IPV.

Section 1. Administrative Disqualification Hearings. (1) Unless a different procedure is specified in this administrative regulation, an administrative disqualification hearing shall:

(a) Be conducted in accordance with 921 KAR 3:070 and KRS Chapter 13B; and

(b) Include[~~:~~

~~1.~~] the issuance of an[~~a recommended order;~~

~~2. Procedures for written exceptions; and~~

~~3. The issuance of a final~~] order in accordance with the Correspondence from the Office of the Attorney General dated April 5, 2012.

(2) The cabinet shall retain:

(a) The official record of an administrative disqualification hearing until all appeals have been exhausted; and

(b) A case record with an IPV disqualification indefinitely.

Section 2. Intentional Program Violations. (1) If the cabinet suspects that an individual committed an IPV, as defined in 921 KAR 3:010, the cabinet shall:

(a) Initiate an administrative disqualification hearing; or

(b) If warranted by the facts of the case, refer the suspected IPV claim to the Office of the Inspector General (OIG) for investigation or referral for prosecution.

(2) An administrative disqualification hearing may be initiated regardless of the current eligibility of an individual.

(3) If the OIG determines that the IPV does not warrant investigation or referral for prosecution, the cabinet shall initiate an administrative disqualification hearing as specified in this administrative regulation.

Section 3. Notification. (1) Form FS-80, Notice of SNAP Suspected Intentional Program Violation, shall serve as the notification to a household of the:

(a) Cabinet's suspicion that an IPV has been committed;

(b) Amount and period of the overpayment for the suspected IPV; and

(c) Household's right to an administrative disqualification hearing.

(2) The cabinet shall provide an individual suspected of an IPV a Form FS-80, Supplement A, Voluntary Waiver of SNAP Administrative Disqualification Hearing, which allows the individual to waive the right to an administrative disqualification hearing, with or without admitting an IPV was committed.

(3) If the household does not return the FS-80 Supplement A, the cabinet shall schedule an administrative disqualification hearing in accordance with 7 C.F.R. 273.16(e)(3) and (4).

(4) In accordance with KRS 13B.050, the administrative disqualification hearing notice shall be sent:

(a) By certified mail, return receipt requested, to the individual; or

(b) By another method, such as electronic or first class mail, if the individual waives his or her right to certified mail delivery under KRS 13B.050[~~To the addressee only; and~~

~~(c) With a return receipt requested~~].

(5) The administrative disqualification hearing notice shall provide information as specified in 7 C.F.R. 273.16(e)(3)(iii).

(6) In accordance with 7 C.F.R. 273.16(e)(2)(iii), the hearing officer shall advise the household member or representative that they may refuse to answer questions during the hearing.

(7) The cabinet shall provide a household notice regarding the IPV determination in accordance with 7 C.F.R. 273.16(e)(9) and KRS 13B.120.

Section 4. Timeframes. (1) Within the ninety (90) day timeframe specified in 7 C.F.R. 273.16(e)(2)(iv), the cabinet shall:

(a) Conduct an administrative disqualification hearing; and

(b) Issue a final order pursuant to the provisions established in 921 KAR 3:070, Section 14[~~17~~].

(2) In accordance with 7 C.F.R. 273.16(e)(2)(iv), a hearing may be postponed:

(a) One (1) time; and

(b) For no more than thirty (30) days.

(3) If a hearing is postponed, the time limit specified in subsection (1) of this section shall be extended for as many days as the hearing is postponed.

Section 5. Hearing Attendance. (1) An administrative disqualification hearing shall be conducted in accordance with 7 C.F.R. 273.16(e)(4).

(2) If a household member or representative cannot be located or does not appear for the administrative disqualification hearing, the hearing officer shall:

(a) Conduct the hearing without the household member or representative;

(b) Consider the evidence; and

(c) Determine whether an intentional program violation was committed based on clear and convincing evidence[~~If a household representative does not appear for the administrative disqualification hearing, the hearing officer shall review the case file to determine if the hearing shall:~~

~~(a) Proceed without household representation, because the return receipt from the hearing notice verified the notice was received by the individual; or~~

~~(b) Not be conducted, because the hearing notice or return receipt is annotated as unclaimed or undeliverable~~].

(3) In accordance with 7 C.F.R. 273.16(e)(4), the cabinet shall rescind a determination of an intentional program violation and conduct a new hearing upon an order of finding if the:

(a) Household was not represented at the hearing;

(b) Individual was determined to have committed an IPV;[~~and~~]

(c)1. Individual, within ten (10) days of the scheduled hearing, establishes good cause for failure to appear in accordance with 921 KAR 3:070, Section 8(2); or

2. Individual, within thirty (30) days after the date of the notice, establishes good cause for failure to appear in accordance with 921 KAR 3:070, Section 8(2)(f), by showing nonreceipt of the notice of hearing; and

(d) Appeal Board for Public Assistance is not considering the same matter[~~Hearing officer later determines the household had good cause, in accordance with 921 KAR 3:070, Section 8(2), for not appearing~~].

Section 6. Benefits and Participation. (1) In accordance with 7 C.F.R. 273.16(e)(5), the participation of a household suspected of an IPV shall not be affected by the suspected IPV until a disqualification is implemented based on the:

(a) IPV being substantiated by the final order or a court of appropriate jurisdiction;

(b) Individual waiving the right to an administrative disqualification hearing by completing, signing, and returning the FS-80, Supplement A; or

(c) Individual completing, signing, and returning the form FS-111, Deferred Adjudication Disqualification Consent Agreement, pursuant to Section 7 of this administrative regulation.

(2) If the cabinet's determination of an IPV is later reversed, the cabinet shall:

(a) Reinstate the individual, if eligible; and

(b) In accordance with 7 C.F.R. 273.17, restore benefits:

1. That were lost as a result of the disqualification; and

2. For no more than twelve (12) months.

Section 7. Deferred Adjudication. (1) The cabinet shall accept a completed form FS-111, Deferred Adjudication Disqualification Consent Agreement, in a case of deferred adjudication pursuant to 7 C.F.R. 273.16(h).

(2) In accordance with 7 C.F.R. 273.16(h), the cabinet shall notify an individual signing a FS-111 of the:

(a) Consequences of consenting to disqualification;

(b) Disqualification; and

(c) Effective date of the disqualification.

Section 8. Penalties. (1) In accordance with 7 C.F.R. 273.16(b), an individual shall be ineligible to participate in SNAP, if the individual has:

(a) Committed an IPV, as determined by:

1. An administrative disqualification hearing: or

2. A court; or

(b) Signed a waiver of right to an administrative disqualification hearing or a disqualification consent agreement.

(2) The time periods for IPV disqualifications shall be implemented in accordance with 7 C.F.R. 273.16(b).

(3) In accordance with 7 C.F.R. 273.16(b)(11), the cabinet shall only disqualify the individual who meets the criteria specified in subsection (1) of this section, not the entire household.

(4) In accordance with 7 C.F.R. 273.16(b)(12), the cabinet shall hold the entire household responsible for making restitution on an overpayment, not just the disqualified individual.

(5) The cabinet shall inform the household in writing of the disqualification penalties for committing an IPV each time the household applies for benefits.

Section 9. Procedures for Appeal. In accordance with 7 C.F.R. 273.16(e)(8)(ii):

(1) Further administrative appeal procedures shall not exist after an:

(a) Administrative disqualification hearing determines that an IPV was committed; or

(b) Individual waives the right to an administrative disqualification hearing;

(2) A cabinet determination of an IPV shall not be reversed by a final order from a subsequent fair hearing; and

(3) An individual determined to have committed an IPV may seek relief in a court having appropriate jurisdiction pursuant to KRS 13B.140.

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

(a) The "Correspondence from the Office of Attorney General dated April 5, 2012", April 5, 2012;

(b) "FS-80, Notice of SNAP Suspected Intentional Program Violation", 4/15[~~9/14~~];

(c)[~~(b)~~] "FS-80, Supplement A, Voluntary Waiver of SNAP Administrative Disqualification Hearing", 9/14; and

(d)[~~(c)~~] "FS-111, Deferred Adjudication Disqualification Consent Agreement", 9/14.

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

TERESA C. JAMES, LCSW, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 27, 2015

FILED WITH LRC: April 30, 2015 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 22, 2015, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 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 June 30, 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, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria used by the Cabinet for Health and Family Services, Department for Community Based Services in determining if an intentional program violation (IPV) has occurred in the Supplemental Nutrition Assistance Program (SNAP) and the penalties that shall be applied for said violation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to comply with 7 C.F.R. 273.16 and KRS Chapter 13B by establishing a hearing process for individuals suspected of intentionally violating a SNAP regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing a hearing process and penalties associated with intentional program violations of SNAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective

administration of the statutes by developing a hearing process and establishing penalties for SNAP intentional program violations.

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

(a) How the amendment will change this existing administrative regulation: The amendment to the administrative regulation incorporates an exemption to KRS Chapter 13B, administrative hearing requirements, as approved by the Office of the Attorney General to assure the state's compliance with federally prescribed timeframes for SNAP administrative hearings. The amendment permits the individual subject to the administrative disqualification hearing to select a means for notification other than certified mail. The amendment also revises material incorporated by reference, form FS-80, Notice of SNAP Suspected Intentional Program Violation, by adding language to inform individuals of their rights during a disqualification hearing as required by the U.S. Department of Agriculture, Food and Nutrition Service (FNS). Lastly, the amendment makes technical corrections in accordance with federal requirements and KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to address findings from a recent federal review of the program and to avoid federal financial penalty.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by assuring conformity with federal requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by informing individuals of their rights during a disqualification hearing as required by the federal administrating agency.

(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 SNAP recipients and potential applicants. There were 777,300 individuals comprising 373,355 households receiving SNAP benefits in Kentucky during 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 take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will not require any additional action on the part of SNAP applicants or recipients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Neither the amendment nor the administrative regulation involves any cost to SNAP applicants or recipients.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All SNAP applicants and recipients will benefit from timely administrative hearings and their rights during a disqualification hearing more clearly stated on the program form. SNAP applicants and recipients may also indirectly benefit from the state maintaining federal resources to support the provisions of SNAP benefits.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and has no initial cost to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and has no fiscal impact on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100 percent federally funded through the United States Department of Agriculture. Program administrative costs are fifty (50) percent federally funded and fifty (50) percent state funded. Funding has been appropriated in the enacted budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The implementation of the amendment to this administrative regulation will not create 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 or directly or indirectly increase any fees

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 7 C.F.R 273.16

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

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment to this administrative regulation will impose no stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Justification for the imposition of a stricter standard, or additional or different responsibilities or requirements, is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13B, 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 7 C.F.R. 273.16

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 does not generate revenue and will not generate any revenue for the 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 does not generate revenue and will not generate any revenue for the state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)

921 KAR 3:070. Fair hearings.

RELATES TO: KRS Chapter 13B, 45.237, 205.231, 7 C.F.R. 273.16

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1), 205.231(5), 7 C.F.R. 271.4, 273.15

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires each state to administer a Supplemental Nutrition Assistance Program (SNAP). 7 C.F.R. 273.15 requires the agency administering SNAP to provide a hearing system for any SNAP applicant or recipient who is dissatisfied with an agency decision or action. KRS Chapter 13B establishes the hearing process to be followed in the Commonwealth. This administrative regulation establishes the fair hearing procedures used by the cabinet in the administration of the Supplemental Nutrition Assistance Program.

Section 1. Opportunity for Fair Hearing. (1) An opportunity for a fair hearing shall be provided to a household aggrieved by an action or inaction:

(a) On the part of the cabinet; and

(b) That affects the SNAP benefits of the household.

(2) A fair hearing shall be conducted:

(a) On a state level;

(b) By a hearing officer assigned by the Division of Administrative Hearings, Families and Children Administrative Hearings Branch; and

(c) At:

1.[~~At~~] The local office administering the benefits of the appellant; or

2. An alternate site, if the appellant:

a. Is unable to travel to the local office; and

b. Requests an alternate site.

(3) If consent is obtained from each party required to testify under oath, a telephonic hearing may be conducted.

(4) If a participant or authorized representative speaks a language other than English, the cabinet shall insure that the hearing procedures are translated and explained in accordance with 7 C.F.R. 273.15(i).

(5) An administrative hearing shall be conducted in accordance with KRS Chapter 13B, this administrative regulation,[~~and~~] the Correspondence from the Office of Attorney General dated June 4, 2014, and the Correspondence from the Office of Attorney General dated April 5, 2012.

Section 2. Notification of Hearing Rights. (1) At the time of application, a participant shall receive written notification of the:

(a) Right to a hearing;

(b) Procedures for requesting a hearing, as specified in Section 4 of this administrative regulation; and

(c) In accordance with 7 C.F.R. 273.15(f), option to designate a representative for a hearing, such as:

1. Legal counsel;

2. A relative;

3. A friend; or

4. An individual to act on behalf of the participant.

(2) Written notification shall be provided to remind a participant of the right to request a fair hearing if:

(a) An action is taken that affects the benefits of the participant; or

(b) The participant disagrees with an action taken by the cabinet and expresses this disagreement to the cabinet.

(3) The participant shall be informed in writing of the availability of free representation from legal aid or other organizations within the community.

Section 3. Timeframe for a Hearing Request. (1) Within a certification period, an active household may request a fair hearing to dispute current benefits.

(2) In accordance with the timeframes of 7 C.F.R. 273.15(g), a SNAP household may request a hearing on any cabinet action.

(3) If a hearing officer determines an appellant meets good cause criteria in accordance with Section 8 of this administrative regulation, the appellant shall be granted an additional thirty (30) days to submit a hearing request.

Section 4. Request for a Hearing. (1) The request for a hearing shall clearly state the reason for the request.

(2) If the reason for the request is unclear, the cabinet may request additional clarification from the appellant.

(3) In accordance with 7 C.F.R. 273.15(h), a request for a hearing shall not be interfered with or limited in any way.

(4) Upon request, and in accordance with 7 C.F.R. 273.15(i), the cabinet shall:

(a) Help an appellant with a hearing request; and

(b) Make available, without charge, the materials necessary for an appellant to:

1. Determine whether a hearing may be requested; or

2. Prepare for a hearing.

(5) As determined by the hearing officer, an appellant may have the hearing process expedited in accordance with 7 C.F.R. 273.15(i)(2).

Section 5. Notice of Hearing[~~Notification~~]. (1) The Division of Administrative Hearings, Families and Children Administrative Hearings Branch shall acknowledge a hearing request by issuing a notice of hearing.

(2) The notice of the hearing shall:

(a) Comply with the requirements of KRS 13B.050(3), subject to the exemption granted by the attorney general in the Correspondence from the Office of Attorney General dated June 4, 2014. The notice shall provide all parties involved with ten (10) days advance written notice of an administrative hearing, and the notice shall not be less than ten (10) days prior to the hearing, unless requested by the appellant;

(b) Specify the name, address, and phone number of the person to notify if an appellant is unable to attend the scheduled hearing; and

(c) Specify that the hearing request shall be dismissed if an appellant or representative fails to appear for a hearing without good cause as specified in Section 8(2) of this administrative regulation.

(3) In accordance with 7 C.F.R. 273.15(1), unless an appellant's request for an expedited hearing is granted, written notice shall be provided at least ten (10) days prior to the date of the hearing to permit adequate preparation of the case.

(4) The appellant may:

(a) Waive the right to certified mail delivery under KRS 13B.050; and

(b) Select another method of delivery, such as electronic or first class mail.

Section 6. Continuation of Benefits. Unless the appellant requests a discontinuance of benefits, benefits shall be continued, in accordance with 7 C.F.R. 273.15(k), pending the final order.

Section 7. Timely Action on Hearing Requests. (1) In accordance with 7 C.F.R. 273.15(c), within sixty (60) days of a request for a fair hearing, the cabinet shall:

(a) Acknowledge the request in accordance with Section 5 of this administrative regulation;

(b) Conduct a hearing; and

(c) Issue a final order.

(2) In accordance with 7 C.F.R. 273.15(c), benefits shall be adjusted:
(a) Within ten (10) days of the final order; or
(b) With the next issuance following receipt of the final order.
(3) If an appellant requests a postponement of a hearing, the:
(a) Hearing shall be postponed;
(b) Postponement shall not exceed thirty (30) days from the request for the postponement; and
(c) Time limit for issuing a final order may be extended for the same number of days as the hearing is postponed.

Section 8. Denial or Dismissal of a Hearing Request. (1) A hearing request shall be denied or dismissed if the:
(a) Request does not meet the criteria specified in Section 3 of this administrative regulation;
(b) Appellant submits a written request to withdraw the hearing request; or
(c) Appellant or representative fails to appear for the scheduled hearing without:
1. Notifying the cabinet prior to the hearing; or
2. Establishing good cause for failure to appear as defined in subsection (2) of this section, within ten (10) days.
(2) Good cause for the delay of a hearing request or failure to appear at a hearing may be granted if the appellant:
(a) Was away from home during the entire filing period;
(b) Is unable to read or comprehend the notice;
(c) Moved, resulting in a delay in receiving or failure to receive the notice;
(d) Or other household member had a serious illness;
(e) Was not at fault for the delay, as determined by the hearing officer; or
(f) Did not receive the notice.
(3) The cabinet shall notify an appellant of the dismissal of a hearing request through the issuance of a Final[~~Recommended~~] Order of Dismissal by the Hearing Officer.

Section 9. Consolidation of Hearings. (1) A fair hearing and an administrative disqualification hearing may be combined into a single hearing if the:
(a) Issues of the hearings are based on the same or related circumstances; and
(b) Appellant receives prior notice of the hearings being combined.
(2) If a fair hearing and an administrative disqualification hearing are combined the:
(a) Timeframe for conducting an administrative disqualification hearing specified in 921 KAR 3:060, Section 4, shall be followed; and
(b) Thirty (30) day advance notice period required by 921 KAR 3:060, Section 3 may be waived if requested by the appellant.
(3) An appellant shall lose the right to a subsequent fair hearing on the amount of a claim if a combined hearing is held to determine:
(a) The amount of the claim; and
(b) If an intentional program violation occurred.

Section 10. Group Hearings. (1) In accordance with 7 C.F.R. 273.15(e), the cabinet may respond to a series of individual requests for a fair hearing by conducting a single group hearing if:
(a) Individual issues of fact are not disputed; and
(b) The issues relate to the same state or federal:
1. Laws;
2. Regulations; or
3. Policy.
(2) The same procedures specified in this administrative regulation for an individual hearing shall apply to a group hearing.

Section 11. Agency Conference. (1) In accordance with 7 C.F.R. 273.15(d), the cabinet shall offer an agency conference to an appellant adversely affected by an action of the cabinet.
(2) The appellant shall be informed that an agency conference:
(a) Is optional; and
(b) Shall not delay or replace the fair hearing process.
(3) A fair hearing shall be dismissed if:
(a) An agency conference leads to an informal resolution of the dispute; and
(b) The appellant makes a written withdrawal of the request for a hearing.
(4) An agency conference shall be attended by the:
(a) Appellant's caseworker;
(b) Local office supervisor; and
(c) Appellant or representative.

Section 12. Rights During the Hearing. (1) During the hearing process, the appellant or representative shall be provided the opportunity to:
(a) Examine:
1. The contents of the case file; and
2. All documents and records to be used at the hearing;
(b) Present the case or have the case presented by a representative or legal counsel;
(c) Bring witnesses, friends, or relatives;
(d) Present arguments without undue interference;
(e) Submit evidence to establish the pertinent facts and circumstances of the case; and
(f)1. Question or refute testimony or evidence; and
2. Cross-examine an adverse witness.
(2) Upon request, a copy of the portions of the case file that are relevant to the hearing shall be provided to the appellant at no charge.
(3) Confidential information, such as the following, shall be protected from release:
(a) Names of individuals who have disclosed information about the appellant's household; and
(b) The nature or status of pending criminal prosecutions.
(4) The following information shall not be introduced at the hearing or affect the recommendation of the hearing officer:
(a) Confidential information as specified in subsection (3) of this section;
(b) Documents, testimony, or records irrelevant to the hearing; and
(c) Other information for which the appellant is not provided an opportunity to contest or challenge.

Section 13. Hearing Officer. (1) The cabinet shall designate a hearing officer who:
(a) Is employed by the cabinet's Division of Administrative Hearings, Health and Family Services Administrative Hearings Branch; and
(b) Meets the criteria specified in KRS 13B.040 and 7 C.F.R. 273.15(m).
(2) When conducting a hearing, a hearing officer shall:
(a) Have the authority set forth in KRS 13B.080;
(b) In accordance with 7 C.F.R. 273.15(m), order an independent medical assessment or professional evaluation from a source:
1. Not associated with the original action; and
2. Agreeable to both the appellant and the cabinet if:
a. The hearing involves medical issues; and
b. The hearing officer considers it necessary;
(c) Maintain a hearing record in accordance with KRS 13B.130 and 921 KAR 3:050, Section 13;[~~and~~]
(d) Issue an[~~a recommended~~] order:
1. In accordance with KRS 13B.110; and
2. As specified in Section 14 of this administrative regulation; and
(e) Issue a final order under Section 9 of this administrative regulation.

Section 14. Hearing Officer's[~~Recommended~~] Order. (1) After the hearing has concluded, the hearing officer shall draft an[~~a recommended~~] order which:
(a) Summarizes the facts of the case;
(b) Specifies the:
1. Reasons for the[~~recommended~~] order; and
2. Address to which a party in the hearing may send an

exception to the[~~recommended~~] order; and

(c) Identifies the:

1. Findings of fact;

2. Conclusions of law;

3. Supporting evidence;[~~and~~]

4. Applicable state and federal regulations; and

5. Address the parties' arguments.

(2) A copy of the[~~recommended~~] order shall be sent simultaneously to the:

(a) Appellant or representative; and

(b) Department for Community Based Services' Division of Family Support[~~; and~~

~~(c) Appeal Board for Public Assistance established in accordance with KRS 205.231~~].

(3) A hearing officer's order shall become a final order for an administrative hearing in accordance with KRS 13B.120, 205.231, and 7 C.F.R. 273.15(c), (n), and (q) sixteen (16) days from the issuance of the order unless a written exception is filed pursuant to Section 15 of this administrative regulation.

(4) If necessary, benefits of the appellant shall be adjusted:

(a) Based on a hearing officer's order that becomes a final order in accordance with subsection (3) of this section; and

(b) Within ten (10) days of the hearing officer's order becoming the final order.

Section 15. Written Exceptions and Rebuttals. (1) If a party to a hearing disagrees with the hearing officer's[~~recommended~~] order, the party may file a written exception with the Appeal Board for Public Assistance established in accordance with KRS 205.231.

(2) A written exception or rebuttal shall:

(a) Be filed within fifteen (15) days of the date the hearing officer's[~~recommended~~] order was mailed;

(b) Be based on facts and evidence presented at the hearing;

(c) Not refer to evidence that was not introduced at the hearing; and

(d) Be sent to each other party involved in the hearing.

Section 16. Appeal Board Review. (1) The Appeal Board for Public Assistance shall send a written acknowledgement of the exception to the hearing officer's[~~recommended~~] order to the:

(a) Parties to the hearing; and

(b) Commissioner of the Department for Community Based Services.

(2) The acknowledgement shall:

(a) Offer the opportunity to:

1. File a brief; or

2. Request permission to submit new or additional evidence; and

(b) State the tentative date on which:

1. A brief, new evidence, or new exhibit are to be received by the Appeal Board for Public Assistance for consideration; and

2. The Appeal Board for Public Assistance shall consider the appeal.

(3) The Appeal Board for Public Assistance shall consider:

(a) The records of the hearing; and

(b) New evidence or exhibits introduced before the Appeal Board for Public Assistance in accordance with this section.

(4) If an appeal is being considered on the record, the parties may:

(a) Submit written arguments; and

(b) Present oral arguments at the Appeal Board for Public Assistance's discretion. Telecommunications may be utilized for the presentation of oral arguments.

(5) If needed, the Appeal Board for Public Assistance may request additional evidence to resolve the appeal.

Section 17. The Appeal Board Decision. (1) The decision of the Appeal Board for Public Assistance shall be a final order in accordance with KRS 13B.120, 205.231, and 7 C.F.R. 273.15(c), (n), (q).

(2) If necessary, benefits of the appellant shall be adjusted:

(a) Based on the decision of the Appeal Board for Public Assistance; and

(b) Within ten (10) days of the Appeal Board for Public Assistance's decision.

(3) A party aggrieved by the Appeal Board for Public Assistance's decision may pursue judicial review of the decision in accordance with KRS 13B.140 and 13B.150.

Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "Correspondence from the Office of Attorney General dated April 5, 2012", April 5, 2012; and

(b) The "Correspondence from the Office of Attorney General dated June 4, 2014", June 4, 2014[~~, is incorporated by reference~~].

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

TERESA C. JAMES, LCSW, Commissioner
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 27, 2015

FILED WITH LRC: April 30, 2015 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 22, 2015, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 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 June 30, 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, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fair hearing procedures used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the fair hearing process used by the cabinet in the administration of SNAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing cabinet procedures for SNAP fair hearings.

(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 fair hearing procedures used by the cabinet in the administration of the SNAP.

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

(a) How the amendment will change this existing administrative regulation: The amendment to the administrative regulation incorporates an exemption to KRS Chapter 13B, administrative hearing requirements, as approved by the Office of the Attorney General to assure the state's compliance with federally prescribed timeframes for SNAP administrative hearings. In addition, this administrative regulation permits an appellant to select a means for notification other than certified mail. The amendment also makes

technical corrections in accordance with federal requirements and KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to avoid federal financial penalty for untimely SNAP administrative hearings.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by assuring conformity with federal requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes through conformity with federal requirements pertaining to SNAP administrative hearings.

(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 SNAP recipients and potential applicants. There were 777,300 individuals comprising 373,355 households receiving SNAP benefits in Kentucky during 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 take to comply with this administrative regulation or amendment: There will be no new action required on the part of SNAP applicants/recipients who seek appeal.

(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 cost imposed on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit directly from enhanced timeliness of SNAP administrative hearings and may benefit indirectly from the state maintaining federal resources to support the provisions of SNAP benefits.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and has no initial cost to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and has no fiscal impact on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100 percent federally funded through the United States Department of Agriculture. Program administrative costs are fifty (50) percent federally funded and fifty (50) percent state funded. Funding has been appropriated in the enacted budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The implementation of the amendment to this administrative regulation will not create 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 or directly or indirectly increase any fees

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 273.15

2. State compliance standards. KRS 13B.170, 194A.010(2), 194A.050(1), 205.231(5),

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 273.15

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment to this administrative regulation will impose no stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Justification for the imposition of a stricter standard, or additional or different responsibilities or requirements, is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B.170, 194A.010(2), 194A.050(1), 205.231(5), 7 C.F.R. 271.4, 273.15

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 does not generate revenue and will not generate any revenue for the 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 does not generate revenue and will not generate any revenue for the state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

KENTUCKY STATE BOARD OF ELECTIONS
(New Administrative Regulation)

31 KAR 4:180. Activities prohibited within 100 feet of the entrance to a building in which a voting machine is located.

RELATES TO: KRS 117.015, 117.235
STATUTORY AUTHORITY: KRS 117.015(1)(a)
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 117.235(5) authorizes any precinct election officer, county clerk, deputy county clerk, or law enforcement official to maintain law and order at the polls and within 300 feet of any entrance to the building in which the voting machine is located if that entrance is unlocked and is used by voters. This administrative regulation establishes activities that are prohibited during the hours voting is being conducted on the day of any election on public property and private property in which a polling place is located within 100 feet of any entrance to a building in which a voting machine is located if that entrance is unlocked and is used by voters, and in or on the building where the county clerk's office is located, or any building designated by the county board of elections and approved by the State Board of Elections for absentee voting, during the hours absentee voting is being conducted in the building by the county clerk pursuant to KRS 117.085(1)(c) so that law and order in that area may be maintained pursuant to KRS 117.235(5).

Section 1. Definition. "Bumper sticker" means a sticker that measures within fourteen (14) inches by five (5) inches for display on a vehicle bearing a printed message soliciting votes for or against any bona fide candidate or ballot question in a manner that expressly advocates the election or defeat of the candidate or expressly advocates the passage or defeat of the ballot question.

Section 2. Activities prohibited within 100 feet of the entrance to a building in which a voting machine is located. (1) Except as otherwise provided in this administrative regulation, on the day of any election, no person shall display signs, distribute campaign literature, cards, or handbills, solicit signatures to any petition, or solicit votes for or against any bona fide candidate or ballot question in a manner that expressly advocates the election or defeat of the candidate or expressly advocates the passage or defeat of the ballot question within 100 feet of any entrance to the building in which a voting machine is located if that entrance is unlocked and is used by voters during the hours voting is being conducted in the building.

(2) Except as otherwise provided in this administrative regulation, no person shall display signs, distribute campaign literature, cards, or handbills, solicit signatures to any petition, or solicit votes for or against any bona fide candidate or ballot question in a manner that expressly advocates the election or defeat of the candidate or expressly advocates the passage or defeat of the ballot question within the interior of a building or affix any signs, campaign literature, cards, handbills, solicitations of signatures to petitions, solicitations of votes for or against any bona fide candidate or ballot question in a manner that expressly advocates the election or defeat of the candidate or expressly advocates the passage or defeat of the ballot question to the exterior or interior of a building where the county clerk's office is located, or any building designated by the county board of elections and approved by the State Board of Elections for absentee voting, during the hours absentee voting is being conducted in the building by the county clerk pursuant to KRS 117.085(1)(c).

(3) The prohibitions established in subsections (1) and (2) of this section shall not apply to:

(a) Private property, unless the property is being used as a voting place established in accordance with the provisions of KRS 117.065;

(b) Exit polling; or

(c) Bumper stickers affixed to a person's vehicle while parked within or passing through a distance of 100 feet of any entrance to the building in which a voting machine is located if that entrance is unlocked and is used by voters during the hours voting is being conducted in the building for a reasonable amount of time in which to vote.

ALISON LUNDERGAN GRIMES, Chair
APPROVED BY AGENCY: May 5, 2015
FILED WITH LRC: May 5, 2015 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 29, 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 the end of the calendar day, June 30, 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 117.235(5) authorizes any precinct election officer, county clerk, deputy county clerk, or law enforcement official to maintain law and order at the polls and within 300 feet of any entrance to a building in which a voting machine is located if that entrance is unlocked and is used by voters. This administrative regulation implements KRS 117.235(5) by establishing activities that are prohibited during the hours voting is being conducted on the day of any election on public property and private property in which a polling place is located within 100 feet of any entrance to a building in which a voting machine is located if that entrance is unlocked and is used by voters and in or on the building where the county clerk's office is located, or any building designated by the county board of elections and approved by the State Board of Elections for absentee voting, during the hours absentee voting is being conducted in the building by the county clerk pursuant to KRS 117.085(1)(c) so that law and order in that area may be maintained pursuant to KRS 117.235(5).
(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement KRS 117.235(5) and to maintain law and order within 300 feet of any entrance to a building in which a voting machine is located if that entrance is unlocked and is used by voters pursuant to KRS 117.235(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 117.235(5) authorizes any precinct election officer, county clerk, deputy county clerk, or law enforcement official to maintain law and order at the polls and within 300 feet of any entrance to a building in which a voting machine is located if that entrance is unlocked

and is used by voters. This administrative regulation conforms to the authorizing statutes by implementing KRS 117.235(5) and establishing activities that are prohibited during the hours voting is being conducted on the day of any election on public property and private property in which a polling place is located within 100 feet of any entrance to a building in which a voting machine is located if that entrance is unlocked and is used by voters and in or on the building where the county clerk's office is located, or any building designated by the county board of elections and approved by the State Board of Elections for absentee voting, during the hours absentee voting is being conducted in the building by the county clerk pursuant to KRS 117.085(1)(c) so that law and order in that area may be maintained pursuant to KRS 117.235(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 117.235(5) authorizes any precinct election officer, county clerk, deputy county clerk, or law enforcement official to maintain law and order at the polls and within 300 feet of any entrance to a building in which a voting machine is located if that entrance is unlocked and is used by voters. This administrative regulation assists in the effective administration of the statutes by implementing KRS 117.235(5) and establishing activities that are prohibited during the hours voting is being conducted on the day of any election on public property and private property in which a polling place is located within 100 feet of any entrance to a building in which a voting machine is located if that entrance is unlocked and is used by voters and in or on the building where the county clerk's office is located, or any building designated by the county board of elections and approved by the State Board of Elections for absentee voting, during the hours absentee voting is being conducted in the building by the county clerk pursuant to KRS 117.085(1)(c) so that law and order in that area may be maintained pursuant to KRS 117.235(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 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 precinct election officers, county clerks, deputy county clerks, law enforcement officials, voters, and individuals who desire to conduct activities prohibited by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Precinct election officers, county clerks, deputy county clerks, and law enforcement officials will need to familiarize themselves with the activities that are prohibited by this administrative regulation. Voters and individuals who desire to conduct activities prohibited by this administrative regulation are not required to take any action to comply with this administrative regulation but must refrain from the activities proscribed by it.

(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 administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this amendment, precinct election officers, county clerks, deputy county clerks, and law enforcement officials will be able to further their interests in maintaining law and order around buildings where voting is being conducted. In addition, each of the entities and persons identified in question (3) will benefit from this administrative regulation by being assured that Kentucky elections are free from voter intimidation and election fraud.

(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 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 county clerks, deputy county clerks, and law enforcement officials.

(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? 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(+/-):

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(New Administrative Regulation)

201 KAR 2:360. Naloxone Dispensing.

RELATES TO: KRS 217.186
STATUTORY AUTHORITY: KRS 217.186, 315.191
NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.186 authorizes the Board of Pharmacy to promulgate administrative regulations governing dispensing of naloxone by a pharmacist pursuant to a physician-approved protocol. This administrative regulation establishes the minimum requirements for the pharmacist to be able to dispense naloxone pursuant to a physician-approval protocol.

Section 1. Certification. (1) A pharmacist desiring to achieve certification to initiate the dispensing of naloxone shall complete and submit an Application for Pharmacist Certification for Naloxone Dispensing, Form 1, with the board and provide the following:
(a) Name;
(b) Address;
(c) Phone number;
(d) Pharmacist license number;
(e) Employer;
(f) Employer address; and
(g) Proof of education and training in the use and dispensing of naloxone for treatment of opioid overdose pursuant to the requirements set forth in Section 5 of this administrative regulation.
(2) The board shall issue the certification to a pharmacist who meets the requirements of subsection (1) of this section within thirty (30) days of the receipt of the application.

Section 2. Procedures for Dispensing of Naloxone. A pharmacist is authorized to initiate the dispensing of naloxone under the following conditions:
(1) The pharmacist has met the requirements of Section 1 of this administrative regulation;
(2) The pharmacist has received his or her certification;
(3) The pharmacist has a physician-approved protocol that meets the minimum requirements of Section 3 of this administrative regulation; and
(4) The pharmacist documents the dispensing event in the pharmacy management system including:
(a) Documentation as required in 201 KAR 2:170 for the dispensing of prescription medication; and
(b) Documentation that the individual receiving naloxone was provided with the required training and education pursuant to Section 4 of this administrative regulation.

Section 3. Protocol Minimum Requirements. A physician-approved protocol authorizing a pharmacist to initiate the dispensing of naloxone shall contain:
(1) Criteria for identifying persons eligible to receive naloxone under the protocol;
(2) Naloxone products authorized to be dispensed shall include:
(a) Name of product;
(b) Dose; and
(c) Route of administration;
(3) Specific education to be provided to the person whom the naloxone is dispensed;
(4) Procedures for documentation of naloxone dispensation, including procedures for notification of the physician authorizing the protocol;
(5) The length of time the protocol is in effect;
(6) The date and signature of the physician approving the protocol; and
(7) The names and work addresses of pharmacist(s) authorized to initiate dispensing of naloxone under the protocol.

Section 4. Education to be Provided to Person Receiving Naloxone Prescription Under Protocol. A pharmacist dispensing naloxone to a person shall provide verbal counseling and written educational materials, appropriate to the dosage form of naloxone dispensed, including:
(1) Risk factors of opioid overdose;
(2) Strategies to prevent opioid overdose;
(3) Signs of opioid overdose;
(4) Steps in responding to an overdose;
(5) Information on naloxone;
(6) Procedures for administering naloxone; and
(7) Proper storage and expiration of naloxone product dispensed.

Section 5. Pharmacist Education and Training Required for Certification. A pharmacist who applies for certification to initiate dispensing of naloxone shall have received education and training related to the safe dispensing of opioids and use of naloxone as rescue therapy for opioid overdose, including:
(1) Risk factors for opioid abuse and overdose;
(2) Opioid overdose prevention;
(3) Recognizing and responding to opioid overdoses;
(4) Indications for use of naloxone as rescue therapy;
(5) Contraindications for use of naloxone;
(6) Administration of naloxone;
(7) Adverse effects associated with naloxone rescue therapy;
(8) Identification of a patient who meets the criteria for provision of naloxone;
(9) Required education to provide to persons receiving naloxone;
(10) Required elements of protocol to initiate dispensing of naloxone; and
(11) Required documentation when initiating dispensing of naloxone.

Section 6. Incorporation by Reference. (1) "Application for Pharmacist Certification for Naloxone Dispensing", Form 1, 5/2015, is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOEL THORNBURY, President
APPROVED BY AGENCY: May 13, 2015
FILED WITH LRC: May 14, 2015 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday June 22, 2015 at 9:30 a.m. at the Board's office located at State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this 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 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 11:59 p.m. Tuesday June 30, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation allows a pharmacist that has received

certification from the Board of Pharmacy to dispense naloxone pursuant to a physician-approved protocol.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with SB192.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation is in conformity with the authorizing statute that authorizes the board to promulgate administrative regulations that establishes the requirements for a pharmacist to dispense naloxone pursuant to a physician-approved protocol.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will set the requirements for a pharmacist to dispense naloxone pursuant to a physician-approved protocol.

(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: The board anticipates 500 pharmacists annually will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A pharmacist will apply to receive certification from the Board to dispense naloxone pursuant to a physician-approved protocol.

(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): A pharmacist will be able to dispense naloxone pursuant to a physician-approved protocol to assist those individuals that have an opioid overdose.

(5) Provide an estimate of how much it will cost 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: None 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: None.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable any pharmacist applying for certification to dispense naloxone pursuant to a physician-approved protocol.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy 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. 2015 RS SB 192 and KRS 315.191 requires or authorizes the action taken by this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? 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: The board anticipates no revenues.

Expenditures: The board anticipates no expenditures.

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(New Administrative Regulation)

201 KAR 20:063. Restrictions on use of amphetamine-like anorectic controlled substances.

RELATES TO: KRS 314.011, 314.042

STATUTORY AUTHORITY: KRS 314.131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131 authorizes the board to promulgate administrative regulations to regulate the conduct of licensees. KRS 314.091 authorizes disciplinary action against licensees for specified offenses. This administrative regulation establishes the requirements governing the use of amphetamine-like anorectic controlled substances.

Section 1. Definitions. (1) "Board" is defined in KRS 314.011(1).

(2) "Body mass index" means the weight of the patient in kilograms divided by the height in meters, squared.

(3) "Schedule III or IV amphetamine-like controlled substance" means a drug classified as a stimulant pursuant to:

(a) 902 KAR 55:025, Section 2; or

(b) 902 KAR 55:030, Section 1.

Section 2. Prior to prescribing, ordering, dispensing, administering, selling, supplying, or giving a Schedule III or IV amphetamine-like controlled substance, an advanced practice registered nurse (APRN) shall take into account the:

(1) Drug's potential for abuse;

(2) Possibility that a drug may lead to dependence;

(3) Possibility a patient will obtain the drug for a nontherapeutic use;

(4) Possibility a patient will distribute it to others; and

(5) Potential illicit market for the drug.

Section 3. Treatment of Obesity with a Schedule III or IV Amphetamine-like Controlled Substance. (1) Prior to prescribing, administering, dispensing, ordering, selling, supplying, or giving a Schedule III or IV amphetamine-like controlled substance to treat obesity in a patient sixteen (16) years of age or older, the APRN shall:

(a) Establish an APRN/patient relationship;

(b) Determine that the patient is obese or overweight with medical risk factors and is a proper candidate for weight reduction treatment;

(c) Determine and record the extent of prior anorectics or other controlled substances used by the patient. The prescribing APRN shall obtain and review a KASPER report for the twelve (12) month period immediately preceding the patient encounter, before prescribing or dispensing controlled substances to the patient;

(d) Determine that the patient has either:

1. A body mass index of twenty-seven (27) or more, unless the body mass index is twenty-five (25) to twenty-seven (27) and the patient has a co-morbidity such as a cardiovascular disease, diabetes mellitis, dyslipidemia, hypertension, or sleep apnea;

2. Body fat greater than or equal to thirty (30) percent in females or greater than or equal to twenty-five (25) percent in males;

3. Current body weight greater than or equal to 120 percent of a well-documented, long-standing, healthy weight that the patient maintained after age eighteen (18);

4. A waist-hip ratio or waist circumference at a level indicating that the individual is known to be at increased cardiovascular or co-morbidity risk because of abdominal visceral fat; or

5. Presence of a co-morbid condition or conditions aggravated by the patient's excessive adiposity; and

(e) Provide the patient with carefully prescribed diet, together with counseling on exercise, behavior modification, and other appropriate supportive and collateral therapies.

(2) During treatment for obesity, an APRN shall:

(a) Maintain an APRN/patient relationship throughout the treatment process;

(b) Maintain an adequate patient record in accordance with subsection (4) of this section; and

(c) Justify in the patient record the use of any Schedule III or IV amphetamine-like controlled substance beyond three (3) months. Before the APRN continues the use of a substance beyond three (3) months, the APRN shall obtain and review a current KASPER report.

(3) An APRN shall terminate the use of Schedule III or IV amphetamine-like controlled substances if:

(a) The patient does not demonstrate weight loss and does not attempt to comply with exercise and dietary changes;

(b) The body mass index of the patient without a co-morbid condition is less than twenty-seven (27) and the percentage of body fat is normal at less than thirty (30) percent in females or less than twenty-five (25) percent in males;

(c) The body mass index of the patient with a co-morbid condition is less than twenty-five (25) and the percentage of body fat is normal at less than thirty (30) percent in females or less than twenty-five (25) percent in males;

(d) The patient has regained the weight lost, using sympathomimetics as part of a complete program and reuse of the medication does not produce loss of the weight gain to help maintain a minimum of five (5) percent weight loss; or

(e) The patient has obtained a Schedule III or IV amphetamine-like controlled substance from another prescriber without the prescriber's knowledge and consent.

(4) The board shall consider the following factors in reviewing the adequacy of a patient record:

(a) Medical history, including:

1. Illnesses, with particular emphasis on cardiovascular diseases;

2. Surgery;

3. Lifestyle;

4. Medications, including controlled substances;

5. Eating habits;

6. Exercise;

7. Weight gain or loss;

8. Prior efforts at weight control or reduction;

9. Prior treatment compliance;

10. Menstruation or pregnancy; and

11. Psychiatric history with particular reference to depression, paranoia, psychosis, or chemical dependency;

(b) Social history;

(c) Family history;

(d) Complete physical examination;

(e) Evaluation of laboratory tests including:

1. CBC;

2. Fasting blood sugar;

3. Thyroid panel or TSH;

4. Lipid profile;

5. Serum potassium;

6. Liver function test; and

7. Renal function test;

(f) An informed consent signed by the patient that cites the limitations and risk of anorectic treatment including potential dependency or psychiatric illness;

(g) 1. A signed agreement that the patient has voluntarily agreed to:

a. Have one (1) prescribing APRN for Schedule III or IV amphetamine-like controlled substances;

b. Use one (1) pharmacy to fill prescriptions for controlled substances;

c. Not have early refills on the prescriptions for controlled substances; and

d. Provide full disclosure of other medications taken; or

2. Documentation that:

a. The APRN requested the patient sign an agreement meeting the requirements of subparagraph 1 of this paragraph;

b. The patient declined to sign the agreement; and

c. Indicates the APRN's clinical reasons for prescribing, or continuing to prescribe, a Schedule III or IV amphetamine-like controlled substance to the patient, in light of the patient's refusal to sign the agreement; and

(h) A record of each office visit, including:

1. The patient's weight;

2. The patient's blood pressure;

3. The patient's pulse;

4. The presence or absence of medication side effects or complications;

5. The doses of medications prescribed;

6. The patient's body mass index; and

7. Evaluation of the patient's compliance with the total treatment regimen.

Section 4. Waiver. For a legitimate medical purpose, an APRN may apply in writing for a written waiver of any requirement in this administrative regulation. The board may issue a waiver with terms and conditions it deems appropriate.

Section 5. Failure to comply with the requirements of this administrative regulation shall constitute actions inconsistent with the practice of nursing pursuant to KRS 314.091(1)(d).

SALLY BAXTER, President

APPROVED BY AGENCY: April 17, 2015

FILED WITH LRC: May 6, 2015 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2015 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m., June 30, 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251,
email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets restrictions on the use of certain controlled substances used for the treatment of obesity or overweight with medical risk factors by advanced practice registered nurses (APRN).

(b) The necessity of this administrative regulation: Because of the potential for abuse of these drugs, this administrative regulation is necessary. It mirrors a similar administrative regulation for physicians.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting restrictions on these drugs and setting out the practice standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting the restrictions and standards.

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

(a) How the amendment will change this existing administrative regulation: 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: APRNs, approximately 5,000.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to conform to the requirements of 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 is no new cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Forestry
(New Administrative Regulation)

402 KAR 3:050. Bad actor notice provisions.

RELATES TO: KRS 149.330, 149.332, 149.344, 149.346, 149.348

STATUTORY AUTHORITY: KRS 149.344

NECESSITY, FUNCTION, AND CONFORMITY: KRS 149.344 requires the cabinet to establish notification requirements for loggers or operators who have received one (1) or more bad actor designations. This administrative regulation establishes the methods and requirements for bad actors to notify the cabinet before beginning timber harvest operations.

Section 1. Notice Required. (1) Pursuant to KRS 149.344(11)(a), a logger who has received one (1) or more bad actor designations pursuant to KRS 149.344(8) shall notify the cabinet prior to conducting logging operations.

(2) The logger shall continue to notify the cabinet until all civil penalties have been paid and all site remediation required by the cabinet has been performed.

Section 2. (1)(a) Bad actor notification shall be made by letter, facsimile, email, telephone conversation, or in person.

(b) A message left on an answering machine or voice mail service shall not constitute valid notification.

(2) In the notification, the logger or operator shall identify the anticipated date of harvest and the location of the timber harvesting site in sufficient detail to enable the division to locate the site in the field. The location shall be identified by:

(a) The name of the landowner;

(b) The county; and

(c) One (1) of the following methods:

1. Latitude and longitude of the site to the nearest one-tenth (1/10) of a minute or the UTM (Universal Transverse Mercator) coordinates to the nearest 100 meters;

2. USGS (United States Geological Survey) 7.5-minute topographic quadrangle map or reproduction thereof, marked to show the name of the quadrangle map, the map scale, the north arrow, and the exact location of the site; or

3. The nearest named community and the approximate distance and direction from the community to the site, the name and number of the nearest highway or street, and a description of how to reach the site from the nearest road intersection or other appropriate landmark.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: May 12, 2015

FILED WITH LRC: May 12, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 23, 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 June 16, 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 June 30, 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 notification requirements for a logger who has received one or more bad actor designations

(b) The necessity of this administrative regulation: This administrative regulation is necessary establish the notification requirements required by the passage of SB 92 from the 2015 Legislative Session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The amendments to KRS 149.334 introduced by SB 92 from the 2015 Legislative Session require the cabinet to promulgate administrative regulations in order to set forth the form and manner of the notification required by a logger who has received one or more bad actor designations. This administrative regulation establishes the notification requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 149.334(11)(b) (SB92, 2015 Legislative Session) requires the cabinet to establish form and manner of notification for loggers who receive one or more bad actor designations. This administrative regulations establishes those requirements in accordance with the requirement in the newly amended 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: 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 will impact logging operators in the Commonwealth who have received one or more bad actor designations. There are approximately 1,157 loggers in the state. Any of these could receive a bad actor designation.

(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 use the form of notification included 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): The costs associated with this proposal will be minimal. The administrative regulation gives the logger multiple options regarding how to notify the agency of logging operations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Logging operators will benefit by having multiple forms of notification established by this administrative regulation which is follows other forms of notification required by the agency.

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

(a) Initially: This amendment will not increase the costs of the agency to implement.

(b) On a continuing basis: This amendment 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 amendment.

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

(9) TIERING: Is tiering applied? No. All loggers who have received one or more bad actor designations within the Commonwealth are required to follow these notification standards.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 149.344.

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 Alcoholic Beverage Control
(Repealer)

804 KAR 1:061. Repeal of 804 KAR 1:060.

RELATES TO: KRS 244.030
STATUTORY AUTHORITY: KRS 241.060(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations regarding control of the sale of alcoholic beverages. 804 KAR 1:060 appears to be duplicative of KRS 244.030 and in contradiction to KRS 244.130 and is therefore unnecessary. This administrative regulation repeals 804 KAR 1:060.

Section 1. 804 KAR 1:060, Solicitation, is hereby repealed.

FREDERICK A. HIGDON, Commissioner
AMBROSE WILSON IV, Secretary
APPROVED BY AGENCY: May 13, 2015
FILED WITH LRC: May 14, 2015 at 1 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, June 29, 2015 at 10:00 a.m., Eastern Time, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by 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 until the end of the day on June 30, 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: Melissa McQueen, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Melissa McQueen
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation repeals 804 KAR 1:060.
(b) The necessity of this administrative regulation The existing regulation appears to duplicate the statute it was promulgated on and is therefore unnecessary. This administrative regulation repeals it.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. The repeal of this administrative regulation will eliminate duplicative reference to a 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: 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: No individuals, businesses, organizations, or state and local governments are affected by the repeal.
(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 entities will be affected by this repealer.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to repeal this administrative regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There is no cost to repeal this administrative regulation.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No extra costs are anticipated to repeal this administrative regulation.
(b) On a continuing basis: None.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is used to implement and enforce the repeal of this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no anticipated increase in fees or funding necessary to repeal this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: This administrative regulation repeal does not directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? No tiering is applied because this amendment repeals an earlier regulation so it applies equally to all 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? No units, parts or divisions of state or local government are expected to 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 241.060(1) authorizes the board to promulgate administrative regulations.
(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 expenditures or revenue will be generated by this administrative regulation.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation.
(c) How much will it cost to administer this program for the first year? The cost to administer this amendment should be minimal, if any.
(d) How much will it cost to administer this program for subsequent years? The cost to administer this amendment should be minimal, if any.
Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation:

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Additional costs to administer these regulatory changes at the local government level for this year or subsequent years should be minimal or none.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(New Administrative Regulation)

804 KAR 10:025 Urban-county alcoholic beverage control administrator.

RELATES TO: KRS 241.220, 241.230, 241.240

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 241.060 the board has authority to promulgate administrative regulations regarding matters over which the board has jurisdiction. KRS 241.220 requires an urban-county government to create by ordinance the office of urban-county alcoholic beverage control administrator. KRS 241.240 establishes that an urban-county alcoholic beverage control administrator shall take an oath and execute a bond as a condition of assuming the role as county alcoholic beverage control administrator. This administrative regulation requires written notification to the board of the urban-county alcoholic beverage control administrator's appointment and proof that the required surety bond was posted.

Section 1. Any urban-county government appointing an urban-county alcoholic beverage control administrator under the authority of KRS 241.220 and 241.230, shall notify the Department of Alcoholic Beverage Control in writing, and shall submit the following documents within thirty (30) days of appointment:

(1) A copy of the appointment letter or resolution which names the person as the urban-county alcoholic beverage control administrator;

(2) A copy of the oath of office that the urban-county alcoholic beverage control administrator has taken that has been signed by the urban-county alcoholic beverage control administrator; and

(3) A copy of the required bond that provides surety for the urban-county alcoholic beverage control administrator.

FREDERICK A. HIGDON, Commissioner
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: May 13, 2015

FILED WITH LRC: May 14, 2015 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, June 29, 2015 at 10:00 a.m., Eastern Time at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by 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 until the end of the day on June 30, 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: Melissa McQueen, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melissa McQueen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation clarifies what documents are necessary in order to provide notice to the board of the appointment of an urban county alcoholic beverage control administrator.

(b) The necessity of this administrative regulation: This administrative regulation clarifies which documents are to be provided to the board upon the appointment of an urban county alcoholic beverage control administrator.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation clarifies what documents need to be provided to the board upon appointment of an urban county alcoholic beverage control administrator.

(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: Urban county governments are affected by this amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment clarifies a policy that urban county governments are already following.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not expected to be any additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no financial benefits to this administrative regulation amendment.

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

(a) Initially: No extra costs are anticipated to amend this administrative regulation.

(b) On a continuing basis: None.

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

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

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

(9) TIERING: Is tiering applied? No tiering is applied because this administrative regulation applies equally to the 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? Urban county governments and urban county alcoholic beverage control administrators are expected to be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate administrative regulations.

(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. Expenditures are not expected to increase. No revenue will be generated by this administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? The cost to administer this amendment should be minimal, if any.

(d) How much will it cost to administer this program for subsequent years? The cost to administer this amendment should be minimal, if any.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Additional costs to administer these regulatory changes at the local government level for this year or subsequent years should be minimal or none.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Non-Depository Institutions
(New Administrative Regulation)

808 KAR 12:110. Report of condition.

RELATES TO: KRS 286.8-020(14), 286.8-030(1), 286.8-140(4), 286.8-255, 286.8-285

STATUTORY AUTHORITY: KRS 286.8-140(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. This administrative regulation establishes the procedures for mortgage loan companies and mortgage loan brokers to follow in submitting a statement of condition with the Nationwide Mortgage Licensing System and Registry as required by KRS 286.8-020(14).

Section 1. Reports submitted to Nationwide Mortgage Licensing System and Registry. (1) Each mortgage loan company and mortgage loan broker required to complete and submit a report of condition pursuant to KRS 286.8-020(14) shall use Form ML-11, NMLS Mortgage Call Report.

(2) The Form ML-11, NMLS Mortgage Call Report shall be submitted electronically to the Nationwide Mortgage Licensing System and Registry according to the schedule established and set forth at http://mortgage.nationwidelicensingsytem.org.

Section 2. Incorporation by Reference. (1) Form ML-11, "NMLS Mortgage Call Report", March 2015, is incorporated by reference.

(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.

CHARLES A. VICE, Commissioner
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: April 28, 2015

FILED WITH LRC: May 12, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 30, 2015, at 2:00 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 June 30, 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 procedure and form required to implement the annual report of condition process for mortgage loan companies and brokers.

(b) The necessity of this administrative regulation: This regulation incorporates the NMLS form required for companies and brokers to make the report of condition. Additionally, this regulation adopts the quarterly report requirement established by NMLS, as well as the report filing deadlines.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. KRS 286.8-020(14) requires mortgage loan companies and brokers that employ or utilize the direct services of a registered mortgage loan originator to file an annual report of condition through NMLS. The report must be in the form required by NMLS (i.e. Form ML-11, NMLS Mortgage Call Report), along with "any other information which may be required by the commissioner." In this case, the commissioner has chosen to exercise his authority to require quarterly reports that culminate in the annual report as prescribed by NMLS.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the procedures for filing reports of condition, which enable the commissioner to monitor the financial state of both licensed mortgage loan companies and brokers, and those companies and brokers that are exempt from licensure under KRS 286.8-020.

(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: This administrative regulation affects mortgage loan companies and mortgage loan brokers that employ or utilize the services of registered mortgage loan originators. The Department currently has approximately 303 licensed mortgage companies, and ninety-four (94) licensed brokers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The regulated entities will be required to complete the NMLS Mortgage Call Report on the quarterly schedule established by NMLS. The regulated entities are already required to complete the report form pursuant to KRS 286.8-020(14).

(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): The regulated entities will benefit by having clarity as to the form required to complete the annual report, and as to the submission schedule.

(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 alter any fees.

(9) TIERING: Is tiering applied? No, tiering is not applied as the report of condition requirement of KRS 286.8-020(14) applies equally to all mortgage loan companies and brokers that employ or utilize the services of a registered mortgage loan originator.

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 Chapter 286.8, specifically KRS 286.8-020(14) and 286.8-140(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. This 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 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 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 impact on expenditures.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(New Administrative Regulation)

810 KAR 1:300. International medication protocol as a condition of a race.

RELATES TO: KRS 230.210, 230.215, 230.240, 230.260, 230.290, 230.320

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.290, 230.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation authorizes licensed racing associations to require adherence to International Medication Protocol, as defined, as a condition of entry in a particular race.

Section 1. Definition. "International Medication Protocol" means a condition of a race that all horses nominated or entered to compete in the race shall not be administered furosemide less than twenty-four (24) hours prior to post time for the race.

Section 2. Notwithstanding any other provision of 810 KAR Chapter 1 to the contrary, an association may require adherence to the International Medication Protocol as a condition of a particular race. The association shall publish the requirement in its condition book or otherwise make the requirement known to all licensees participating in its race meeting. The horses entered to compete in any such race shall not be eligible to receive furosemide less than twenty-four (24) hours prior to post time for the race. All matters related to sample collection, ownership, storage, shipment, chain of custody, testing, and reporting and other applicable provisions shall be done in accordance with 810 KAR 1:018, 810 KAR 1:028, and 810 KAR 1:130.

Section 3. Penalties. If the commission laboratory determines the presence of furosemide at a concentration of greater than 1,000 picograms/ml in a serum sample, derived post-race from a horse that is not eligible to receive furosemide pursuant to this administrative regulation, it shall be prima facie evidence that furosemide was administered to the horse in violation of this administrative regulation. Violations of this administration regulation shall be subject to the penalties provided in 810 KAR 1:028 for Class C drug violations.

Section 4. To the extent of any conflict between a provision in this administrative regulation and a provision in any other administrative regulation contained in 810 KAR Chapter 1, the provisions in this administrative regulation shall supersede.

ROBERT M. BECK, JR., Chairman
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: May 6, 2015

FILED WITH LRC: May 11, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on June 22, 2015 at 9:00 a.m., at the South Park Theatre at the Visitor's Information Center, Kentucky Horse Park, 4089 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing 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 through June 30, 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: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Susan B. Speckert

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation allows a race track to schedule a race prohibiting the use of furosemide on race day as a condition of that race. It establishes a penalty for licensees who violate the condition. It does not ban furosemide on race day. If an owner/trainer wants to run his/her horse on furosemide on race day, he/she will still be able to do that in other races. The regulation will enable the industry to determine if there is an interest in running races without furosemide. It will enable tracks to market races to international markets that do not use furosemide on race day.

(b) The necessity of this administrative regulation: This regulation enables race tracks to better serve the owners and trainers who compete at their track. Many owners and trainers believe horses should not be administered furosemide on race day, and they want to compete in races in which none of the horses are running on furosemide. North America is the only jurisdiction that allows horses to compete with furosemide on race day and many believe this fact is damaging the marketability of American horses. This regulation gives tracks the ability to schedule such races and gives the Commission the ability to penalize participants who violate the prohibition.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) mandates that the commission establish the conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) further requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation enables the Commission to enforce the condition, should a track choose to impose it. This is consistent with the Commission's statutory authority and mandate to protect the integrity of horse racing.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect race tracks that choose to impose the condition. It will affect owners and trainers who choose to enter and compete in non-furosemide races. It will also affect the Commission, which will enforce the condition.

(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: Only those owners and trainers who choose to enter and compete in a race with the condition will be impacted. They will not be permitted to administer furosemide to their horses on race day.

(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 associated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question: The regulation will give tracks the option of scheduling non-furosemide races. It does not ban furosemide on race day. If an owner/trainer wants to run his/her horse on furosemide on race day, he/she will still be able to do that in other races. The regulation will enable the industry to determine if there is an interest in running races without furosemide. It will enable tracks to market races to international markets that do not use furosemide on race day.

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

(a) Initially: No costs associated.

(b) On a continuing basis: No costs associated.

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

(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 necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.240, 230.260, 230.290, 230.320.

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

(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:

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(New Administrative Regulation)

811 KAR 1:300. International medication protocol as a condition of a race.

RELATES TO: KRS 230.210, 230.215, 230.240, 230.260, 230.290, 230.320

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.290, 230.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation authorizes licensed racing associations to require adherence to International Medication Protocol, as defined, as a condition of entry in a particular race.

Section 1. Definition. "International Medication Protocol" means a condition of a race that all horses nominated or entered to compete in the race shall not be administered furosemide less than twenty-four (24) hours prior to post time for the race.

Section 2. Notwithstanding any other provision of 811 KAR Chapter 1 to the contrary, an association may require adherence to the International Medication Protocol as a condition of a particular race. The association shall publish the requirement in its condition book or otherwise make the requirement known to all licensees participating in its race meeting. The horses entered to compete in any such race shall not be eligible to receive furosemide less than twenty-four (24) hours prior to post time for the race. All matters related to sample collection, ownership, storage, shipment, chain of custody, testing, and reporting and other applicable provisions shall be done in accordance with 811 KAR 1:090, 811 KAR 1:095, and 811 KAR 1:260.

Section 3. Penalties. If the commission laboratory determines the presence of furosemide at a concentration of greater than 1,000 picograms/ml in a serum sample, derived post-race from a horse that is not eligible to receive furosemide pursuant to this administrative regulation, it shall be prima facie evidence that furosemide was administered to the horse in violation of this administrative regulation. Violations of this administration regulation shall be subject to the penalties provided in 811 KAR 1:095 for Class C drug violations.

Section 4. To the extent of any conflict between a provision in this administrative regulation and a provision in any other administrative regulation contained in 811 KAR Chapter 1, the provisions in this administrative regulation shall supersede.

ROBERT M. BECK, JR., Chairman
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: May 6, 2015

FILED WITH LRC: May 11, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2015 at 9:00 a.m., at the South Park Theatre at the Visitor's Information Center, Kentucky Horse Park, 4089 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing 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 through June 30, 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: Susan B. Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susan B. Speckert

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation allows a race track to schedule a race prohibiting the use of furosemide on race day as a condition of that race. It establishes a penalty for licensees who violate the condition. It does not ban furosemide on race day. If an owner/trainer wants to run his/her horse on furosemide on race day, he/she will still be able to do that in other races. The regulation will enable the industry to determine if there is an interest in running races without furosemide. It will enable tracks to market races to international markets that do not use furosemide on race day.

(b) The necessity of this administrative regulation: This regulation enables race tracks to better serve the owners and trainers who compete at their track. Many owners and trainers believe horses should not be administered furosemide on race day, and they want to compete in races in which none of the horses are running on furosemide. North America is the only jurisdiction that allows horses to compete with furosemide on race day and many believe this fact is damaging the marketability of American horses. This regulation gives tracks the ability to schedule such races and gives the Commission the ability to penalize participants who violate the prohibition.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) mandates that the commission establish the conditions under which thoroughbred racing and pari-mutuel wagering thereon shall be conducted in Kentucky and charges it to, "promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth." KRS 230.240(2) further requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation enables the Commission to enforce the condition, should a track choose to impose it. This is consistent with the Commission's statutory authority and mandate to protect the integrity of horse racing.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect race tracks that choose to impose the condition. It will affect owners and trainers who choose to enter and compete in non-furosemide races. It will also affect the Commission, which will enforce the condition.

(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: Only those owners and trainers who choose to enter and compete in a race with the condition will be impacted. They will not be permitted to administer furosemide to their horses on race day.

(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 associated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question: The regulation will give tracks the option of scheduling non-furosemide races. It does not ban furosemide on race day. If an owner/trainer wants to run his/her horse on furosemide on race day, he/she will still be able to do that in other races. The regulation will enable the industry to determine if there is an interest in running races without furosemide. It will enable tracks to market races to international markets that do not use furosemide on race day.

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

(a) Initially: No costs associated.

(b) On a continuing basis: No costs associated.

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

(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 necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.240, 230.260, 230.290, 230.320.

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

(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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(New Administrative Regulation)

811 KAR 2:300. International medication protocol as a condition of a race.

RELATES TO: KRS 230.210, 230.215, 230.240, 230.260, 230.290, 230.320

STATUTORY AUTHORITY: KRS 230.215, 230.240, 230.260, 230.290, 230.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation authorizes licensed racing associations to require adherence to International Medication Protocol, as defined, as a condition of entry in a particular race.

Section 1. Definition. "International Medication Protocol" means a condition of a race that all horses nominated or entered to compete in the race shall not be administered furosemide less than twenty-four (24) hours prior to post time for the race.

Section 2. Notwithstanding any other provision of 811 KAR Chapter 2 to the contrary, an association may require adherence to the International Medication Protocol as a condition of a particular race. The association shall publish the requirement in its condition book or otherwise make the requirement known to all licensees participating in its race meeting. The horses entered to compete in any such race shall not be eligible to receive furosemide less than twenty-four (24) hours prior to post time for the race. All matters related to sample collection, ownership, storage, shipment, chain of custody, testing, and reporting and other applicable provisions shall be done in accordance with 811 KAR 2:096, 811 KAR 2:100, and 811 KAR 2:170.

Section 3. Penalties. If the commission laboratory determines the presence of furosemide at a concentration of greater than 1,000 picograms/ml in a serum sample, derived post-race from a horse that is not eligible to receive furosemide pursuant to this administrative regulation, it shall be prima facie evidence that furosemide was administered to the horse in violation of this administrative regulation. Violations of this administration regulation shall be subject to the penalties provided in 811 KAR 2:100 for Class C drug violations.

Section 4. To the extent of any conflict between a provision in this administrative regulation and a provision in any other administrative regulation contained in 811 KAR Chapter 2, the provisions in this administrative regulation shall supersede.

ROBERT M. BECK, JR., Chairman
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: May 6, 2015

FILED WITH LRC: May 11, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2015 at 9:00 a.m., at the South Park Theatre at the Visitor's Information Center, Kentucky Horse Park, 4089 Iron

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(1) Provide a brief summary of:

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(b) The necessity of this administrative regulation: This regulation enables race tracks to better serve the owners and trainers who compete at their track. Many owners and trainers believe horses should not be administered furosemide on race day, and they want to compete in races in which none of the horses are running on furosemide. North America is the only jurisdiction that allows horses to compete with furosemide on race day and many believe this fact is damaging the marketability of American horses. This regulation gives tracks the ability to schedule such races and gives the Commission the ability to penalize participants who violate the prohibition.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect race tracks that choose to impose the condition. It will affect owners and trainers who choose to enter and compete in non-furosemide races. It will also affect the Commission, which will enforce the condition.

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(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 associated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question: The regulation will give tracks the option of scheduling non-furosemide races. It does not ban furosemide on race day. If an owner/trainer wants to run his/her horse on furosemide on race day, he/she will still be able to do that in other races. The regulation will enable the industry to determine if there is an interest in running races without furosemide. It will enable tracks to market races to international markets that do not use furosemide on race day.

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

(a) Initially: No costs associated.

(b) On a continuing basis: No costs associated.

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

(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 necessary.

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

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FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The 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 230.215, 230.240, 230.260, 230.290, 230.320.

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

(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:

CABINET FOR HEALTH AND FAMILY SERVICES
Kentucky Office of Health Benefit and Health Information Exchange
(New Administrative Regulation)

900 KAR 10:110. KHBE Formal Resolution Process Related to SHOP Employers and Employees.

RELATES TO: KRS 194A.050(1), 42 U.S.C. 18031, 45 C.F.R. Part 155, 156

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Kentucky Office of Health Benefit and Health Information Exchange, has responsibility to administer the state-based American Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures for a formal review process related to SHOP employers and employees in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

Section 1. Definitions. (1) "Applicant" means an employer or employee seeking eligibility for enrollment in a qualified health plan under 900 KAR 10:020.

(2) "De novo" means a review of a formal review request without deference to prior decisions in the case.

(3) "Desk review" means an administrative review by the office of an eligibility determination.

(4) "Employee" is defined by section 2791 of the Public Health Service Act.

(5) "Employer" is defined by section 2791 of the Public Health Service Act, except that such term includes employers with one (1) or more employees.

(6) "Formal review record" means the formal review decision and all papers and requests filed in the formal review process.

(7) "Formal review request" means a clear expression, either orally or in writing, by an applicant, enrollee, employer, or small business employer or employee to have any eligibility determination or redetermination contained in a notice issued in accordance with 45 C.F.R. 155.310(g), 45 C.F.R. 330(e)(1)(ii), 45 C.F.R. 335(h)(1)(ii), or 45 C.F.R. 155.715(e) or (f).

(8) "Kentucky Health Benefit Exchange" or "KHBE" means the Kentucky state-based exchange conditionally approved by HHS under standards set forth in 45 C.F.R. 155.105 to offer qualified health plans on January 1, 2014.

(9) "Kentucky Office of Health Benefit and Health Information Exchange", "KOHBHIE", or "office" means the office created to administer the Kentucky Health Benefit Exchange.

(10) "SHOP" means a Small Business Health Options Program operated by an exchange through which a qualified employer can provide employees, their spouses, and their dependents with access to one (1) or more qualified health plans.

(11) "Vacate" means to set aside a previous action.

Section 2. Right to Formal Review. (1) An employer applicant may request a formal review of a:

(a) Denial of eligibility as set forth in 900 KAR 10:020; or

(b) Failure of the KHBE to make an eligibility determination to participate in SHOP within fifteen (15) calendars days of receiving an application from an employer.

(2) An employee applicant may request a formal review of a:

(a) Denial of eligibility as set forth under 900 KAR 10:020; or

(b) Failure of the SHOP to make an eligibility determination within fifteen (15) days of receiving an application from an employee.

(3) Within ninety (90) days of receipt of a notice of denial of eligibility, an applicant may submit a formal review request to the office:

(a) Via the Web site at www.kynect.ky.gov;

(b) By contacting the office contact center at 1-800-459-6328; or

(c) By mail addressed to kynect SHOP, PO Box 2102, Frankfort Kentucky 40602.

(4) A formal review request shall clearly state a reason for a formal review in accordance with subsection (1) or (2) of this section.

(5) If an applicant is notified that a formal review request does not meet the requirements of this section, the applicant may amend the request to satisfy the requirements.

Section 3. Dismissal of a Formal Review. (1) A formal review by an applicant shall be dismissed if the applicant:

(a) Withdraws the formal review request in writing; or

(b) Fails to submit a formal review request that meets the requirements in Section 2 of this administrative regulation.

(2) If a formal review is dismissed in accordance with subsection (1) of this section, the office shall provide written notice to the applicant:

(a) Within three (3) business days of the dismissal; and

(b) That includes the reason for dismissal.

(3) The office may vacate a dismissal under subsection (2) of this section if an applicant makes a written request within thirty (30) days of the date of the notice of dismissal in subsection (2) of this section showing good cause why the dismissal shall be vacated.

Section 4. Desk Review. (1) An employer, or an employer and employee if the applicant is an employee, shall have the opportunity to submit evidence to the office for review of the eligibility determination.

(2) The office shall consider:

(a) The information used to determine the applicant's eligibility; and

(b) Any additional evidence provided by the applicant under subsection (1) of this section.

(3) An applicant's formal review request shall be desk reviewed:

(a) By one (1) or more impartial office officials who have not been directly involved in the eligibility determination implicated in the formal review; and

(b) De novo.

Section 5. Formal Review Decision. (1) A desk review by an official of the office shall result in a final formal review decision.

(2) A final formal review decision shall:

(a) Be in writing;

(b) Be based on:

1. For an applicant who is an employer, the eligibility requirements in 900 KAR 10:020; or

2. For an applicant who is an employee, the eligibility requirements in 900 KAR 10:020;

(c) State the decision and the effect of the decision on the eligibility of the employer or employee;

(d) Summarize the facts relevant to the formal review;

(e) Identify the legal and regulatory basis for the decision;

(f) State the effective date of the decision; and

(g) Be rendered within ninety (90) days of receipt by the office of an employer or employee formal review request.

(2) The office shall issue written notice of the formal review decision to the employer, or to the employer and employee if an employee is requesting the formal review, within ninety (90) days of the date of receipt of a formal review request in accordance with Section 2 of this administrative regulation.

(3) If the formal review decision affects the employer or employee's eligibility, the office shall implement the formal review

decision.

Section 6. Formal Review Record. The formal review record shall be available and accessible to an employer, or employer and employee if an employee is requesting the formal review:

(1) In a convenient format; and

(2) During regular business hours which shall:

(a) Be Monday through Friday from 8:00 a.m. to 4:30 p.m.; and

(b) Exclude holidays.

CARRIE BANAHAN, Executive Director
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 13, 2015

FILED WITH LRC: May 14, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 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 June 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 June 30, 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, or email address at tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carrie Banahan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the policies and procedures for a formal review process related to SHOP employers and employees in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the policies and procedures for a formal review process related to SHOP employers and employees in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the policies and procedures for a formal review process related to SHOP employers and employees in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed requirements for a formal review process related to SHOP employers and employees in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

(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 250 SHOP employers or employees seeking health insurance coverage on the Kentucky Health Benefit Exchange.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each employer or employee seeking coverage on SHOP make request a formal review related to eligibility and enrollment on the Kentucky Health Benefit Exchange.

(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 employer or employee that may request to participate on the Kentucky Health Benefit Exchange by providing a formal review process.

(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 Kentucky Office of Health Benefit and Health Information Exchange within the Cabinet for Health and Family Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 42 U.S.C. 18031, and 45 C.F.R. Part 155, 156.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. Section 18031 and 45 C.F.R. Parts 155 and 156.

2. State compliance standards. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet, and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures for a formal review process related to SHOP employers and employees in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

3. Minimum or uniform standards contained in the federal mandate. The Affordable Care Act establishes the creation of the American Health Benefit Exchange as identified in Section 1311(a) of the Affordable Care Act. The "Kentucky Health Benefit Exchange" (KHBE) is the Kentucky state-based exchange conditionally approved by HHS established by 45 C.F.R. 155.105 to offer a QHP in Kentucky beginning January 1, 2014. An Exchange must make a formal review process available to SHOP employers and employees.

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.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of May 5, 2015

Members: Senators Julie Raque Adams, Perry Clark, Alice Forgy Kerr, and Ernie Harris; and Representatives Denver Butler, 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: Melissa Justice, Kentucky Education Assistance Authority; Dinah Bevington, Personnel Cabinet; David Gordon, Department of Revenue; Tony Barrett, Jane Gardner, Sherrie Long, Board of Landscape Architects; Sierra Newmann, Marcus Jones, Board of Prosthetics, Orthotics and Pedorthics; Mark Bizzell, Labor Cabinet; Dana Todd, Alcohol Beverage Control; Stephanie Brammer Barnes, Maryellen Mynear, Connie Payne, Office of Inspector General; Stuart Owen, Department for Medicaid Services; Michelle Blevins, Tanya Dickinson, Division of Behavioral Health; Victoria Eldridge, Phyllis Sosa, Department for Aging and Independent Living; Sheila Schuster, lobbyist, Kentucky Coalition of Nurse Practitioners and Nurse Midwives.

Administrative Regulations Reviewed by the Subcommittee:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student and Administrative Services: Authority

11 KAR 4:080. Student aid applications. Melissa Justice, senior associate counsel, represented the division.

Grant Programs

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

In response to questions by Co-Chair Harris, Ms. Justice stated that the amount of family contribution was based on Pell Grant calculations. The CAP grant amount varied based on fund availability and the number of eligible recipients. Prioritization was established by the order of application submission; applicants who filed early were given priority over those who filed later.

Kentucky Educational Excellence Scholarship Program

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

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to: (1) correct citations; and (2) comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

PERSONNEL CABINET: Classified

101 KAR 2:102. Classified leave general requirements. Dinah Bevington, general counsel, represented the cabinet.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 9, 11, and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

101 KAR 2:105. Sick leave sharing procedures.

In response to a question by Co-Chair Marzian, Ms. Bevington stated that, for the purposes of 101 KAR 2:105 and 2:106, donating less than a full day's sick or annual leave time had in the past been an administrative problem logistically. The requirement that leave donations be in an amount not less than seven and one-half (7.5) hours for an employee working a thirty-seven and one-half (37.5) hour work week was already established in these administrative regulations. Because some employees worked under a different system, these administrative regulations were amended to establish that leave donations shall be in an amount not less than eight (8) hours for an employee working a forty (40) hour work week.

A motion was made and seconded to approve the following: (1) to amend the STATUTORY AUTHORITY paragraph to correct a citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to make a grammatical correction. Without objection, and with agreement of the agency, the amendments were approved.

101 KAR 2:106. Annual leave sharing procedures.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct a citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

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

101 KAR 2:180. Employee performance evaluation system.

A motion was made and seconded to approve the following amendments: (1) to amend Section 9 to establish requirements for requesting an exception to evaluation provisions; and (2) to amend Sections 1 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Unclassified

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 5, 11, and 12 to comply with the drafting requirements of KRS Chapter 13A and for clarity. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Office of Property Valuation: Forms

103 KAR 3:030 & E. Property and Severance Forms manual. David Gordon, executive director, represented the department.

GENERAL GOVERNMENT CABINET: Board of Landscape Architects: Board

201 KAR 10:050. Fees. Tony Barrett, landscape architect and task force member for the board; Jane Gardner, executive director; and Sherie Long, landscape architect and board member, represented the board.

PUBLIC PROTECTION CABINET: Office of Occupations and Professions: Board of Prosthetics, Orthotics, and Pedorthics: Board

201 KAR 44:010. Fees. Sierra Newman, chair, and Marcus Jones, assistant attorney general, represented the board.

In response to questions by Co-Chair Harris, Ms. Newman stated that the fees had not been increased since the inception of this administrative regulation in 2013. Board expenses had increased, including increased charges to the board from the Office of Occupations and Professions. The General Assembly had not swept funds from this board. Licensees were notified of the

proposed fees; however licensees did not comment on the fee increases during the public comment period.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES to paragraph to correct citations; and (2) to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

LABOR CABINET: Labor Standards; Wages and Hours

803 KAR 1:035. Hearing procedure. Mark Bizzell, assistant general counsel, represented the cabinet.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to: (a) clarify requirements; and (b) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Retail Premises

804 KAR 7:011. Repeal of 804 KAR 7:010. Dana Todd, staff attorney, represented the department.

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. Stephanie Brammer-Barnes, internal policy analyst; Maryellen Mynear, inspector general; and Connie Payne, deputy inspector general, represented the cabinet.

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. Stuart Owen, regulation coordinator, represented the cabinet.

A motion was made and seconded to approve the following amendments: (1) to amend Section 13 to change the edition date of the material incorporated by reference; (2) to amend the Community Mental Health Center Behavioral Health Services Manual incorporated by reference to: (a) add two (2) practitioner types (certified prevention professionals and pregnant women substance use treatment community support associates) as authorized providers of pregnant women substance use prevention services and case management services; (b) remove peer support specialists from the list of practitioners authorized to provide pregnant women substance use prevention services and case management services; (c) clarify the requirements to qualify for pregnant women substance use case management services; and (d) establish supervision requirements for pregnant women substance use preventive services; (3) to amend the STATUTORY AUTHORITY paragraph and Section 1 to correct citations; (4) to amend Section 2 to delete a fifth option for qualifying as a psychiatric nurse (possessing any level of education with American Nursing Association certification as a psychiatric or mental health nurse) because that provision was not consistent with the provisions in the manual incorporated by reference; and (5) to amend Section 7 and the material incorporated by reference to: (a) remove conflicting provisions; (b) specify that records shall also be made available for inspection and copying by a managed care organization if the recipient is enrolled in an MCO; (c) specify that the coverage of services provided by a licensed clinical alcohol and drug counselor or counselor associate is contingent and effective upon approval by the Centers for Medicare and Medicaid Services; and (d) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Division of Policy and Operations: Medicaid Services

907 KAR 1:102. Advanced practice registered nurse services.

A motion was made and seconded to approve the following amendments: (1) to amend Section 13 to change the edition date of the material incorporated by reference; (2) to amend the Physician Injectable Drug List incorporated by reference to: (a) add injectable drugs to the list; and (b) update dosages and national drug codes (NDCs) for injectable drugs already included on the list; (3) to amend Sections 2 and 3 to correct cross-references; and (4) to amend Section 4 to correct capitalizations. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendment: to amend Section 4 to correct a cross-reference to another administrative regulation. Without objection, and with agreement of the agency, the amendment was approved.

Commissioner's Office: Hospital Service Coverage and Reimbursement

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

Department for Behavioral Health, Developmental and Intellectual Disabilities: Division for Behavioral Health: Mental Health

908 KAR 2:220 & E. Adult peer support specialist. Michele Blevins, assistant director, and Tanya Dickinson, regulation coordinator, represented the cabinet.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to include a definition for "training curriculum"; (2) to amend Sections 3 and 5 to add time frames for department approvals and provider notifications; and (3) to amend Sections 3 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

908 KAR 2:230 & E. Kentucky family peer support specialist.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to include a definition for "training curriculum"; (2) to amend Sections 3 and 5 to add time frames for department approvals and provider notifications; and (3) to amend Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

908 KAR 2:260 & E. Targeted case manager: eligibility and training.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to include a definition for "training curriculum"; (2) to amend Sections 3 and 4 to add time frames for department approvals and provider notifications; and (3) 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.

Department for Aging and Independent Living: Division of Quality Living: Aging Services

910 KAR 1:140. Appeal Procedures. Victoria Elridge, deputy commissioner, and Phyllis Sosa, staff assistant, represented the cabinet.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1 and 3 to correct citations. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND

CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1, 4, 5, 10, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 2, 9, 10, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend the RELATES TO paragraph and Sections 2, 4, 5, 7, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the June 9, 2015, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Chiropractic Examiners: Board

201 KAR 21:090 & E. Prechiropractic education requirements.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Motor Carriers: Motor Carriers

601 KAR 1:112 & E. Transportation network company.

Kentucky Bicycle and Bikeways Commission: Office of the Secretary: Motorcycle and Bicycle Safety

601 KAR 14:020. Bicycle safety standards.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Health Care: Health Services and Facilities

902 KAR 20:091. Facilities specifications, operation and services; community mental health center. Stephanie Brammer-Barnes, internal policy analyst; Maryellen Mynear, inspector general; and Connie Payne, deputy inspector general, represented the cabinet. Sheila Schuster, lobbyist, Kentucky Coalition of Nurse Practitioners and Nurse Midwives, testified concerning 902 KAR 20:400.

902 KAR 20:400. Limited services clinics.

In response to questions by Co-Chair Harris, Ms. Payne stated that advanced practice registered nurse training included diagnosis and treatment of chronic conditions in addition to other illnesses. The cabinet was continuing to develop requirements for limited services clinics that did not have a physician directly on site. Chart review was another issue the cabinet was still working with stakeholders to address. Ms. Mynear explained the various levels of nursing certification.

In response to a question by Senator Raque Adams, Ms. Payne stated that the cabinet began developing these requirements in 2013 after a request from Baptist Health. Multiple drafts were circulated among stakeholders; however, stakeholders had not reached a consensus. The cabinet was attempting to improve access to health care while still providing sufficient safeguards to protect public health and safety.

Ms. Schuster stated that drafts were not circulated initially to nurse practitioners and that, for that group, this process only began once this administrative regulation was actually filed. Nurse practitioners were not required to be supervised by a physician. Recent legislation changed prescribing provisions but did not address the issue of limited services clinics treating patients with chronic health conditions.

The agency requested deferral of this administrative regulation to the June 9 meeting of the Subcommittee. Without objection, and with agreement of the Subcommittee, this administrative regulation was deferred.

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.

Division of Policy and Operations: Medicaid Services

907 KAR 1:046. Community mental health center primary care services.

The Subcommittee adjourned at 1:30 p.m. until June 9, 2015, at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

NONE

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **L - 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 **L - 16**

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 **L - 30**

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 **L - 31**

The Subject Index is a general index of administrative regulations published in VOLUME 41 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

VOLUME 40

The administrative regulations listed under VOLUME 40 are those administrative regulations that were originally published in Volume 40 (last year's) issues of the *Administrative Register 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.)

Regulation Number	40 Ky.R. Page No.	Effective Date
30 KAR 6:010E	2401	3-24-14
Replaced		See 41 Ky.R.
907 KAR 1:019E	1573	12-30-13
Replaced	2703	7-7-14
907 KAR 1:030E	1581	12-26-13
Replaced	2709	7-7-14
907 KAR 1:038E	1585	12-26-13
Replaced	2712	7-7-14
907 KAR 1:039E	1591	12-26-13
Replaced	2716	7-7-14
907 KAR 1:044E	1595	12-30-13
Replaced	2718	7-7-14
907 KAR 1:045E	1600	12-30-13
Replaced	2721	7-7-14
907 KAR 1:054E	1603	12-30-13
Replaced	2722	7-7-14
907 KAR 1:082E	1617	12-30-13
Replaced	2736	7-7-14
907 KAR 1:604E	1631	12-26-13
Replaced	2749	7-7-14
907 KAR 1:631E	1638	12-26-13
Replaced	2755	7-7-14
907 KAR 1:632E	1642	12-26-13
Replaced	2757	7-7-14
907 KAR 1:913E*(r)*	1646	12-26-13
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
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908 KAR 2:250E	2115	2-6-14
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30 KAR 6:010	2646	See 41 Ky.R.
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907 KAR 10:825		
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922 KAR 1:480		
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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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SYMBOL KEY:
* Statement of Consideration not filed by deadline
** Withdrawn before being printed in Register
**** Emergency expired after 180 days
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS:
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

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31 KAR 4:140E	372	7-22-14
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31 KAR 4:180E	2527	5-5-15
31 KAR 5:010E	375	7-22-14
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SYMBOL KEY:
* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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156.070	704 KAR 5:070
156.111	16 KAR 9:080
156.160	702 KAR 1:160
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156.501	702 KAR 1:160
156.502	702 KAR 1:160
156.557	704 KAR 3:370
156.800	704 KAR 3:370
157.320	702 KAR 7:140
157.350	702 KAR 7:140
157.390	16 KAR 2:120
157.618	750 KAR 1:030
158.035	702 KAR 1:160
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158.060	702 KAR 7:140
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158.805	703 KAR 5:122
158.808	705 KAR 4:250
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164.769	11 KAR 4:080
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186.051	601 KAR 9:135
186.162	201 KAR 37:010
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211.090	902 KAR 2:055
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216.530	902 KAR 20:008
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216.535	910 KAR 1:210
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216.557	900 KAR 2:050
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219.350	902 KAR 45:120
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230.225	810 KAR 1:090
230.240	810 KAR 1:027
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230.260	810 KAR 1:028
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230.265	810 KAR 1:028
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230.290	810 KAR 1:027
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230.300	810 KAR 1:028
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230.310	810 KAR 1:027
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243.030	804 KAR 4:230
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243.050	804 KAR 4:230
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243.075	804 KAR 10:030
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243.082	804 KAR 4:230
243.090	804 KAR 4:440
243.380	804 KAR 4:440
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243.390	804 KAR 4:440
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243.710	103 KAR 3:010
243.720	103 KAR 3:010
243.730	103 KAR 3:010
243.850	103 KAR 3:010
243.884	103 KAR 3:010
244.030	804 KAR 1:061
246.295	302 KAR 20:066
248.756	103 KAR 3:010
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260.610	301 KAR 3:100
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278.020	807 KAR 5.001
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278.190	807 KAR 5:011
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278.300	807 KAR 5.001
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278.310	807 KAR 5:076
278.380	807 KAR 5:076
278.410	807 KAR 5:001
278.702	807 KAR 5:110
278.704	807 KAR 5:110
278.706	807 KAR 5:110
278.708	807 KAR 5:110
278.710	807 KAR 5:110
278.712	807 KAR 5:110
278.714	807 KAR 5:110
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281.620	601 KAR 1:112
281.650	601 KAR 1:112
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The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2014 *Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at http://www.lrc.ky.gov/home.htm.

‡ - Pursuant to KRS 13A.320(e), this indicates a technical change was made to this administrative regulation during the promulgation process.

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Chronic wasting disease, surveillance in farmed cervids; 302 KAR 20:066

WATER, DIVISION OF
Drinking Water (Public Water Supply)
Bottled water; 401 KAR 8:700
Lead and copper; 401 KAR 8:300
Microbiological monitoring; 401 KAR 8:200