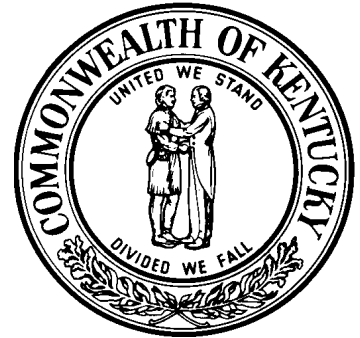


# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 42, NUMBER 2  
SATURDAY, AUGUST 1, 2015

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

---

## ARRS – AUGUST 11, 2015 TENTATIVE AGENDA ..... 227 REGULATION REVIEW PROCEDURE ..... 230

### EMERGENCIES

Retirement Systems .....	231
Real Estate Commission .....	233
Board of Hairdressers and Cosmetologists .....	244
Department of Juvenile Justice .....	246
Transportation Cabinet .....	252
Department of Alcoholic Beverage Control .....	256
CHFS: Office of Inspector General .....	261
CHFS: Department for Community Based Services .....	267

### AS AMENDED

Board of Elections .....	270
Board of Pharmacy .....	272
Board of Hairdressers and Cosmetologists .....	274
Board of Nursing .....	275
Board of Licensed Diabetes Educators .....	276
Department of Fish and Wildlife Resources .....	277
Department for Natural Resources .....	281
Justice & Public Safety Cabinet: Internal Investigations Branch .....	282
Law Enforcement Council .....	284
Board of Education .....	287
Department of Alcoholic Beverage Control .....	294
Board of Home Inspectors .....	295
Department of Housing, Buildings and Construction .....	298
Cabinet for Health and Family Services .....	301

### AMENDED AFTER COMMENTS

Board of Medical Imaging and Radiation Therapy .....	338
Transportation Cabinet .....	348
Department of Alcoholic Beverage Control .....	375
Cabinet for Health and Family Services .....	377

### PROPOSED AMENDMENTS

Higher Education Assistance Authority .....	445
Retirement Systems .....	452
Finance and Administration Cabinet .....	456
Board of Pharmacy .....	458
Board of Medical Licensure .....	460
Real Estate Commission .....	463
Board of Hairdressers and Cosmetologists .....	478

Board of Nursing .....	480
Board of Examiners of Psychology .....	501
Board of Licensure of Marriage and Family Therapists .....	509
Department of Fish and Wildlife Resources .....	511
Department of Juvenile Justice .....	519
Department of Alcoholic Beverage Control .....	525
Horse Racing Commission .....	534
Department of Housing, Buildings and Construction .....	540
Cabinet for Health and Family Services .....	542

### NEW ADMINISTRATIVE REGULATIONS

Higher Education Assistance Authority .....	627
Secretary of State .....	628
Board of Pharmacy .....	630
Real Estate Commission .....	631
Board of Nursing .....	637
Department of Corrections .....	638
Transportation Cabinet .....	639
Department of Financial Institutions .....	643

ARRS Report .....	646
OTHER COMMITTEE REPORTS .....	652

### CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates .....	B - 2
KRS Index .....	B - 8
Technical Amendments .....	B - 13
Subject Index .....	B - 14

### MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet August 11, 2015, at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages 227-229 of this Administrative Register.

**Due to the size of the August 2015 Administrative Register of Kentucky, the paper version is stapled into two sections. Section 1 contains pages 227-444 and Section 2 contains pages 445-652 and indexes.**

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2015 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

**HOW TO CITE:** Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 42, Kentucky Register, page 318 (short form: 42 Ky.R. 318).

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

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

#### **ADMINISTRATIVE REGISTER OF KENTUCKY**

(ISSN 0096-1493)

© 2015 Legislative Research Commission, All Rights Reserved

The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, 700 Capitol Avenue, Room 300, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: \$120 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Periodical postage paid at Frankfort, Kentucky.

POSTMASTER: Send address changes to Administrative Register of Kentucky, 700 Capitol Avenue, Room 64, State Capitol, Frankfort, Kentucky 40601.

#### **KENTUCKY LEGISLATIVE RESEARCH COMMISSION**

##### **Chairmen**

Senator Robert Stivers  
Senate President

Representative Gregory D. Stumbo  
House Speaker

##### **Senate and House Members**

Senator David P. Givens  
President Pro Tempore

Representative Jody Richards  
Speaker Pro Tempore

Senator Damon Thayer  
Majority Floor Leader

Representative Rocky Adkins  
Majority Floor Leader

Senator Ray Jones  
Minority Floor Leader

Representative Jeffrey Hoover  
Minority Floor Leader

Senator Daniel Seum  
Majority Caucus Chair

Representative Sannie Overly  
Majority Caucus Chair

Senator Gerald Neal  
Minority Caucus Chair

Representative Stan Lee  
Minority Caucus Chair

Senator Jimmy Higdon  
Majority Whip

Representative Johnny Bell  
Majority Whip

Senator Julian Carroll  
Minority Whip

Representative Jim DeCesare  
Minority Whip

Becky Harilson and Steve Collins, Interim Directors  
Joe Cox, Printing and Publications Officer

#### **ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**

##### **Members**

Senator Ernie Harris, Co-Chair  
Representative Mary Lou Marzian, Co-Chair  
Senator Julie Raque Adams  
Senator Perry B. Clark  
Senator Alice Kerr  
Representative Denny Butler  
Representative Will Coursey  
Representative Tommy Turner

##### **Staff**

Donna Little  
Emily Caudill  
Sarah Amburgey  
Emily Harkenrider  
Karen Howard  
Carrie Klaber  
Angela Bertholf  
Betsy Cupp

**VOLUME 42, NUMBER 2 – AUGUST 1, 2015**

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA, AUGUST 11, 2015, at 1:00 p.m., Room 149 Capitol Annex**

**EDUCATION PROFESSIONAL STANDARDS BOARD**

**Board**

- 16 KAR 2:020. Occupation-based career and technical education certification.
- 16 KAR 4:030. Out-of-state educator preparation.

**PERSONNEL CABINET**

**Personnel Cabinet, Classified**

- 101 KAR 2:020. Job classification plan.
- 101 KAR 2:034. Classified compensation administrative regulations.
- 101 KAR 2:046. Applications, qualifications, and examinations.
- 101 KAR 2:056. Registers.
- 101 KAR 2:066. Certification and selection of eligible applicants for appointment.
- 101 KAR 2:120. Incentive programs.
- 101 KAR 3:045. Compensation plan and pay incentives.

**GENERAL GOVERNMENT CABINET  
Real Estate Appraisers Board**

**Board**

- 201 KAR 30:070. Grievances.

**Board of Medical Imaging and Radiation Therapy**

**Board**

- 201 KAR 46:010. Definitions for 201 KAR Chapter 46. (Amended After Comments)
- 201 KAR 46:020. Fees. (Not Amended After Comments)
- 201 KAR 46:030. Education for medical imaging technologists, advanced imaging professionals and radiation therapists. (Amended After Comments)
- 201 KAR 46:040. Medical imaging technologist, advanced imaging professional and radiation therapist licenses. (Amended After Comments)
- 201 KAR 46:045. Temporary license application for medical imaging technologists, advanced imaging professionals, and radiation therapists. (Amended After Comments)
- 201 KAR 46:050. Provisional training license for medical imaging technologists and radiation therapists. (Not Amended After Comments)
- 201 KAR 46:060. Continuing education requirements. (Not Amended After Comments)
- 201 KAR 46:070. Violations and enforcement. (Deferred from June)
- 201 KAR 46:081. Limited x-ray machine operator. (Not Amended After Comments)

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources**

**Fish**

- 301 KAR 1:146. Commercial fishing gear.

**JUSTICE AND PUBLIC SAFETY CABINET  
Parole Board**

**Board**

- 501 KAR 1:080. Parole Board policies and procedures. (Not Amended After Comments)(Deferred from June)

**Department of Corrections**

**Office of the Secretary**

- 501 KAR 6:270. Probation and parole policies and procedures.

**TRANSPORTATION CABINET  
Department of Highways  
Division of Maintenance**

**Traffic**

- 603 KAR 5:155. Removal and pruning of vegetation. (Amended After Comments)

**Billboards**

- 603 KAR 10:002. Definitions for 603 KAR Chapter 10. (Amended After Comments)
- 603 KAR 10:010. Static advertising devices. (Amended After Comments)
- 603 KAR 10:021. Electronic advertising devices. (Amended After Comments)

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Board of Education  
Department of Education**

**School Terms, Attendance and Operation**

- 702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics.

**Office of Instruction**

- 704 KAR 3:303. Required academic standards.

**Instructional Programs**

- 705 KAR 4:041. Work-based learning program standards.

**Department of Workforce Investment  
Office of Employment and Training**

**Employment Services**

- 787 KAR 2:040 & E. Local workforce development area governance. ("E" Expires 11/17/2015)

**VOLUME 42, NUMBER 2 – AUGUST 1, 2015**

**LABOR CABINET**  
**Department for Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**

**Occupational Safety and Health**

- 803 KAR 2:180. Recordkeeping; reporting; statistics.
- 803 KAR 2:200. Confined spaces in construction.
- 803 KAR 2:250. Discrimination.
- 803 KAR 2:305. Powered platforms, manlifts, and vehicle-mounted work platforms.
- 803 KAR 2:317. Special industries.
- 803 KAR 2:402. General safety and health provisions.
- 803 KAR 2:421. Adoption of 29 C.F.R. Part 1926.950-968.
- 803 KAR 2:505. Cranes and derricks in construction.

**PUBLIC PROTECTION CABINET**  
**Department of Alcoholic Beverage Control**

**Licensing**

- 804 KAR 4:370. Entertainment destination center license. (Amended After Comments)
- 804 KAR 4:390. License renewals.

**Department of Financial Institutions**  
**Division of Non-Depository Institutions**

**Check Cashing**

- 808 KAR 9:010. Administration and enforcement of KRS 286.9-140 to ensure that check cashers do not violate the law against multiple transactions in excessive amounts by a customer. (Not Amended After Comments)

**Mortgage Loan Companies and Mortgage Loan Brokers**

- 808 KAR 12:020. Claims of exemption. (Deferred from July)
- 808 KAR 12:021. Licensing and registration. (Deferred from July)
- 808 KAR 12:110. Report of condition. (Deferred from July)

**Horse Racing Commission**

**Thoroughbred Racing**

- 810 KAR 1:300. International medication protocol as a condition of a race. (Not Amended After Comments)

**Harness Racing**

- 811 KAR 1:300. International medication protocol as a condition of a race. (Not Amended After Comments)

**Quarter Horse, Appaloosa and Arabian Racing**

- 811 KAR 2:300. International medication protocol as a condition of a race. (Not Amended After Comments)

**Department of Housing, Buildings and Construction**  
**Division of Plumbing**

**Plumbing**

- 815 KAR 20:060. Quality and weight of materials.
- 815 KAR 20:100. Joints and connections.
- 815 KAR 20:130. House sewers and storm water piping; methods of installation.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Public Health**  
**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. (Amended After Comments)(Deferred from May)
- 902 KAR 20:160. Chemical dependency treatment services and facility specifications. (Amended After Comments)
- 902 KAR 20:180. Psychiatric hospitals; operation and services. (Deferred from June)
- 902 KAR 20:320. Level I and Level II psychiatric residential treatment facility operation and services. (Deferred from June)

**Division of Maternal and Child Health**

**Water Fluoridation**

- 902 KAR 115:010. Water fluoridation for the protection of dental health.

**Department for Medicaid Services**

**Medicaid Services**

- 907 KAR 1:026. Dental services' coverage provisions and requirements.

**Division of Community Alternatives**

**Medicaid Services**

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

**Division of Policy and Operations**

**Medicaid Services**

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

**Division of Community Alternatives**

**Medicaid Services**

- 907 KAR 1:626. Reimbursement of dental services.

**Psychiatric Residential Treatment Facility Services and Reimbursement**

- 907 KAR 9:005. Non-outpatient Level I and Level II psychiatric residential treatment facility service and coverage policies. (Amended After Comments)
- 907 KAR 9:010. Reimbursement for non-outpatient Level I and Level II psychiatric residential treatment facility services. (Deferred from June)

## VOLUME 42, NUMBER 2 – AUGUST 1, 2015

907 KAR 9:015. Coverage provisions and requirements regarding outpatient services provided by Level I or Level II psychiatric residential treatment facilities. (Amended After Comments)

907 KAR 9:020. Reimbursement provisions and requirements regarding outpatient behavioral health services provided by Level I or Level II psychiatric residential treatment facilities. (Not Amended After Comments)

### **Hospital Service Coverage and Reimbursement**

907 KAR 10:014. Outpatient hospital service coverage provisions and requirements. (Amended After Comments)

907 KAR 10:016. Coverage provisions and requirements regarding inpatient psychiatric hospital services. (Amended After Comments)

907 KAR 10:020. Coverage provisions and requirement regarding outpatient psychiatric hospital services. (Amended After Comments)

907 KAR 10:025. Reimbursement provisions and requirements regarding outpatient psychiatric hospital services. (Not Amended After Comments.)

### **Behavioral Health**

907 KAR 15:080. Coverage provisions and requirement regarding outpatient chemical dependency treatment center services. (Amended After Comments)

907 KAR 15:085. Reimbursement provisions and requirements regarding outpatient chemical dependency treatment center services. (Not Amended After Comments)

### **Department for Aging and Independent Living Division of Quality Living**

#### **Aging Services**

910 KAR 1:270. Hart-Supported Living grant program.

### **Department for Community Based Services Division of Protection and Permanency**

#### **Child Welfare**

922 KAR 1:310. Standards for child-placing agencies.

922 KAR 1:340. Standards for independent living programs.

922 KAR 1:350. Family preparation for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet.

922 KAR 1:495. Training requirements for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet.

## **REGULATIONS REMOVED FROM THE AUGUST AGENDA**

### **LABOR CABINET Department of Workers' Claims**

#### **Worker's Claims**

803 KAR 25:008. Procedure for adjustments of claims using litigation management systems. (Comments Received)

803 KAR 25:013. Repeal of 803 KAR 25:009 and 803 KAR 25:010. (Comments Received)

### **Department of Charitable Gaming**

#### **Charitable Gaming**

820 KAR 1:001. Definitions for 820 KAR Chapter 1. (Comments Received)

820 KAR 1:032. Pulltab construction. (Comments Received)

820 KAR 1:033. Electronic pulltab system, electronic pulltab device, and electronic pulltab construction. (Comments Received)

### **CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy**

#### **State Health Plan**

900 KAR 5:020. State Health Plan for facilities and services. (Comments Received, SOC ext.)

### **Office of the Health Benefit and Health Information Exchange**

#### **Health Benefit Exchange**

900 KAR 10:010. Exchange participation requirements and certification of qualified health plans and qualified stand-alone dental plans. (Comments Received, SOC ext.)

### **Department for Public Health Division of Public Health Protection and Safety**

#### **Food and Cosmetics**

902 KAR 45:120. Inspection and permit fees: hotels, manufactured or mobile home communities, recreational vehicle communities, youth camps, and private water supplies. (Comments Received, SOC ext.)

### **Department for Medicaid Services Division of Policy and Operations**

#### **Medicaid Services**

907 KAR 1:055. Payments for primary care center, federally-qualified health center, federally-qualified health center look-alike, and rural health clinic services. (Comments Received, SOC ext.)

### **Department for Community Based Services Division of Family Support**

#### **Supplemental Nutrition Assistance Program**

921 KAR 3:060 & E. Administrative disqualification hearings and penalties. ("E" expires 10/27/2015) (Comments Received, SOC ext.)

921 KAR 3:070 & E. Fair Hearings. ("E" expires 10/27/2015) (Comments Received, SOC ext.)

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

**Filing and Publication**

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

**Public Hearing and Public Comment Period**

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

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

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

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

**Review Procedure**

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

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY  
200 KAR 5:365E

This emergency administrative regulation is being promulgated in order to facilitate the timely implementation of House Bill 408, which passed during the 2015 Session of the Kentucky General Assembly. Among other statutes, HB 408 amended KRS 45A.183 to allow the use of a new alternative construction delivery method, Construction Manager-General Contractor, in state construction projects. The amendment to KRS 45A.183 is effective June 24, 2015. The Construction Manager-General Contractor alternative offers an efficient and cost-effective delivery method for state construction projects. Implementing this regulation as an emergency will make this procurement method available as soon as the authorizing legislation takes effect. This emergency administrative regulation shall be replaced by an ordinary administrative regulation being filed with the Administrative Regulations Compiler contemporaneously with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor  
LORI FLANERY, Secretary

FINANCE AND ADMINISTRATION CABINET  
Office of the Secretary  
(Emergency Amendment)

**200 KAR 5:365E. Alternative project delivery methods for capital construction.**

RELATES TO: KRS 45A.030, 45A.085, 45A.180, 45A.183, 45A.690-45A.725

STATUTORY AUTHORITY: KRS 45A.180, 45A.183

EFFECTIVE: June 16, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.180 requires the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of as many recognized alternative methods of management of construction contracting as he may determine to be feasible. This administrative regulation implements the provisions of KRS 45A.180 and 45A.183 relating to alternative construction delivery methods.

Section 1. Definitions. (1) "Alternative construction delivery method" means a delivery method other than design-bid-build.

(2) "Chief purchasing officer" is defined in KRS 45A.030(3).

(3) "Construction manager-agency" is defined in KRS 45A.030(5).

(4) "Construction management-at-risk" is defined in KRS 45A.030(6).

(5) "Construction manager-general contractor" is defined in KRS 45A.030(7).

(6) "Design-bid-build" is defined in KRS 45A.030(11).

(7) [(6)] "Design-build" is defined in KRS 45A.030(12).

Section 2. Use of Alternative Construction Delivery Methods.

(1) An alternative construction delivery method may be deemed appropriate for a competitive process consistent with KRS Chapter 45A [negotiation pursuant to KRS 45A.085] upon issuance of a written determination by the chief purchasing officer that due to the nature, detail, or circumstances of a project, it is not appropriate to solicit competitive bids using the conventional design-bid-build delivery method and an alternative construction delivery method is justified. The determination shall include a description of facts justifying use of an alternative construction delivery method, and shall state whether the method to be used shall be one of "construction management-at-risk," "design-build," "construction manager-general contractor," or "construction manager-agency."

(2) The criteria for determining the utilization of a specific alternative delivery method for a particular project shall include

factors such as the dollar scope of the project, the anticipated schedule of the project, the type of project, and the overall complexity of the project.

Section 3. (1) If it has been determined that it is not appropriate to solicit competitive bids using the conventional design-bid-build delivery method, action to deliver a capital construction project using a specific alternative construction delivery method shall commence by solicitation of written proposals as provided in this section [in accordance with KRS 45A.085(2) and 200 KAR 5:307]. A copy of the request for proposals shall be transmitted to the Capital Projects and Bond Oversight Committee staff.

(2) ~~The criteria for determining the utilization of a specific alternative delivery method for a particular project shall include, factors such as the dollar scope of the project, the anticipated schedule of the project, the type of project, and the overall complexity of the project. The Finance and Administration Cabinet, in conjunction with the user agency, shall determine the appropriate project delivery method prior to the development of preliminary specifications and the issuance of any project solicitations.~~

(3) A solicitation of proposals for competitive negotiation shall state:

(a) That the purchasing agency proposes to enter into competitive negotiation with responsible offerors;

(b) The date, hour, and place that written proposals shall be received;

(c) The type of alternative delivery method involved and the associated requirements;

(d) A description of the services sought and the procurement procedures to be followed;

(e) Specifications, or the location where specifications may be obtained;

(f) The specific qualitative and pricing evaluative factors, with associated scoring values or weights, to be considered in determining the proposal most advantageous to the commonwealth, with qualifications and price to be weighted at not less than twenty-five (25) percent and fifty (50) percent respectively;

(g) The level or quantity of information required from each offeror to allow for equitable evaluation;

(h) The proposed method of award of contract;

(i) Other information as may be desirable or necessary to reasonably inform potential offerors of technical, performance, and any other data and requirements of the procurement;

(j) The existence of a funding limitation, if determined to be in the best interest of the commonwealth;

(k) The amount of the funding limit, if it is determined by the Director of the Division of Contracting and Administration that disclosure of the amount of the funding limit will promote competition and will be in the best interest of the commonwealth; and

(l) The level or amount of stipends, if any, to be provided and to whom, contingent upon funding limitations. Stipends shall only be provided if adequate funds are available over and above the required project costs.

(3) [(4)] If a funding limit has been established, proposals that exceed the funding limit may be rejected.

Section 4. (1) Procedures for the manner in which proposals will be evaluated shall be established by the purchasing officer per the requirements of the competitive negotiation for each procurement and shall be set forth in the request for proposals. The purchasing officer may request offerors to submit written clarification or explanation of their proposals, and the proposal of any offeror who fails to respond or to request an extension of time to respond within the time requested may be rejected.

(2) Proposals shall be evaluated based upon factors stated in the request for proposals. Numerical rating systems shall be used. ~~[All evaluation documentation, scoring, and summary conclusions shall be in writing and made a part of the file records]~~

for the procurement.]

Section 5. The Director of the Division of Contracting and Administration shall appoint an evaluation committee of scoring and nonscoring (technical) members with membership comprised of personnel from the Finance and Administration Cabinet and the user agency for which the project is being constructed. The Director of the Division of Contracting and Administration shall determine, in writing, the number of committee members based upon the financial scope and technical complexity of the subject project, with no less than four (4), nor more than seven (7), scoring members.

Section 6. Interim preproposal meetings may[shall] be conducted with potential offerors to allow for questions and clarifications regarding project plans and specifications provided as a part of the request for proposals. A written confirmation of all information presented in these meetings shall become an official addendum to the procurement documents and provided to all potential offerors. The number of preproposal meetings shall be determined by the Director of the Division of Contracting and Administration and stated in the request for proposals.

Section 7. All written proposals received by the procurement agency in response to a solicitation shall be kept secure and unopened by the purchasing officer until the date and hour established for opening the proposals. Proposals not clearly marked as such may be opened for identification purposes, and shall be appropriately identified with reference to the particular procurement and resealed until the time for opening proposals.

Section 8. At the close of the proposal submission deadline, all proposals received shall be opened by the purchasing officer. The purchasing officer shall examine each written proposal received for general conformity with the terms of the procurement. If, after examination of the written proposals initially submitted, it is determined, in writing, that no acceptable proposal has been submitted, all proposals may be rejected and new proposals may be solicited on the basis of the same, or revised terms, or the procurement may be abandoned.

Section 9. If, after solicitation of proposals to enter into competitive negotiations, only one (1) proposal responsive to the solicitation is received, the purchasing officer may commence negotiations with the single offeror and any resulting contract entered into with that offeror shall be deemed to have been competitively negotiated and awarded in accordance with KRS 45A.085 and this administrative regulation. The terms and conditions of the contract shall not in any material respect deviate in a manner detrimental to the purchasing agency from the terms and conditions specified in the solicitation for proposals.

Section 10. The purchasing officer shall hold separate any pricing information before forwarding all conforming proposals to the appropriate, designated evaluation committee for qualitative evaluation. Pricing information shall be kept separate and secure until it is combined with the evaluation committee aggregate qualitative scoring to achieve the final score for the procurement process as set forth in the request for proposals.

Section 11. Proposals shall not be subject to public inspection until the procurement process has been completed and a contract awarded to the highest scoring, responsible offeror submitting the proposal determined to be the most advantageous to the commonwealth, based upon the pricing and qualitative evaluation factors set forth in the solicitation.

Section 12. Discussions with offerors by any member of the evaluation committee relative to the procurement shall be discouraged except during the selection committee interview process. Any ex parte communications between offerors and members shall be documented by each member with a written summary of all discussions setting forth both the dates and the

general substance of the discussions. Verbatim records of the discussion shall not be required. The written summaries shall become part of the procurement file.

Section 13. An awarded contract utilizing an alternative project delivery method shall be submitted to the Government Contract Review Committee for review in accordance with KRS 45A.690 to 45A.725.

LORI FLANERY, Secretary

APPROVED BY AGENCY: June 16, 2015

FILED WITH LRC: June 16, 2015 at 4 p.m.

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

(1) Provide a brief summary of:

(a) What this administrative regulation does: It provides for a new alternative construction delivery method, Construction Manager-General Manager.

(b) The necessity of this administrative regulation: KRS 45A.180(1) directs the Finance and Administration Cabinet ("FAC") to promulgate regulations regarding the determination to use an alternative construction delivery method for state construction contracts. KRS 45A.183(1)(2)(a)(effective June 24, 2015) requires the FAC to use administrative regulations promulgated pursuant to KRS 45A.180 in the use of the Construction Manager-General Manager alternative delivery method.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The amended regulation sets forth the criteria and requirements for the determination and use of the Construction Manager-General Manager alternative delivery method.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides prospective bidders guidance on the response to solicitations using the Construction Manager-General Manager alternative delivery method in accordance with the procedures used in existing alternative delivery methods allowed by 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 amendment adds the definition of "Construction Manager-General Manager." This will allow the FAC to use the existing administrative procedures set forth in the regulation for this new alternative delivery method.

(b) The necessity of the amendment to this administrative regulation: The regulation must be amended to meet the requirements of KRS 45A.180 and 45A.183.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment sets forth the procedure on the use of this new alternative delivery method.

(d) How the amendment will assist in the effective administration of the statutes: The amendments give FAC flexibility to use an additional alternative delivery method which may reduce construction costs on some projects.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendments will impact prospective bidders for construction contracts but 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: Prospective bidders must comply with the filing requirements for bids, but these requirements are not new and apply to existing alternative delivery methods. Prospective bidders should be familiar with these procedures.

(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 compared to responses to solicitations for existing alternative delivery methods.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No benefits or detriments will accrue to the prospective bidders. This is simply a new construction method.

(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 should have no additional impact on 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? Universities and counties.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 45A.183.

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:

#### STATEMENT OF EMERGENCY 201 KAR 11:170E

This emergency administrative regulation is one that must be placed into effect immediately to allow sufficient time for course development and approval prior to the effective date for implementing KRS. 324.085. An ordinary administrative regulation is not sufficient to allow adequate time for course development, and review and approval by the Commission. The emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 29, 2015.

STEVEN L. BESHEAR, Governor  
JIM HUFF, Chairperson

#### GENERAL GOVERNMENT CABINET Kentucky Real Estate Commission (Emergency Amendment)

#### 201 KAR 11:170E. Real estate[Private] school and pre-license course approval.

RELATES TO: KRS 324.010(7), 324.046(1), (2), 324.085

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

EFFECTIVE: June 29, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.010(7) and (8) authorizes the commission to approve a real estate school. KRS 324.046(1) and (2) require an applicant for initial licensure as a broker or sales associate to have completed the specified number of courses from an approved or accredited real estate school. This administrative regulation establishes the requirements and application procedures for an approved real estate school seeking approval of courses for license credit.

Section 1. (1) To apply for certification as an approved real estate school or to renew certification, a real estate school shall submit a:

(a) Completed Provider Application – Form E101[for an Approved Real Estate School,] including the information required concerning curriculum, instructors, required textbooks, educational materials, and policies of the school;

(b) Copy of the license[Certificate of Approval] from the Kentucky Commission on[State Board for] Proprietary Education[or Kentucky Department of Education], if applicable;

(c) Sample schedule to outline how a course will be presented;

(d) Completed detailed Course Outline – Form E105 broken into four (4) hour increments to include teaching methods, learning objectives for the course, auxiliary aids, and materials for each course, which shall include:

1.[A Real Estate] Instructor Application – Form E100 and any additional documents required to explain a response on the application for each instructor who will teach this course, as required by 201 KAR 11:175; and

2. A copy of the written material, other than the textbook or real estate license law manual, which the instructor will use in the classroom;

(e) Sample copy of a school brochure or information sheet promoting the school;

(f) Copy of legal documentation required to support an answer, if applicable;

(g) A sample copy of an official transcript that will be issued by the school;[.]

(h) A copy of a contract or agreement signed by the student which outlines the class schedule, assignments or projects, examination requirements, grading system, and attendance requirements; and

(i) Other documents as outlined in Section 2 of this administrative regulation.

(2) An approved real estate school shall include a statement in the school application that a criminal conviction may prevent an applicant from qualifying for licensure under KRS 324.045. Failure to do so may result in suspension of an approved school's certification until the information is included in the application.

(3) An approved real estate school shall notify the commission within ten (10) days of a material change in the information originally furnished on the application or in an attachment to the application.

(4) A renewal application shall be submitted by October 1 of each even numbered year. The approval shall be for a two (2) year period, beginning November 1.

Section 2. (1) The curriculum for a pre-license course at an approved real estate school shall:

(a) Include a minimum of:

1. Three (3) academic hours per course; or

2. Fifteen (15) hours for a course related to the appraisal of property;

(b) Be conducted for a maximum of no more than seven (7) academic hours during a twenty-four (24) hour period;

(c) 1. Consist of a course containing the topics listed in the Pre-license Prescribed Topics – Form E112~~[Topics Prescribed]~~ by the Real Estate Commission.

2. A real estate course shall be one that~~[which]~~ is designated specifically as a real estate course by an approved or accredited real estate school that~~[which]~~ offers the course.

3. The academic content for the course shall specifically focus on real estate.

4. The course shall be for academic credit and not a continuing education unit, examination preparation or review, experiential education, or competency testing.

5. A candidate shall not submit completion of the same course or essentially the same course twice for licensure credit;

(d) 1. Include a closed-book monitored final examination of at least:

a. Seventy-five (75) multiple choice questions for a three (3) hour ~~academic~~~~[hour]~~ course; or

b. 100 multiple choice questions for a six (6) hour ~~academic~~~~[hour]~~ course.

2. The passing score shall be seventy-five (75) percent in order to pass the course.

3. Examination questions shall cover all aspects of material covered in the course, including applicable license laws and administrative regulations.

4. One (1) retake of the examination shall be permitted; and

(e) Include in all real estate pre-license~~[prelicense]~~ courses, a practicum or project applicable to the topic, that shall be completed with a passing score and averaged with the final examination and other components or assignments required in the course, as part of the student's final grade.

(2) The application for course approval shall include a copy of the final examination and answer key, an explanation and copies of the project or practicum that shall be required of students, when that assignment shall be due, and how the final grade for the course shall be calculated.

(3)(a) All primary and secondary providers offering online pre-license~~[prelicense]~~ or other distance education courses shall be approved in accordance with the provisions set forth in 201 KAR 11:240~~[certified by the Association of Real Estate License Law Officials (ARELLO) or the International Distance Education Certification Center (IDECC) as to format and delivery systems of the program]~~.

(b) The commission shall review the content to ensure that it meets the requirements outlined in this administrative regulation and in 201 KAR 11:240.

(4)(a) The application and all required attachments shall be submitted to the commission for consideration at its next regularly-scheduled meeting.

(b) The provider shall be notified in writing of the commission's approval or denial of the course for academic credit.

Section 3. Each real estate pre-license~~[prelicense]~~ course completed at an out-of-state accredited institution, for which credit may be granted under this section, shall be approved or rejected under the following procedure:

(1) A course description from the school catalog, course syllabus, table of contents from text used in the course, or other summary of the course shall be provided to the commission by the applicant;

(2) The commission education director shall review the material submitted by the applicant and recommend the commission either grant or reject credit under this section at the commission's regular monthly meeting;

(3) The commission education director shall record:

(a) The name of the course;

(b) Whether approval was granted or rejected; and

(c) The date of approval or rejection.

(4) If a course has been previously approved by the commission under this section or if a course is substantially similar to a previously-approved course, the commission education director shall be authorized to determine course approval;

(5) In determining whether a course is substantially similar to a previously-approved course, one (1) or more of the following items shall be considered:

(a) The table of contents from text used in the course;

(b) The course syllabus;

(c) Course description from the school catalog; or

(d) Other summary of the course.

(6) The commission's education director shall notify an applicant if a course is rejected for credit under this section;

(7)(a) If an applicant disagrees with the education director's decision under this section, he or she shall, within ten (10) days from the date of the education director's notification of rejection, file with the commission a written request for a commission review of its education director's decision.

(b) The request shall specifically indicate the applicant's disagreement.

(c) Failure to indicate disagreement within the ten (10) day period shall constitute waiver by the applicant and the education director's decision shall become final;

(8)(a) In addition to notifying~~[the indication to]~~ the education director of disagreement with his or her decision, the applicant shall provide a written summary to the education director detailing why credit under this section is merited.

(b) The commission education director shall forward this summary to the commission along with his or her response to the commission for a final decision at the commission's regular monthly meeting.

(c) Failure to provide within ten (10) days a specific summary detailing why credit is merited under this section shall constitute waiver by the applicant and the education director's decision shall become final at that point;

(9)(a) If the applicant indicates disagreement with the education director's decision within ten (10) days of notification and provides a written summary detailing the disagreement within ten (10) days of notification, the commission shall consider the submissions from the applicant and the education director and reject or approve the course for credit under this section.

(b) The commission shall notify the applicant of its decision in writing.

Section 4. An approved real estate~~[course]~~ school shall not:

(1) Advertise in conjunction with the business of a broker or a brokerage firm; or

(2) Discuss, induce, or promote affiliation with a broker or brokerage firm.

Section 5. (1) An approved real estate school shall maintain accurate and permanent records on each student enrolled in a course.

(a) A permanent record shall include each student's record of courses completed or attempted, academic hours awarded, and final grades.

(b) A certificate of completion shall be:

1. Included in the permanent records of each student; and
2. Mailed to each student upon completion of a course.

(2) Records shall:

- (a) Be maintained for three (3) years; and
- (b) Include student attendance records, final grade, and test scores.

(3) An approved real estate school shall notify the commission, in writing, within five (5) days of the beginning of a ~~pre-license~~~~[prelicense]~~ course. Notice shall include the name of the course, class location, and scheduled dates and times the class will be offered.

(4) Schools and instructors shall take appropriate steps to maintain the confidentiality of the final examinations at all times. These steps shall include:

- (a) Maintaining examinations and answer keys in a secure place accessible only to the school administrator and the instructor;
- (b) Prohibiting students from retaining copies of the final examination and answer sheets; and
- (c) Monitoring students at all times when examinations are being conducted.

Section 6. (1) An approved real estate school shall permit an inspection and monitoring by the commission or its designee to evaluate an aspect of the administration or operation of the school or to evaluate the performance of the instructor.

(2) Monitoring may include a periodic mailing by the commission to students seeking an evaluation of his or her ~~pre-license~~~~[prelicense]~~ course and instructor.

Section 7. (1) Private school approval ~~may~~~~[shall]~~ be withdrawn if the commission determines that:

~~(a)[(4)]~~ Information contained on the application or renewal is inaccurate or misleading;~~or]~~

~~(b)[(2)]~~ The establishment or conduct of the school is not in compliance with this administrative regulation or the instruction is so deficient as to impair the value of the course;~~or~~

~~(c)[If a school has been given notice of a deficiency under this section, the commission shall give the school an opportunity to correct the deficiency within thirty (30) days. If the deficiency has been corrected, the commission may, after reviewing the steps taken to correct the problem, recertify the school or course.~~

~~(3)]~~ The school is not certified by the Kentucky Commission on~~[State Board for]~~ Proprietary Education.

(2) If the commission has notice that a school's approval may be subject to withdrawal for the reasons set forth in subsection (1) of this section, the commission shall:

(a) Give written notice to the school of the intent to withdraw approval and the reasons therefor;

(b) Give the school an opportunity to address the notice, in writing, within thirty (30) days of the date of the notice of intent to withdraw approval; and

(c) Review the issues and the school's response, and the commission may withdraw approval of the school.

Section 8. An effort made directly or indirectly by a school, official, or employee, or a person on their behalf to reconstruct the real estate licensing examination or portion of the examination shall result in immediate revocation of school approval.

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

(a) ~~"Instructor Application - Form E100[Application for Certification of Approved Real Estate School]", 05/15[09/07] edition, Kentucky Real Estate Commission;~~

(b) ~~"Provider Application - Form E101[Course Outline]", 05/15[09/07] edition, Kentucky Real Estate Commission;~~

(c) ~~"Course Outline - Form E105[Certificate of Completion]", 05/15[09/07] edition, Kentucky Real Estate Commission; and~~

(d) ~~"Pre-license Prescribed Topics - Form E112[Topics Prescribed by the Real Estate Commission]", 05/15[2007] edition, Kentucky Real Estate Commission[; and~~

(e) ~~"Real Estate Instructor Application", 09/07 edition, Kentucky~~

~~Real Estate Commission].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

JIM HUFF, Chairperson

APPROVED BY AGENCY: June 22, 2015

FILED WITH LRC: June 29, 2015 at 11 a.m.

CONTACT PERSON: Rhonda K. Richardson, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rhonda K. Richardson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and application procedures for an approved real estate school and requirements and procedures for course approval.

(b) The necessity of this administrative regulation: KRS 324.010(7) and KRS 324.281(8) require that the commission promulgate regulations setting forth the review process and procedure for approval of real estate schools and courses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets forth the requirements and application procedures for approval of real estate school applications and requirements and procedures for approval of courses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a review process and procedure for approval of real estate schools and courses.

(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:

i. Application for an Approved Real Estate School renamed "Provider Application" to allow a more generic use of the form;

ii. Kentucky State Board for Proprietary Education change to "Kentucky Commission for Proprietary Education" to reflect change in name;

iii. Certificates of Approval form title changed to "license" to reflect change of document title of required document issued by Kentucky Commission for Proprietary Education;

iv. "Pre-license" inserted before "course(s)" and "topics" where necessary, to distinguish pre-license course requirements and process from post-license course requirements and process;

v. Adds a provision to address the withdrawal of approval from a school by the Kentucky Commission for Proprietary Education;

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to maintain compatibility with the newly enacted KRS 324.235;

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation sets forth the requirements and application procedures for approval of real estate school applications and requirements and procedures for approval of courses;

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides a review process and procedure for approval of real estate schools and courses.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Forty-five (45) Proprietary schools may be affected by this administrative regulation;

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

(a) List the actions that each of the regulated entities identified

in question (3) will have to take to comply with this administrative regulation or amendment: Impacted entities will be required to follow the processes set forth in this regulation and to utilize the required forms.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Education providers are currently charged \$15.00 per course approval application. There will be no additional cost to the providers in completing the new forms.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By utilizing the required forms the proprietary school approval process will be not be delayed.

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

(a) Initially: This administrative regulation substitutes the existing form for a new form. This regulation will be implemented utilizing existing staff and no additional cost will be incurred.

(b) On a continuing basis: Administrative regulation will be implemented utilizing existing staff.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The existing agency 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 are funding will be 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 or directly increase any fees. The fee schedule for this administrative regulation is set forth in KRS 324.287.

(9) TIERING: Is tiering applied? Tiering has not been applied as there is no disproportionate impact on any regulated entity.

#### 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 Real Estate Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.010(7) and KRS 324.281(8).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will be implemented utilizing existing staff and no additional cost will be incurred.

(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? Approximately \$7,200.

(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? Approximately \$7,200.

(c) How much will it cost to administer this program for the first year? Administration will be carried out by existing staff and there will be no additional costs..

(d) How much will it cost to administer this program for subsequent years? None. Administration will be carried out by existing staff.

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 11:175E

This emergency administrative regulation is one that must be placed into effect immediately to allow sufficient time for recruitment, selection and approval of instructors prior to the effective date for implementing KRS. 324.085. An ordinary administrative regulation is not sufficient to allow adequate time for recruitment, selection and approval of course instructors prior to the date for implementing KRS 324.085. The emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 29, 2015.

STEVEN L. BESHEAR, Governor

JIM HUFF, Chairperson

#### GENERAL GOVERNMENT CABINET Kentucky Real Estate Commission (Emergency Amendment)

#### 201 KAR 11:175E. Instructor approval procedures and guidelines.

RELATES TO: KRS 324.010(7)(1)(g), ~~324.046(1), (2)~~

STATUTORY AUTHORITY: KRS 324.085, 324.281(5), 324.282

EFFECTIVE: June 29, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.010(7)(1)(g) authorizes the commission to approve a real estate school. KRS 324.085(4), (5) authorizes the commission to promulgate administrative regulations necessary to implement requirements for instructor approval~~[324.046(1) and (2) require an applicant for initial licensure as a broker or sales associate to have completed the specified number of courses from an approved or accredited real estate school]~~. This administrative regulation establishes the requirements and application procedures for approval as an instructor at an approved real estate school.

Section 1. To apply for certification as an instructor at an approved real estate school, an instructor shall:

(1) Submit a:

(a) Completed~~[Real Estate]~~ Instructor Application – Form E100;

(b) Copy of a current resume;

(c) Copy of legal documentation required to support an answer, if applicable; and

(d) Completed Course Outline – Form E105 for each course;

(2) Have:

(a) A bachelor's, ~~master's~~, ~~[masters]~~ or doctorate degree from a college or university duly accredited by a nationally recognized rating or accrediting organization, in a field directly related to the nature of the course, such as real estate, business, law, finance, or education;

(b) An associate degree in real estate from a college or university duly accredited by a nationally recognized rating or accrediting organization;

(c) Completed five (5) consecutive years full-time experience in the real estate related subject area that he is teaching (averaging at least twenty (20) hours per week for each of the five (5) years); or

(d) A combination of teaching, education, and full-time experience in real estate totaling five (5) years (averaging at least twenty (20) hours per week for each year of experience); and

(3) Possess:

(a) A thorough familiarity of the provisions of KRS Chapter 324 and the effect of those provisions on the subject area of the

course; and

(b) A thorough knowledge of the subject area of the course he is teaching.

Section 2. Approval of an instructor shall be withdrawn by the commission for:

- (1) A violation of a provision of KRS Chapter 324 or an administrative regulation promulgated under it;
- (2) Falsification of material submitted to the commission to become an approved instructor;
- (3) Failure to provide to the commission requested material;
- (4) While acting as an instructor in an educational facility, engaging in brokerage activity with an enrolled student;
- (5) Soliciting an investment from a student; or
- (6) Attempting to recruit a student to a real estate company while acting as an instructor.

Section 3. (1) An approved instructor may[shall] teach:

- (a) A pre-license[prelicensure] course offered by an:
    1. Approved real estate school; or
    2. Accredited real estate school which receives funding under the real estate education, research and recovery fund;[er]
  - (b) A mandatory continuing education course; or
  - (c) A post-license education course.
- (2) A person who is not an approved instructor shall not teach a course listed in subsection (1) of this section.

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

- (a) "~~Real Estate~~Instructor Application – Form E100", 05/15[11/97] edition, Kentucky Real Estate Commission; and
- (b) "Course Outline – Form E105", 05/15[11/97] edition, Kentucky Real Estate Commission.

(2) This material may be inspected, copied, or obtained at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

JIM HUFF, Chairperson

APPROVED BY AGENCY: June 22, 2015

FILED WITH LRC: June 29, 2015 at 11 a.m.

CONTACT PERSON: Rhonda K. Richardson, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rhonda K. Richardson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and application procedures for approval as an instructor at an approved real estate school, and removes the mandatory language regarding the courses an instructor may teach.

(b) The necessity of this administrative regulation: KRS 324.085(5) requires that the commission promulgate administrative regulations implementing procedures for instructor approval.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements and application procedures for approval as an instructor at an approved real estate school.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the procedures and guidelines for the approval of an instructor at an approved real estate school.

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

(a) How the amendment will change this existing administrative regulation:

i. The amendment changes the reference to "prelicensure" to "pre-license" and changed the form names and numbers referenced in the existing administrative regulation.

ii. Amendments were made to the "RELATES TO" provision to more precisely identify statutes to which the amended administrative regulation relates;

iii. Amendments were made to the "STATUTORY AUTHORITY" provision to more precisely identify the statutory authority;

iv. Amendments were made to the "NECESSITY, FUNCTION AND CONFORMITY" provision to address the requirement for implementation of an instructor approval process.

(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation were necessary for compatibility and consistency with post-licensure education requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation sets forth the procedures and guidelines for the approval of an instructor at an approved real estate school.

(d) How the amendment will assist in the effective administration of the statutes: Education providers may qualify and obtain the approval of their instructors by following the procedures and guidelines set forth in this regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: At present, there are fifty-three (53) approved education providers that 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: All education providers must use the guidelines and procedures set forth in this amended administrative regulation to have their instructors approved.

(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 new costs associated with the amended administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Education providers, with qualifying instructor applicants, will have their instructors approved.

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

(a) Initially: None. Regulation will be implemented utilizing existing staff.

(b) On a continuing basis: None. Regulation will be implemented utilizing existing staff.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.

(9) TIERING: Is tiering applied? Tiering has not been applied, as there is no disproportionate impact on any regulated entity.

#### 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 Real Estate Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.085, 324.281(5), 324.282

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

None.

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

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

(c) How much will it cost to administer this program for the first year? NONE, administration will be carried out by existing staff.

(d) How much will it cost to administer this program for subsequent years? None, administration will be carried out by existing staff.

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 11:235E

This emergency administrative regulation is one that must be placed into effect immediately to provide guidelines for course development and approval, and provider approval prior to the effective date for implementing KRS. 324.085. An ordinary administrative regulation is not sufficient to allow adequate time for provider approval, and course development approval, by the Commission. The emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 29, 2015.

STEVEN L. BESHEAR, Governor  
JIM HUFF, Chairperson

### GENERAL GOVERNMENT CABINET Kentucky Real Estate Commission (New Emergency Administrative Regulation)

#### 201 KAR 11:235E. Post-license Education Requirements.

RELATES TO: KRS 324.010, 324.046, 324.090, 324.160  
STATUTORY AUTHORITY: KRS 324.085, 324.281, 324.282  
EFFECTIVE: June 29, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.085, 324.281, 324.282 authorize the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.085 authorizes the commission to establish procedures for implementing the requirements for post-license education. This administrative regulation establishes procedures for implementing the requirements for post-license education.

Section 1. Definitions. (1) "Broker-affiliated training program" means one (1) or more post-license education course offered for post-license educational credit provided or sponsored by a licensed real estate principal broker.

(2) "Initial sales associate license" means the original Kentucky sales associate license issued by the commission.

Section 2. Post-license Education Course Provider Requirements. (1) A post-license education course shall be sponsored by:

(a) An accredited institution;

(b) A school that has been licensed by the Kentucky Commission on Proprietary Education;

(c) An appropriate governmental regulatory body;

(d) An approved real estate school as defined in KRS 324.010(7); or

(e) An approved broker-affiliated training program.

(2) To apply for approval of a post-license education course, a provider shall submit:

(a) A completed Provider Application – Form E101, which shall:

1. Include a Course Outline – Form E105, broken into fifteen (15) minute increments, to include learning objectives for the course, teaching methods, auxiliary aids, materials, and the policies of the provider; and

2. Be signed by the sponsor's administrator to indicate compliance with applicable law and the requirements of this administrative regulation;

(b) A completed Education Course Application – Form E102;

(c) A copy of the license from the Kentucky Commission on Proprietary Education, unless the provider is an accredited college or university, an appropriate governmental regulatory body, an approved real estate school as defined in KRS 324.010(b), or an approved broker-affiliated training program;

(d) A completed Instructor Application – Form E100 for each instructor who will teach the course, as required by 201 KAR 11:175; and

(e) A copy of all advertising or brochures advertising the post-license education course.

(3) The course provider shall agree that all instructors shall abide by the Generally Accepted Principles of Education – Form E104 as adopted by the Real Estate Educators Association and the commission as the standard for classroom performance, and comply with the KREC Guidelines for Classroom Management – Form E103.

(4) The commission education director shall submit the information to the commission for approval or rejection of the course at its regularly scheduled meeting.

(5) A course and instructor that has been previously approved within the calendar year may be sponsored by another provider, upon the submission of an Education Course Application – Form E102 and approval by the commission staff.

(6) A provider shall:

(a) At least thirty (30) days prior to the scheduling of a post-license education course, submit to the commission an Education Schedule – Form E106;

(b) Give each attendee who completes the course an Education Completion Certificate – Form E110;

(c) Within ten (10) days of conclusion of a post-license education course, submit to the commission a completed:

1. Roster that lists all attendees that completed the course;

2. Course Evaluation – Form E108 completed by each attendee listed on the roster; and

3. Course Evaluation Transmittal – Form E109;

(d) Permit unannounced monitoring of the courses and inspection of the records by the commission; and

(e) Make the course available to all licensed agents, subject only to space limitations.

(7) A provider's approval to conduct post-license education courses may be withdrawn by the commission for:

(a) A violation of the KREC Guidelines for Classroom Management – Form E103;

(b) Falsification of attendance information submitted to the commission;

(c) Allowing an instructor to solicit business or sell materials to students in the classroom;

(d) Failure to provide the commission the required materials in accordance with this

administrative regulation; or

(e) Conducting courses that were not approved prior to being offered.

Section 3. Instructor Requirements. (1) A post-license education course shall be taught by an instructor approved under the requirements established in 201 KAR 11:175 and subject to the requirements in 201 KAR 11:460.

(2) A licensee who teaches an approved post-license

education course shall be entitled to continuing education credit on an hour-for-hour basis. To obtain continuing education credit, the instructor shall be included on the roster that lists all attendees that completed the course that is provided to the commission. However, the instructor shall not receive credit more than once in a calendar year for each specific course taught.

Section 4. Post-license Education Course Criteria and Requirements. (1) One (1) hour of post-license education shall be allowed for each fifty (50) minutes of actual instruction.

(2) Post-license education shall consist of thirty (30) hours from the courses specified in paragraphs (a) and (b) of this subsection and eighteen (18) hours as specified in paragraph (c) of this subsection:

(a) The three (3) hour Commission Licensee Compliance course;

(b) The requirements in each of the following course topics:

1. Six (6) hours in Agency;
2. Six (6) hours in Contracts;
3. Three (3) hours in Finance;
4. Three (3) hours in Advertising;
5. Three (3) hours in Disclosure;
6. Three (3) hours in Fair Housing; and
7. Three (3) hours in Technology & Data Security; and

(c) Eighteen (18) hours in elective topics chosen by the licensee from the electives listed in the Post-license Topics – Form E113.

(3) A licensee shall not receive post-license education credit for a duplicate course.

(4) No more than nine (9) hours of post-license education may be taken in a twenty-four (24) hour period.

(5) Post-license education courses shall meet the following standards:

(a) Consist of topics that are real estate specific, provide practical knowledge of the brokerage business, and protect the public interest;

(b) Course objectives and assessments shall be practicum based to allow application of knowledge from pre-license education to practical real estate brokerage scenarios; and

(c) A course that is motivational or considered to be personal development in nature shall not be approved.

(6) All course approvals shall expire on December 31 of each calendar year.

(7) All primary or secondary providers wishing to offer online or other distance education courses shall be approved in accordance with the provisions set forth in 201 KAR 11:240. The commission shall review the content of courses to ensure that it meets the requirements outlined in this administrative regulation and in 201 KAR 11:240.

Section 5. Compliance and delinquency. (1) The time requirements established in this administrative regulation may be extended by the commission for good cause shown. A licensee's request for an extension of time for good cause shown shall be submitted to the commission within the two (2) year timeframe set forth in KRS 324.085.

(2) If a licensee fails to provide proof of completion of the post-license education requirements within the allotted timeframe set forth in KRS 324.085, then the licensee's license shall be automatically canceled.

(3) A canceled license shall not be reactivated until the licensee has completed all of his or her post-license education requirements, complied with all commission orders, and all other applicable licensing requirements.

Section 6. Records Maintenance. (1) Each post-license education provider shall maintain the following records in a file for three (3) years following the end of each calendar year:

(a) A copy of the roster submitted to the commission of licensees attending the course;

(b) A copy of the Course Evaluation Transmittal – Form E109;

(c) The sign-in sheet or registration list used by the provider to track attendance; and

(d) Any other documentation regarding student attendance.

(2) Records containing licensee information shall be destroyed by the provider.

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

(a) "Instructor Application – Form E100", 05/15 edition;

(b) "Provider Application – Form E101", 05/15 edition;

(c) "Education Course Application – Form E102", 05/15 edition;

(d) "KREC Guidelines for Classroom Management – Form E103", 05/15 edition;

(e) "Generally Accepted Principles of Education – Form E104", as adopted by the Real Estate Educators Association, 05/15 edition;

(f) "Course Outline – Form E105", 05/15 edition;

(g) "Education Schedule – Form E106", 05/15 edition;

(h) "Course Evaluation – Form E108", 05/15 edition;

(i) "Course Evaluation Transmittal – Form E109", 05/15 edition;

(j) "Education Completion Certificate – Form E110", 05/15 edition; and

(k) "Post-License Prescribed Topics – Form E113", 05/15 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

JIM HUFF, Chairperson

APPROVED BY AGENCY: June 22, 2015

FILED WITH LRC: June 29, 2015 at 11 a.m.

CONTACT PERSON: Rhonda K. Richardson, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rhonda K. Richardson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines "broker-affiliated training," establishes post-license education course provider requirements and approval process, sets the post-license education course criteria and requirements, and addresses non-compliance and record maintenance for post-license education.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish post-license education course provider requirements, and approval process, the post-license education course criteria and requirements and approval process, and to addresses non-compliance and record maintenance for post-license education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation defines "broker-affiliated training," establishes post-license education course provider requirements and approval process; sets forth the post-license education course criteria and requirements, instructor approval process, and addresses non-compliance and record maintenance for post-license education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides procedures for post-license education course providers to obtain approval, as well as, approval of their courses and instructors.

(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 affects post-license education course 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: Regulated entities will be required to follow the procedures set forth in this administrative regulation and to utilize the required forms.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Course providers will incur the ordinary and usual costs they currently have for developing their course.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Post-license education course providers can seek approval, as well as, approval of their courses and instructors.

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

(a) Initially: None. This administrative regulation will be implemented utilizing existing staff.

(b) On a continuing basis: None. This administrative regulation will be implemented utilizing existing staff.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing agency 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: None

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: A new fee is established for applications for course approval.

(9) TIERING: Is tiering applied? Tiering has not been applied because there is no disproportionate impact on the entities impacted.

#### 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 Real Estate Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.085, KRS 324.281, KRS 324.282.

(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. This administrative regulation will be implemented utilizing existing staff.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is estimated that this administrative regulation will generate \$1,500 in fees the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is estimated that this administrative regulation will generate \$1,500 in fees for subsequent years.

(c) How much will it cost to administer this program for the first year? None. This administrative regulation will be implemented utilizing existing staff.

(d) How much will it cost to administer this program for subsequent years? None. This administrative regulation will be implemented utilizing existing staff.

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 11:240E

This emergency administrative regulation is one that must be placed into effect immediately to allow sufficient time for course development and approval prior to the effective date for implementing KRS 324.085. An ordinary administrative regulation is not sufficient to allow adequate time for course development, and review and approval by the commission. The emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 29, 2015.

STEVEN L. BESHEAR, Governor  
JIM HUFF, Chairperson

#### GENERAL GOVERNMENT CABINET Kentucky Real Estate Commission (Emergency Amendment)

#### 201 KAR 11:240E. Distance education requirements.

RELATES TO: KRS 324.046(5), 324.085(1), (2), 324.281(7)  
STATUTORY AUTHORITY: KRS 324.085(1), (4), 324.281(5), (7), (8), 324.282

EFFECTIVE: June 29, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Kentucky Real Estate Commission to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. KRS 324.085(4) requires the commission to promulgate administrative regulations for implementing continuing education and post-education requirements and instructor approval. This administrative regulation establishes the requirements for courses offered through distance education.

Section 1. Definitions. (1) "Continuing education course" means a course approved pursuant to the requirements set forth in KRS 324.085(1) and 201 KAR 11:230[program of at least three (3) fifty-(50) minute hours taken primarily to satisfy license renewal requirements for individuals holding a sales associate's license or a broker's license].

(2) "Distance education course" means a continuing or post-license education course or a pre-license course that is taught in a setting where the teacher and the student are in separate locations and that uses instructional methods that include internet-based training, computer-based training (CBT), satellite transmission, or teleconferencing.

(3) "Post-license education course" means a course that satisfies the forty-eight (48) hours of education that is required within two (2) years of receiving or activating an initial sales associate license.

(4) "Pre-license[Prelicense] course" means a course that satisfies an education requirement to obtain a real estate sales associate's or broker's license, generally consisting of forty-eight (48) fifty (50) minute hours or more.

Section 2. Distance Education Standards for Approval[Precess Course Requirements]. (1)(a) The design and format of all continuing education, post-license education, and pre-license[prelicense] courses offered through means of distance education shall satisfy the requirements of this administrative regulation and guidelines of the commission[shall be certified by



the Association of Real Estate License Law Officials (ARELLO) or the International Distance Education Certification Center (IDECC)].

(b) Continuing education, post-license education, and pre-license[prelicense] courses conducted for academic credit in an accredited college or university via interactive television shall be exempt from this requirement, but shall satisfy the requirements established in Section 5 of this administrative regulation.

(2) A course shall be offered only in the delivery format in which it was approved~~[Any secondary provider, who obtains an ARELLO or IDECC certified course from a primary provider or course developer, shall obtain the certification as a secondary provider before the course may be offered to Kentucky licensees].~~

(3)(a) An instructor for a distance education course shall be approved by the commission pursuant to the requirements set out in 201 KAR 11:175~~[A course shall be offered only in the delivery format in which it was certified. Components of the course may not be added, deleted or altered by the provider in order to fulfill different licensing requirements for a particular jurisdiction.~~

(4)(a) An instructor for a distance education course shall be approved by the commission pursuant to the requirements set out in 201 KAR 11:175.

(b) Each course shall have an approved instructor available to answer questions from students.

(c) The individual applying for approval as an instructor shall complete the course before submitting the application to the commission for its approval and shall submit evidence of course completion with the application.

(4)(a) The commission shall require approval of the course content as established in 201 KAR 11:170, 201 KAR 11:230, and 201 KAR 11:235.

(b) The content of the course shall be in a topic specifically related to real estate.

(c) License law or regulations from other states and general skills computer classes shall not satisfy this course-content requirement.

(5)(a) [If the ARELLO or IDECC certification is discontinued for any reason, the provider shall immediately notify the commission.

(b) Approval of the course shall be suspended pending recertification.

(c) If the certification for a primary provider is discontinued for any reason, any approved secondary provider's approval shall also be suspended pending recertification of the primary provider.

(6)(a) The commission shall require approval of the course content as established in 201 KAR 11:170 and 201 KAR 11:230.

(b) The content of the course shall be in a topic specifically related to real estate.

(c) License law or regulations from other states and general skills computer classes shall not satisfy this course-content requirement.

(7)(a) The provider shall be approved by the commission and meet all other requirements for education as outlined in KRS Chapter 324 and its administrative regulations.

(b) A course shall be open to all licensees.

Section 3. Distance Education Course Requirements. (1) A distance education course shall provide mastery of the material and be developed in accordance with the following guidelines:

(a) The material shall be divided into learning units, modules, or chapters;

(b) Each unit shall contain learning objectives that are comprehensive enough to ensure that the course will likely be mastered by the student upon completion of the material;

(c) The course shall provide a structured learning method designed to enable students to attain each objective;

(d) The course shall provide a means to assess the student's performance on a regular basis during each unit of instruction and before proceeding to the next unit; and

(e) Provide a method for tracking the length of time a student spends on the course~~[1. The course shall provide a method for tracking the length of time a student spends on the course].~~

2. A student shall not be able to bypass the course materials and advance directly to the end-of-module quizzes or exercises that are included to assess the student's performance;

(f) Security shall be provided to ensure that the student receiving credit is the one who actually completes the course;

(g) 1. For a continuing and post-license education course, the student shall pass a final exam with a score of at least seventy-five (75) percent that shall be included as the last module of the course, in order to receive credit.

2. No more than two (2) retakes~~[One (1) retake]~~ of the final examination shall be allowed.

3. Each course shall have an item bank from which the final examination questions shall be pulled.

4. The bank shall contain multiple choice items and have forty (40)~~[thirty (30)]~~ percent more questions than required on the final examination, so that retake exams will contain~~[have some]~~ unique new questions.

5. The final examination shall have a minimum of five (5) questions for each approved hour of education~~[- a. Twenty-five (25) questions for a three (3) hour course;~~

b. Thirty (30) questions for a four (4) hour course; and

c. Fifty (50) questions for a six (6) hour course;

(h) 1. A pre-license[prelicense] distance education course shall contain a monitored final examination arranged for the student by the instructor for the course.

2. The examination shall cover both the content area covered by the course and the applicable real estate laws and administrative regulations that~~[which]~~ apply to those content areas.

3. Each course shall have an item bank from which the final examination questions shall be pulled.

4. The bank shall contain multiple choice items and have forty (40)~~[thirty (30)]~~ percent more questions than required on the final examination, so that retake exams will have some unique new questions.

5. a. A forty-eight (48) hour course shall contain a minimum of fifty (50)~~[-~~

a. Seventy-five (75)] items~~[- and]~~

b. A ninety-six (96) hour course shall contain at least 100 questions.

6. No more than two (2) retakes of the~~[One (1) retake]~~ exam shall be allowed;

(i) 1. A pre-license[prelicense] final examination shall be monitored by the approved instructor for the course or another individual designated by the instructor who is not a relative or a business associate of the student.

2. The monitor may be:

a. A certified librarian;

b. A public school administrator;

c. A college professor~~[-or]~~

d. Other approved real estate instructor who may be associated with the school that offers the course; or

e. A monitor from a qualified online test monitoring service.

3. The monitor shall sign a statement that he or she is not affiliated with the student in any way.

4. The monitor shall:

a. Verify that the person taking the examination is the person registered for the course;

b. Observe the student taking the exam;

c. Assure that the student does not use aids of any kind;

d. Assure that a calculator is nonprogrammable;

e. Assure that any time limitations on the final examination are not exceeded;

f. Certify to the provider that all requirements for the final examination have been met;~~[and]~~

g. Submit to the provider, a signed and notarized statement to that effect; and

h. Assure that any student's mobile device, cell phone, or camera is shut down and put away, while at the test site.

(j) 1. Each student shall complete an affidavit that~~[which]~~ certifies that he or she has personally completed all components of the course and the final exam with no assistance from persons other than the instructor.

2. The certification shall include the date of completion and the student's signature, which may be provided electronically.

3. Credit may be denied and disciplinary action taken if it is determined that a licensee received assistance on a distance

education course or the final exam.

4.a.[(2)(a)] To obtain credit for a distance education course, a licensee shall complete the course within the time frame allotted by the school for pre-license[prelicensure] courses or within the calendar year for continuing and post-license education, unless the licensee is completing the course to comply with a continuing education delinquency plan as outlined in 201 KAR 11:230, or to comply with an order of the commission.

b. ~~The[(b)]~~ completion date for all courses shall be the date the student completes the final examination with a passing score of at least seventy-five (75) percent, and submits the evaluation and the student affidavit.

Section 4. Distance Education Provider Requirements. (1)(a) A provider shall submit the appropriate application for approval and the Distance Education Checklist and Information Sheets – Form E114[a copy of the ARELLO or IDECC certification form and summary sheet].

(b) The application shall include:

1. A complete copy of the program on the medium that is to be used;
2. All hardware or software required to review the material;
3. A link to the internet site;
4. A copy of the final examination question bank and key for each course; and
5. A copy of any student materials.

(c) The application and other required documents shall be submitted at least sixty (60)[forty-five (45)] days prior to the commission's meeting date, to allow adequate time for review.

(2) The provider shall have reasonable oversight of a student's work in order to ensure that the student completing the work is the one who is enrolled in the course.

(3)(a) The provider shall ensure that approved instructors are available to assist students who have questions regarding:

1. The technology used in the delivery;
2. The course content; or
3. The completion requirements.

(b) The provider shall ensure that the approved instructor has knowledge of both the content and the technology required to complete the program.

(c) A student shall not be required to call more than one (1) person to obtain answers to questions about the course.

(4)(a) The provider shall include a complete description of the hardware and software or other technology required by the student in order to complete the course.

(b) The provider shall include an explanation of the safeguards against loss of data resulting from inadvertent hardware or software failure.

(5) The provider shall include a detailed explanation of how the course measures, documents and records the student completion of the material, and any activities or exercises required to achieve mastery of the material.

(6)(a) ~~The provider shall obtain an evaluation from each student[on forms developed by and available from ARELLO or IDECC, whichever is applicable].~~

(b) An evaluation may be submitted to the provider electronically and a copy of each form shall be returned along with the attendance roster and other documents required by the commission for continuing education courses.

(c) Attendance rosters for each approved continuing and post-license education course shall be submitted on a semi-monthly basis and shall include:

1. Provider's name;
2. Course name and number assigned by the commission;
3. Total enrollment for the month;
4. Licensee's full legal name;
5. Residence address;
6. Identifying information; and
7. The date of completion for each student, so that compliance with various deadlines can be verified.

(d) A completion certificate shall be issued to the student upon completion of the course, submission of the evaluation, signing of the affidavit, and passing the final exam.

(7)(a) For a pre-license[prelicensure] course, a provider shall issue a completion certificate to the student. The document shall contain:

1. The provider's name;
2. Course name;
3. Number of hours earned;
4. Beginning and completion date for the course;
5. Student's full legal name; and
6. Residence address.

(b) This document shall be submitted with the student's license application.

Section 5. Interactive Television Requirements.[(1)] A course offered for academic credit via interactive television in an accredited college or university shall require the following[not be subject to the ARELLO or IDECC certification requirement, if the following criteria are met]:

(1)[(a)] There shall be two (2) way audio and video connections between the instructor and the student;

(2)[(b)] College personnel shall be stationed at each remote site to handle technology problems that may arise and to monitor attendance of students during the class; and

(3)[(c)] The program shall be one that has been properly approved by the college accrediting body as fulfilling the requirements for academic credit[; and

(d) ~~Documentation shall be supplied to the commission along with the application for approval which outlines the compliance with this criteria.~~

(e) ~~The course or program shall be ARELLO or IDECC certified, if any of the requirements in paragraphs (a) through (d) are not met].~~

Section 6. Incorporation by Reference. (1) "Distance Education Checklist and Information Sheets – Form E114[Information Sheet]", 06/15[09/07] edition, Kentucky Real Estate Commission, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

JIM HUFF, Chairperson

APPROVED BY AGENCY: June 22, 2015

FILED WITH LRC: June 29, 2015 at 11 a.m.

CONTACT PERSON: Rhonda K. Richardson, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rhonda K. Richardson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for courses offered through distance education.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide standards for the development and conduct of courses offered thru distance education mediums.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.085(4) requires the commission to promulgate administrative regulations for implementing continuing education and post-education requirements, and instructor approval. This administrative regulation sets standards for the development and conduct of courses offered thru distance education mediums.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 324.085(4) requires the commission to promulgate regulations for implementing continuing education and post-education requirements, and instructor approval. This administrative regulation sets standards for the development and conduct of

courses offered thru distance education mediums, and provides instructor qualifications and approval, requirements.

(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 applies the administrative regulation to post-license education courses, and clarifies the existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to apply the administrative regulation to post-license education courses, and to clarify the existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324.085(4) requires the commission to promulgate administrative regulations for implementing continuing education and post-education requirements, and instructor approval. This amendment addresses the standards for the development and conduct of courses offered through distance education mediums, and provides instructor qualifications and approval requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment applies the administrative regulation to post-license education courses, and clarifies the existing 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 affects fourteen (14) current online real estate education providers and any real estate provider seeking approval in the future, and does not affect individual real estate licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Real estate education providers seeking to provide distance education will be required to meet the standards and follow the protocols set forth in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will reduce the cost providers currently incur for course review and certification by more than half that incurred by use of the current third party approval process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this administrative regulation will allow providers seeking to incur lower costs for approval of online or other distance education courses.

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

(a) Initially: Extensive staff time will be required None. This administrative regulation will be implemented utilizing existing staff.

(b) On a continuing basis: None. This administrative regulation will be implemented utilizing existing staff.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency 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: Review and approval of online and distance education course will be performed by commission staff in lieu of third party certification. Online and distance education providers will be assessed fees to recoup the cost to the commission.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Online and distance education providers will be assessed fees to recoup the cost to the commission.

(9) TIERING: Is tiering applied? Tiering has been applied to reduce the processing fees incurred by the same provider when submitting subsequent courses for approval as follows:

First Time Submission for 48/96 Hour Course Review/Application: \$300

Subsequent Courses or Renewal of Approved 48/96 Hours Course: \$200

First Time Submission for PLE course (9-47 hour course): \$200

Subsequent PLE Courses or Renewal of Approved PLE (9-47 hrs.): \$150

First Time Submission for CE & PLE Course (1-8 hour course): \$125

Subsequent CE & PLE Courses or Renewal of Approved CE/PLE (1-8 hrs.): seventy-five (75) dollars

A "First Time Submission" is the first course offered by the provider via a specific delivery method. Due to the implementation of the new distance education guidelines and approval process, the first course submitted by each provider for approval in 2016 will be defined as a "First Time Submission". A "First Time Submission" fee is required both for the first continuing and post-license education course and the first 48/96 hour pre-license course.

A "Subsequent Course" is any additional distance education course submitted to the Commission for approval from a provider utilizing the same distance education delivery method that was used in the "First Time Submission".

A "Renewal" is a distance education course that has been previously approved by the Commission and has not undergone any substantive changes.

#### 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 Real Estate Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.085(1), (4), 324.281(5), (7), (8), 324.282.

(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. Significant staff time will be utilized in implementing this administrative regulation. Education providers will be assessed fees to recoup the costs.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is estimated that the commission will recoup \$24,950 the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is estimated that the commission will recoup \$15,210 in subsequent years.

(c) How much will it cost to administer this program for the first year? See narrative explanation below.

(d) How much will it cost to administer this program for subsequent years? See narrative explanation below.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The fiscal impact of this amended administrative regulation cannot be determined at this time because the number of courses for which course approval may be sought is indefinable. There are four (4) categories of real estate education requirements -- pre-license, post-license, continuing, and broker management -- with a total of 192 hours of real estate education, respectively. Course offerings can range from a one (1)-hour to a ninety-six (96)-hour course, and the potential number of providers is indefinable.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATEMENT OF EMERGENCY  
201 KAR 12:110E**

This emergency administrative regulation is being promulgated in order to facilitate the timely implementation of HB 239, which passed during the 2015 Regular Session of the General Assembly. Among other statutes, HB 239 establishes direction and process to apply for and renew a cosmetology school license in the state of Kentucky and also provides language to authorize that cosmetology schools may provide postsecondary education. This emergency administrative regulation is also being promulgated to assure compliance with federal requirements. Failure to enact this administrative regulation on an emergency basis may cause a loss of federal funding. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor  
BEA COLLINS, President

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Hairdressers and Cosmetologists  
(Emergency Amendment)**

**201 KAR 12:110E. School license.**

RELATES TO: KRS 317A.060, 317A.090

STATUTORY AUTHORITY: KRS 317A.050, 317A.060

EFFECTIVE: June 17, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.090 requires that each school owner shall submit an application to operate a school of cosmetology, furnish proof of financial responsibility, and meet all city, county, and state zoning, building, and plumbing codes. This administrative regulation defines the process of applying for a cosmetology school license.

Section 1. Each person, firm, or corporation applying for a license to operate a school of cosmetology shall submit an application provided by the board.

Section 2. Each individual owner, or one (1) partner[;] in the instance of a partnership, or one (1) corporate officer in the instance of a corporation, shall submit a financial statement indicating financial assets in the amount of \$10,000 for twenty (20) students enrolled and \$1,000 for each additional student enrolled.

Section 3. A person having any interest in operating a school shall submit a minimum of two (2) character references, proposed copy of student contract indicating all financial charges to enrolling students, and term of lease for location, if applicable.

Section 4. Application for license to operate a school of cosmetology shall be accompanied by an architect's or draftsman's plan of proposed premises drawn to scale, showing the arrangements of the classroom, clinic area, mannequin area, dispensary, reception area, shampoo area, office and any other area of the school, entrance and exits, and placement of equipment.

Section 5. (1) A license to operate a cosmetology school carries the approval of this board and shall be valid only for the location and person, firm, or corporation named on the application and license issued by the board. A school of cosmetology license shall not be transferable from one (1) location to another or from one (1) person, firm, or corporation to another.

(2) The license shall contain:

(a) The name of the proposed school; and

(b) A statement that the proposed school is authorized to operate educational programs beyond secondary education.

Section 6. The owners, firm, or corporation operating a school of cosmetology shall notify the board in writing twenty (20) days

prior to selling, transferring, or changing of ownership and management of a school. Prospective ownership shall meet all qualifications of owning a school and have the approval of the board.

Section 7. Following approval of the application to operate a school of cosmetology by the board, the site shall be inspected by a quorum of the board or by at least one (1) member of the board and the board administrator. A final inspection of the premises shall be conducted by the members of the board prior to issuing of license. All schools shall comply with city, county, and state zoning laws, plumbing and building codes. The construction or renovation of the proposed school shall be completed and a final inspection conducted by the board within twelve (12) months from the date of approval of the site. Any extension of this period of time shall be granted for good cause shown provided the request is presented, in writing, to the board. The applicant shall provide:

(1) The reason for extension and the term of request; and

(2) Supportive documentation of the extension request.

Section 8. Any cosmetology school owner, manager, or instructor who misrepresents facts to the board, to the students, or to the general public concerning any information regarding the school or any student enrolled in the school, or in any way violates administrative regulations adopted by this board, may be served notice to show cause before this board, why the school's license and the instructor's license should not be revoked.

Section 9. Any person, establishment, firm or corporation ~~that~~which accepts, directly or indirectly, compensation for teaching persons any branch or subjects of cosmetology as defined in KRS 317A.010 shall be classified as a school and shall be required to comply with all the provisions of law and the rules and administrative regulations of this board by authority established in KRS 317A.090 and 317A.050.

Section 10. The board shall not license a correspondence school, nor shall the board license any school of cosmetology in an establishment that teaches any other trade, profession, or business, excluding vocational training schools.

Section 11. A person who is an owner, partner, stockholder, or corporate officer, or who has any financial or other interest in the management and control of the school[;] shall not be enrolled in the school as a student.

Section 12. A school of cosmetology shall not permit or require students to be in attendance at school more than forty (40) hours in any one (1) week.

Section 13. Any school of cosmetology desiring night classes may, by proper application, be granted permission from the board to operate the classes. Under no condition shall the school operate past 10 p.m. local time.

Section 14. (1) A member of the board or an employee, unless resigning, shall not~~It shall be considered a conflict of interest and therefore impermissible for a member of the board or for an employee of the board to~~ apply for a new school license or~~to~~ apply for any existing school license under KRS 317A.090 and this administrative regulation.~~If any member of the board or any employee of the board desires to apply for a new school license or for any existing school license, the board member or employee of the board shall submit a letter of resignation to the board no later than thirty (30) days prior to submitting an application for a school license.~~

(2) The board may choose not to consider any application for a school license submitted by a relative of a member of the board, by a relative of a board employee, or by any person with whom a member of the board or a board employee shares a significant financial interest. Failure to make full disclosure to the board as to the exact nature of the relationship between the board member or employee of the board and the applicant may result in denial of

approval of licensure. A person applying for a new school license shall complete an application with the board.

(3) The provisions of this section shall apply only to applications for licenses approved or filed, licenses issued, or actions of a person serving as a member of the board or as a board employee after June 10, 1986.

Section 15. Incorporation by Reference. (1) "Application for Kentucky School of Cosmetology", 10/09, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Hairdressers and Cosmetologists, 111 St. James Court, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BEA COLLINS, President

APPROVED BY AGENCY: June 10, 2015

FILED WITH LRC: June 17, 2015 at 4 p.m.

CONTACT PERSON: Charles Lykins, Administrator, 111 St James Ct., Frankfort, Ky 40601, phone 502-564-4262, fax 502-564-0481.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Charles Lykins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes requirements for the process of issuing a school license.

(b) The necessity of this administrative regulation: To meet requirements set forth by The Federal Department of Education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: To meet the requirements of issuing a school license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will set the requirements for the process issuing a school license.

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

(a) How the amendment will change this existing administrative regulation: By defining the license content that the board issues

(b) The necessity of the amendment to this administrative regulation: To meet the US. Department of Education requirements for post-secondary education.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires the board to promulgate administrative regulations that govern cosmetology school license.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will help define the school license process and license content.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Seventy (70)

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The license issued will meet requirements set forth by the US Department of Education and will help identify post-secondary schools in the state of Kentucky.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

No funding will be required

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as this regulation is applicable to all applications.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 600.9

2. State compliance standards. KRS 317A.050, KRS 317A.060

3. Minimum or uniform standards contained in the federal mandate. 34 C.F.R. 600.9

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Board of Hair Dressers and Cosmetologist

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.060 and KRS 317A.090

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATEMENT OF EMERGENCY**  
**505 KAR 1:100E**

This emergency administrative regulation is being promulgated in order to implement a revised classification system and amended manual for use by the Department of Juvenile Justice. KRS 13A.190(1)(a)(3) provides that an emergency administrative regulation is one (1) that must "[m]eet a deadline for the promulgation of an administrative regulation that is established by state law, or federal law or regulation." The proposed administrative action must be taken on an emergency basis because the Department of Juvenile Justice has a compelling and immediate obligation to institute a revised classification and placement system to comply with revisions to the Unified Juvenile Code as modified by SB 200 [2014], which become fully effective July 1, 2015. The revisions are needed to ensure that youth committed or sentenced to the Department of Juvenile Justice are placed in the least restrictive alternative for shorter time periods, consistent with the severity of the committing offense, while taking into account treatment needs. The ordinary administrative regulation is identical to this emergency administrative regulation and is being filed with the Regulations Compiler simultaneously with this emergency regulation.

STEVEN L. BESHEAR, Governor  
J. MICHAEL BROWN, Secretary  
BOB HAYTER, Commissioner

**JUSTICE AND PUBLIC SAFETY CABINET**  
**Department of Juvenile Justice**  
**(Emergency Amendment)**

**505 KAR 1:100E. Department of Juvenile Justice Policies and Procedures: admissions.**

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.069, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

EFFECTIVE: July 1, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.069, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

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

(a) The "Department of Juvenile Justice Policy and Procedures Manual: Admissions", July 1, 2015[April 15, 2009], which includes the following:

- 200 Definitions[Classification] (Amended 7/01/15[4/15/09]);
- 200.1 Classification[Day Treatment Admissions] (Amended 7/01/15[4/15/09]);
- 201 Day Treatment Admissions (Added 7/01/15);
- 202 Youth Placement Priority[Waiting List] (Amended 7/01/15[4/15/09]);
- 204 Daily Census and Population (Amended 7/01/15[4/15/09]);
- 206 Administrative Transfers (Amended 7/01/15[4/15/09]);
- 208 Youth Rights [Orientation] (Amended 7/01/15[4/15/09]);
- 209 Youth Access to Outside Investigative Agencies (Amended 7/01/15[04/15/09]);
- 210 Interstate Referrals (Amended 7/01/15[4/15/09]);
- 211 Interstate Runaways, Escapees and Absconders (Amended 7/01/15[4/15/09]);

- 212 Interstate Purchase of Care (Amended 7/01/15[4/15/09]);
- 213 Interstate Travel (Amended 7/01/15[4/15/09]);
- 214 Interstate Revocations and Case Closure (Amended 7/01/15[4/15/09]); and
- 217 Advanced Care Unit Admissions and Release (Amended 7/01/15[04/15/09]); and

(b) The "Classification and Placement Manual", Amended 7/01/15[05/12/09];

(c) The "Youth Level of Service/Case Management Inventory (YLS/CMI), User's Manual", 01/13/06;

(d) The "Child and Adolescent Service Intensity Instrument (CASII)", also known as "Child and Adolescent Level of Care Utilization System (CALOCUS)", 01/13/06;

(e) The "Estimate of Risk of Adolescence Sex Offense Recidivism (ERASOR)", 01/13/06; and

(f) The "Juvenile Sex Offender Assessment Protocol (J-SOAP)", 01/13/06].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

BOB D. HAYTER, Commissioner

APPROVED BY AGENCY: June 30, 2015

FILED WITH LRC: July 1, 2015 at 2 p.m.

CONTACT PERSON: LaDonna Koebel, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: LaDonna Koebel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the policies and procedures governing the operation of the Department of Juvenile Justice including the classification and placement of juveniles committed to the Department.

(b) The necessity of this administrative regulation: To conform to the requirements of SB 200 "2014" and the amendments to the Unified Juvenile Code as well as KRS 15A.065, 15A.0652 and 15A.069.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation governs the management, policy and coordination of all matters relating to the classification, evaluation, and placement of juvenile committed to or detained by the Department of Juvenile Justice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to the Department of Juvenile Justice employees and the residential as to the classification, placement and transportation of youth.

(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 shall bring the Department of Juvenile Justice into compliance with statutory amendments to the Unified Juvenile Code as established through SB 200 "2014".

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065, 15A.0652 and 15A.069.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments establish and amend practices and procedures relating to the classification, evaluations, and placement of juveniles committed to the Department of Juvenile Justice.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will help the Department of Juvenile Justice classify and place youth within the new statutory mandates under SB 200 and KRS 635.060 [effective

July 1, 2015].

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1,400 employees of the Department in community and residential settings, approximately 2,267 youth in all programs, and all visitors and volunteers to Department of Juvenile Justice facilities

(4) Provide analysis of how the entities identified in question (3) will be impacted by the implementation of this administrative regulation, if new, or by the change if it is an amendment, including: To ensure youth are placed in the least restrictive placement based on their assessed risk and treatment needs, and to provide a clearer understanding of the policies and procedures by employees and residents regarding the classification, placement, and timeframes for commitment and out of home treatment.

(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: Community staff will administer a risk and needs assessment on all adjudicated youth, residential staff and the community will have a clear understanding of the classification and placement of youth in the least restrictive placement based on their treatment needs and level risk to reoffend which is commensurate with the severity of the committing offense.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Estimated costs to the Department of Juvenile Justice to implement all policy revisions to come into compliance with the provisions of SB 200 "2014" are estimated as follows:

Salaries & Staffing Costs: Approximately \$847,591.00

Training Costs: Approximately \$300,000.00

Validation of Risk Assessment tools: Approximately \$250,000.00

CourtNet Access to AOC data to complete risk assessments: \$28,200.00

Approximate Total Estimated Costs: \$1,425,791.00

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Youth who are committed to the Department of Juvenile Justice will remain in placement and commitment to the Department for shorter periods of time and in the least restrictive placement which can meet their treatment needs consistent with the severity of their committing offense. The benefit to the revised classification and placement is to reduce the length of stay in out of home placements for youth, reduce the costs of out of home placements by the Department, and reduce recidivism by returning lower level offending youth to the community sooner. A child who is adjudicated for an offense that would be a misdemeanor if committed by an adult, other than an offense for which a child has been declared a juvenile sex offender or an offense involving a deadly weapon may only be committed for a period not to exceed twelve (12) months, and may only receive treatment in an out of home placement for up to four (4) months [unless treatment needs require additional treatment in an out of home setting, not to exceed the maximum length of commitment]. A child who is adjudicated for an offense that would be a Class D felony if committed by an adult, other than an offense for which a child has been declared a juvenile sex offender or an offense involving a deadly weapon may only be committed for a period not to exceed eighteen (18) months, and may only receive treatment in an out of home placement for up to eight (8) months [unless treatment needs require additional treatment in an out of home setting, not to exceed the maximum length of commitment].

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

(a) Initially: Approximately \$1,425,791.00

(b) On a continuing basis: \$925,791.00

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Department of Juvenile Justice General Funds and Restricted Funds if necessary.

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

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

(9) Tiering: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as the Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department of Juvenile Justice

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065(1), KRS 15A.0652, KRS 15A.0654, KRS 15A.067, KRS 15A.069, KRS 600.040, KRS 605.080, KRS 605.090, KRS 605.095, KRS 605.100, KRS 605.110, KRS 605.150, KRS 610.100, KRS 635.095, KRS 635.100, KRS 635.060, KRS 635.520, KRS 640.120, KRS 645.250

(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 revised administrative regulations will only impact the Department of Juvenile Justice. The anticipated expenditures associated with implementing the provisions of SB 200 "2014" and revisions to the Unified Juvenile Code are approximately \$1,425,791.00 for the first year and \$925,791.00 annually thereafter.

(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?

Response: 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?

Response: None

(c) How much will it cost to administer this program for the first year? The anticipated expenditures associated with implementing the provisions of SB 200 "2014" and revisions to the Unified Juvenile Code are approximately \$1,425,791.00 for the first year and \$925,791.00 annually thereafter.

(d) How much will it cost to administer this program for subsequent years? The anticipated expenditures associated with implementing the provisions of SB 200 "2014" and revisions to the Unified Juvenile Code are approximately \$1,425,791.00 for the first year and \$925,791.00 annually thereafter.

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**  
**505 KAR 1:110E**

This emergency administrative regulation is being promulgated in order to implement revised policies for residential treatment programs within the Department of Juvenile Justice. KRS 13A.190(1)(a)(3) provides that an emergency administrative regulation is one (1) that must "[m]eet a deadline for the promulgation of an administrative regulation that is established by state law, or federal law or regulation." The proposed administrative action must be taken on an emergency basis because the Department of Juvenile Justice has a compelling and immediate obligation to institute revised policies to comply with revisions to the Unified Juvenile Code as modified by SB 200 [2014], which becomes fully effective July 1, 2015. The revisions are needed to ensure that youth committed or sentenced to the Department of Juvenile Justice receive treatment which can be completed in shorter time frames consistent with the severity of the committing offense. The amended policies also amend the timeframes for development of a treatment plan for each child committed to the department which is responsive to the child's risk factors and individual needs, involves the family as appropriate, and implements series of graduated sanctions for youth in residential settings. The ordinary administrative regulation is identical to this emergency administrative regulation and is being filed with the Regulations Compiler simultaneously with this emergency regulation.

STEVEN L. BESHEAR, Governor  
J. MICHAEL BROWN, Secretary  
BOB HAYTER, Commissioner

**JUSTICE AND PUBLIC SAFETY CABINET**  
**Department of Juvenile Justice**  
**(Emergency Amendment)**

**505 KAR 1:110E. Department of Juvenile Justice Policy[~~Policies~~] and Procedures Manual: program services.**

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 635.500, 635.505(7), 640.120, 645.250

EFFECTIVE: July 1, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy[~~Policies~~] and Procedures Manual: Program Services", July 1, 2015[~~October 14, 2014~~], is incorporated by reference and includes the following:

- 300 Definitions (Amended 7/01/15[~~10/14/14~~]);
- 300.1 Programs and Services (Amended 7/01/15[~~10/14/14~~]);
- 300.2 Correspondence to the Court System (Amended 7/01/15[~~10/14/14~~]);
- 301 Intake and Orientation (Amended 7/01/15[~~10/14/14~~]);
- 301.1 Youth's Personal Property, Dress Code, and Facility Issued Property (Amended 7/01/15[~~10/14/14~~]);
- 301.2 Hair and Grooming (Amended 7/01/15[~~10/14/14~~]);
- 302 Individual Treatment Plan and Aftercare Plan (Amended 7/01/15[~~10/14/14~~]);
- 303 Treatment Team Composition, Function, and Responsibility (Amended 7/01/15[~~10/14/14~~]);
- 306 Treatment Track and Level[Phase] System (Amended 7/01/15[~~05/14/14~~]);

- 307 Counseling Services (Amended 7/01/15[~~10/14/14~~]);
- 308 Advanced Care Unit (Amended 7/01/15[~~10/14/14~~]);
- 309 Family Engagement (Amended 7/01/15[~~05/14/14~~]);
- 310 Family and Community Contacts: Mail, Telephone, and Visitation (Amended 7/01/15[~~10/14/14~~]);
- 311 Cadet Leadership and Education Program (C.L.E.P.) (Added 7/01/15);
- 314 Youth Council (Amended 7/01/15[~~05/14/14~~]);
- 315 Use of Non-Governmental Funds and Youth Activity Funds Account (Amended 7/01/15[~~10/14/14~~]);
- 316 Youth Allowances and Work Details (Amended 7/01/15[~~10/14/14~~]);
- 317 Recreation (Amended 7/01/15[~~10/14/14~~]);
- 318 Behavior Management (Amended 7/01/15[~~10/14/14~~]);
- 318.1 Graduated Responses, Sanctions, and Incentives[Discipline] (Amended 7/01/15[~~10/14/14~~]);
- 318.2 Disciplinary Review (Amended 7/01/15[~~10/14/14~~]);
- 318.3 Discipline: Level 5[V] Youth Development Center (Amended 7/01/15[~~10/14/14~~]);
- 319 Staff Requirements for the Supervision of Youth (Amended 7/01/15[~~10/14/14~~]);
- 319.1 Facility Capacities (Amended 7/01/15[~~05/14/14~~]);
- 320 Transportation of Youth (Amended 7/01/15[~~05/14/14~~]);
- 321 Incident Reporting (Amended 7/01/15[~~10/14/14~~]);
- 322 Drug Screening and Testing (Amended 7/01/15[~~10/14/14~~]);
- 323 Isolation (Amended 7/01/15[~~10/14/14~~]);
- 324 Restraints (Amended 7/01/15[~~10/14/14~~]);
- 325 Searches (Amended 7/01/15[~~10/14/14~~]);
- 326 Contraband, Seizure, and Chain of Custody (Amended 7/01/15[~~10/14/14~~]);
- 327 Escape and Absent Without Leave (Amended 7/01/15[~~10/14/14~~]);
- 328 Individual Client Records (Amended 7/01/15[~~10/14/14~~]);
- 329 Progress Notes (Amended 7/01/15[~~10/14/14~~]);
- 330 Log and Shift Reports (Amended 7/01/15[~~05/14/14~~]);
- 331 Grievance Procedure (Amended 7/01/15[~~10/14/14~~]);
- 332 Authorized Leave: [Off-grounds Activities,] Day Releases[, and Furloughs; Supervised Off-grounds Activities (Amended 7/01/15[~~10/14/14~~]);
- 333 Day Treatment Admissions (Amended 7/01/15[~~Added 05/14/14~~]);
- 334 Youth Development Centers Educational and Vocational Programming, Assessment, and Transition (Amended 7/01/15[~~05/14/14~~]);
- 334.1 Day Treatments: Educational Programming, Assessment, and Transition (Amended 7/01/15[~~05/14/14~~]);
- 334.2 Group Homes: Educational Services (Amended 7/01/15[~~10/14/14~~]);
- 335 Youth Development Center Educational and Vocational Records; Day Treatment Educational Records (Amended 7/01/15[~~05/14/14~~]);
- 339 Youth Development Center and Day Treatment Instructional Staffing (Amended 7/01/15[~~05/14/14~~]);
- 341 Youth Development Center and Day Treatment Evaluation of Integrated Educational and Vocational Plan (Amended 7/01/15[~~Added 05/14/14~~]);
- 343 Technical Education Safety (Amended 7/01/15[~~05/14/14~~]);
- 344 Library Services (Amended 7/01/15[~~10/14/14~~]);
- 345 Religious Programs (Amended 7/01/15[~~10/14/14~~]);
- 346.1 Youthful Offenders (Amended 7/01/15[~~Added 05/14/14~~]);
- 347.1 Educational and Meritorious Good Time Credit for Youthful Offenders (Amended 7/01/15[~~10/14/14~~]);
- 351 Youthful Offender Parole (Amended 7/01/15[~~10/14/14~~]); and
- 352 Youthful Offender Transfer (Amended 7/01/15[~~05/14/14~~]).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile



## VOLUME 42, NUMBER 2 – AUGUST 1, 2015

Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

BOB D. HAYTER, Commissioner

APPROVED BY AGENCY: June 30, 2015

FILED WITH LRC: July 1, 2015 at 2 p.m.

CONTACT PERSON: LaDonna Koebel, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: LaDonna Koebel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the policies and procedures governing the operation of the Department of Juvenile Justice including the rights and responsibilities of the Department of Juvenile Justice employees, treatment providers and the residential population, and implements revisions to Department residential treatment programs to come into compliance with revisions to the Unified Juvenile Code under SB 200 (2014).

(b) The necessity of this administrative regulation: To conform to the requirements of SB 200 (2014) and the amendments to the Unified Juvenile Code.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation governs every aspect of program services within residential and day treatment programs in the Department.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to the Department of Juvenile Justice employees, the residential and community population as to their duties, rights, privileges and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment will bring the Department of Juvenile Justice into compliance with the amendments to the Juvenile Code, KRS Chapter 635 as amended by SB 200 [2014].

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065 and 15A.067, and to bring the Department into compliance with SB 200 [2014].

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or authorized representative to implement practices and procedures to ensure the safe and efficient operation of Department residential and day treatment programs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will restructure residential treatment programs within the Department of Juvenile Justice to ensure that public offenders will be able to complete treatment in shorter timeframes consistent with the requirements of SB 200 [2014] and KRS 635.060 [effective July 1, 2015].

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 1,335 employees of residential programs, 353 youth in DJJ residential programs, and all visitors and volunteers to DJJ facilities.

(4) Provide analysis of how the entities identified in question (3) will be impacted by the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The amendments provide policies and procedures which provide for reduced timeframes in out of home placement by restructuring the residential treatment for public offenders, ensuring use of graduated sanctions, and less out of home treatment for the lowest level offenders.

(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: DJJ residential programs will need to

update their facility Standard Operating Procedures to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each program will absorb the cost of updating procedures and training staff on updated policies. Estimated costs to the Department of Juvenile Justice to implement all policy revisions to come into compliance with the provisions of SB 200 [2014] are estimated as follows:

Salaries & Staffing Costs: Approximately \$847,591.00

Training Costs: Approximately \$300,000.00

Validation of Risk Assessment tools: Approximately \$250,000.00

CourtNet Access to AOC data to complete risk assessments: \$28,200.00

Approximate Total Estimated Costs: \$1,425,791.00

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Youth who are committed to the Department of Juvenile Justice will remain in placement and commitment to the Department for shorter periods of time and in the least restrictive placement which can meet their treatment needs consistent with the severity of their committing offense. The benefit to the revised policies for the residential population is to reduce the length of stay in out of home placements for youth, reduce the costs of out of home placements by the Department, and reduce recidivism by returning lower level offending youth to the community sooner. Under the provisions of SB 200 [2014], a child who is adjudicated for an offense that would be a misdemeanor if committed by an adult, other than an offense for which a child has been declared a juvenile sex offender or an offense involving a deadly weapon may only be committed for a period not to exceed twelve (12) months, and may only receive treatment in an out of home placement for up to four (4) months [unless treatment needs require additional treatment in an out of home setting, not to exceed the maximum length of commitment]. A child who is adjudicated for an offense that would be a Class D felony if committed by an adult, other than an offense for which a child has been declared a juvenile sex offender or an offense involving a deadly weapon may only be committed for a period not to exceed eighteen (18) months, and may only receive treatment in an out of home placement for up to eight (8) months [unless treatment needs require additional treatment in an out of home setting, not to exceed the maximum length of commitment].

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

(a) Initially: Approximately \$1,425,791.00

(b) On a continuing basis: \$925,791.00

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Department of Juvenile Justice General Fund and Restricted Funds if necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) Tiering: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as the Sections 2 and 3 of the Kentucky Constitution.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department of Juvenile Justice

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065(1), KRS 15A.0652, KRS 15A.0654, KRS 15A.067, KRS 600.040, KRS 605.090, KRS 605.095, KRS 605.100, KRS 605.110(3), KRS 605.150, KRS 635.060, KRS 635.095, 635.100, 635.520, KRS 640.120, KRS 645.250

(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 revised administrative regulations will only impact the Department of Juvenile Justice. The anticipated expenditures associated with implementing the provisions of SB 200 [2014] and revisions to the Unified Juvenile Code are approximately \$1,425,791.00 for the first year and \$925,791.00 annually thereafter.

(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 anticipated expenditures associated with implementing the provisions of SB 200 [2014] and revisions to the Unified Juvenile Code are approximately \$1,425,791.00 for the first year and \$925,791.00 annually thereafter.

(d) How much will it cost to administer this program for subsequent years? The anticipated expenditures associated with implementing the provisions of SB 200 [2014] and revisions to the Unified Juvenile Code are approximately \$1,425,791.00 for the first year and \$925,791.00 annually thereafter.

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 505 KAR 1:130E

This emergency administrative regulation is being promulgated in order to implement revised policies regarding community services offered by the Department of Juvenile Justice. KRS 13A.190(1)(a)(3) provides that an emergency administrative regulation is one (1) that must "[m]eet a deadline for the promulgation of an administrative regulation that is established by state law, or federal law or regulation." The proposed administrative action must be taken on an emergency basis because the Department of Juvenile Justice has a compelling and immediate obligation to institute revised policies to comply with revisions to the Unified Juvenile Code as modified by SB 200 [2014], which becomes fully effective July 1, 2015. The amended policies also implement the development of a risk and criminogenic needs assessment administered for all children adjudicated on a public offense prior to disposition, provides for the development of a case plan for each child sentenced, committed, or probated to the department which is responsive to the individual child's risk and need factors, involves the family as appropriate, and implements a series of graduated responses, to include sanctions and incentives, for youth in community settings commensurate with KRS 15A.0652. The ordinary administrative regulation is identical to this emergency administrative regulation and is being filed with the Regulations Compiler simultaneously with this emergency regulation.

STEVEN L. BESHEAR, Governor  
J. MICHAEL BROWN, Secretary  
BOB HAYTER, Commissioner

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (Emergency Amendment)

#### 505 KAR 1:130E. Department of Juvenile Justice Policies and Procedures: juvenile services in community.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, 635.100[(7)], 640.120, 645.250

EFFECTIVE: July 1, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095, 635.100, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy and Procedures Manual: Juvenile Services in Community", July 1, 2015[February 10, 2014], is incorporated by reference and includes the following:

600 Definitions (Amended 7/01/15[2/10/14]);

601 Initial Contact &[and] Court Support for Public Offenders (Amended 7/01/15[2/10/14]);

601.1 Initial Contact &[and] Court Support for Youthful Offenders (Amended 7/01/15[11/14/13]);

601.2 Case Management Screens and Assessments (Added 7/01/15);

602 Individual Client Record (Amended 7/01/15[11/14/13]);

603 Service Complaints (Amended 7/01/15[11/14/13]);

604 Case Planning and Participation in Treatment Planning[Individual Treatment Plan] (Amended 7/01/15[11/14/13]);

605 Community Supervision (Amended 7/01/15[2/10/14]);

606 Probation of Public Offenders (Amended 7/01/15[11/14/13]);

607 Commitment of Public Offenders (Amended 7/01/15[11/14/13]);

608 Drug Screening and Confirmation Testing (Amended 7/01/15[11/14/13]);

609 Youth's[Children's] Benefits (Amended 7/01/15[11/14/13]);

609.1 Title IV-E Federal Foster Care Maintenance Payments (Amended 7/01/15[2/10/14]);

609.2 Trust Funds (Amended 7/01/15[11/14/13]);

610 Transportation of Committed Youth (Amended 7/01/15[11/14/13]);

610.1 Out-of-State Travel (Amended 7/01/15[2/10/14]);

611 Electronic Monitoring (Amended 7/01/15[11/14/13]);

612 Authorized Leave for Public Offenders and Youthful Offenders in Placement (Amended 7/01/15[11/14/13]);

613 Supervised Placement Revocation (Amended 7/01/15[11/14/13]);

[614 Intensive Aftercare Program (Amended 11/14/13)]

615 Juvenile Intensive Supervision Team (JIST) (Amended 7/01/15[11/14/13]);

616 Youthful Offenders-Confined, Shock Probated, and Transferred to the Department of Corrections (Amended 7/01/15[11/14/13]);

616.1 Probation of Youthful Offenders (Amended 7/01/15[11/14/13]);

616.2 Parole of Youthful Offenders (Amended 7/01/15[11/14/13]);

617 Incident Reports (Amended 7/01/15[11/14/13]);

618 AWOL or Escape (Amended 7/01/15[11/14/13]);

620 Use of Self-Protection Skills[Force and Searches] (Amended 7/01/15[11/14/13]);

- 621 Mental or Behavioral Health Services, Referrals, and  
Psychiatric Hospitalization (Amended 7/01/15[14/14/13]);  
622 Community Mental Health Operations (Amended  
7/01/15[14/14/13]); and  
623 Health and Safety for Community and Mental Health  
Services (Amended 7/01/15[2/40/44]).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

BOB D. HAYTER, Commissioner

APPROVED BY AGENCY: June 30, 2015

FILED WITH LRC: July 1, 2015 at 2 p.m.

CONTACT PERSON: LaDonna Koebel, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: LaDonna Koebel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the policies and procedures governing the community operations of the Department of Juvenile Justice including the assessment, supervision and case management of juveniles probated or committed to the Department.

(b) The necessity of this administrative regulation: To conform to the requirements of SB 200 "2014" and the amendments to the Unified Juvenile Code as well as KRS 15A.065, 15A.0652, KRS 15A.067, KRS 605.150, KRS 635.095 and KRS 635.100.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation governs every aspect of the program services for the community population of the Department of Juvenile Justice.

(d) How this administrative regulation currently assists, or will assist, in the effective administration of the statutes: By providing clear and concise direction and information to the Department of Juvenile Justice employees and the community population as to their duties, rights, privileges, and responsibilities.

(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 shall bring the Department of Juvenile Justice into compliance with statutory amendments to the Unified Juvenile Code as established through SB 200 "2014".

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065, KRS 15A.0652, 15A.067, 605.150, 635.095 and 635.100 and come into compliance with statutory amendments to the Unified Juvenile Code as established through SB 200 "2014".

(c) How the amendment conforms to the content of the authorizing statutes: The policy revisions update the practices or procedures to ensure youth committed or probated to the Department of Juvenile Justice are properly served. Revises timeframes for supervision and commitment and responsibilities of community and mental health staff.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will help the Department of Juvenile Justice to operate consistent with statutory revisions implanted under SB 200 "2014" and amendments to KRS Chapter 635 which become effective July 1, 2015.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 250 employees of the Department of Juvenile Justice, approximately 1,800 youth in all programs, and all visitors and volunteers to 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: By providing and implementing these policies and procedures, the Department of Juvenile Justice will be providing services more effectively and consistently. Policy amendments will ensure that youth are placed and supervised in the least restrictive placement based on their assessed risk and treatment needs, and to provide staff a clearer understanding of the timeframes for commitment and out of home treatment.

(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: Community staff will administer a risk and needs assessment on all adjudicated youth. Agency employees will provide services to the youth in the community and all programs in accordance with the procedures outlined in the regulation and the materials incorporated by reference.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Estimated costs to the Department of Juvenile Justice to implement all policy revisions to come into compliance with the provisions of SB 200 "2014" are estimated as follows:

Salaries & Staffing Costs: Approximately \$847,591.00

Training Costs: Approximately \$300,000.00

Validation of Risk Assessment tools: Approximately

\$250,000.00

CourtNet Access to AOC data to complete risk assessments:

\$28,200.00

Approximate Total Estimated Costs: \$1,425,791.00

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Youth who are committed to the Department of Juvenile Justice will remain in placement and commitment to the Department for shorter periods of time and in the least restrictive placement which can meet their treatment needs consistent with the severity of their committing offense. The benefit to the revised classification and placement is to reduce the length of stay in out of home placements for youth, reduce the costs of out of home placements by the Department, and reduce recidivism by returning lower level offending youth to the community sooner.

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

(a) Initially: Approximately \$1,425,791.00

(b) On a continuing basis: \$925,791.00

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Juvenile Justice General Fund and Restricted Funds if necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None.

(8) State whether or not this administrative regulation established any fees, or directly or indirectly, increased any fees: None

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated, as well as the Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department of Juvenile Justice

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, KRS 15A.0652, KRS 15A.067, KRS 15A.160, KRS 15A.210, KRS 15A.305(5), KRS 200.115, KRS 605.150, KRS 635.060, KRS 635.095, KRS 635.100, KRS

640.120, and KRS 645.250.

(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 revised administrative regulations will only impact the Department of Juvenile Justice. The anticipated expenditures associated with implementing the provisions of SB 200 "2014" and revisions to the Unified Juvenile Code are approximately \$1,425,791.00 for the first year and \$925,791.00 annually thereafter.

(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 revised administrative regulations will only impact the Department of Juvenile Justice. The anticipated expenditures associated with implementing the provisions of SB 200 "2014" and revisions to the Unified Juvenile Code are approximately \$1,425,791.00 for the first year and \$925,791.00 annually thereafter.

(d) How much will it cost to administer this program for subsequent years? The revised administrative regulations will only impact the Department of Juvenile Justice. The anticipated expenditures associated with implementing the provisions of SB 200 "2014" and revisions to the Unified Juvenile Code are approximately \$1,425,791.00 for the first year and \$925,791.00 annually thereafter.

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

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

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

Other Explanation: This administrative regulation will provide a clear and concise policies and procedures for all youth receiving services from the Department of Juvenile Justice, and reflect the treatment and practice of the agency.

#### **Statement of Emergency 601 KAR 1:113E**

This emergency administrative regulation establishes the requirements for a Transportation Network Company to apply for and maintain operating authority in the Commonwealth. The current lack of oversight of businesses that use web-related mobile applications to connect drivers using their personal vehicles with potential passengers has created a public safety concern. An increasing number of people in the Commonwealth rely on the transportation network companies and their drivers as a means of transportation. This emergency administrative regulation has been promulgated to address an imminent risk to public safety caused by a lack of oversight of businesses on which the public increasingly relies for transportation. It will include the requirement of a criminal background check for TNC drivers, and will ensure that safety inspections are performed on vehicles used to transport the public. In this emergency regulation, regulatory requirements are established for the operation of a Transportation Network Company with an emphasis on public safety. Substantial changes have been made to 601 KAR 112E that incorporate the provisions of Senate Bill 153 from the 2015 legislative session. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed simultaneously with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor  
MICHAEL W. HANCOCK, Secretary

#### **TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Carriers (New Emergency Administrative Regulation)**

#### **601 KAR 1:113E. Transportation Network Company.**

RELATES TO: KRS 17.500, 61.878(1)(c)1., 61.930(6), 61.931(6), 186.050, 186.281, 189.290, 189A.010, 281.600, 281.630, 281.6301, 281.631, 281.640, 281.650, 281.655, 281.656, 281.912, 281.990, 304.3-070, 304.10-010-304.10-070, 304.39-020(2), 304.39-040, 304.39-320, 532.060

STATUTORY AUTHORITY: KRS 281.600, 281.630, 281.655

EFFECTIVE: July 8, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.600 authorizes the Department of Vehicle Regulation to promulgate administrative regulations to regulate and establish requirements for the safe operation of motor carriers. KRS 281.630 authorizes the department to establish requirements for a transportation network company to apply for authority to operate in Kentucky. KRS 281.655 requires the department to establish standards for pre-trip acceptance policies and prearranged ride liability policies for transportation network companies. This administrative regulation establishes the standards and application requirements for a transportation network company to operate in Kentucky.

Section 1. Definitions. (1) "Basic reparation benefits" is defined by KRS 304.39-020(2).

(2) "Certificate" is defined by KRS 281.010(8).

(3) "Driver" is defined by KRS 281.010(20).

(4) "Mobile application" is defined by KRS 281.010(30).

(5) "Motor carrier" is defined by KRS 281.010(31).

(6) "Motor carrier vehicle" is defined by KRS 281.010(32).

(7) "Operating Authority" means the authority granted to operate as a TNC in the commonwealth through the application process with the department.

(8) "Passenger" is defined by KRS 281.010(36).

(9) "Personal information" is defined by KRS 61.931(6).

(10) "Prearranged ride" is defined by KRS 281.010(39).

(11) "Pre-trip acceptance liability policy" is defined by KRS 281.010(40).

(12) "Regular seat" is defined by KRS 281.010(44).

(13) "Street hail" is defined by KRS 281.010(45).

(14) "Transportation network company" or "TNC" is defined by KRS 281.010(51).

(15) "Transportation network company driver" or "TNC driver" is defined by KRS 281.010(53).

(16) "Transportation network company service" or "TNC service" is defined by KRS 281.010(54).

(17) "Transportation network company vehicle" or "TNC vehicle" is defined by KRS 281.010(55).

(18) "Underinsured vehicle coverage" is defined by KRS 304.39-320(1).

(19) "Uninsured vehicle coverage" is defined by KRS 304.20-020(2).

Section 2. Application and Renewal. (1) A TNC shall register as a business organization with the Kentucky Secretary of State unless the applicant is a sole proprietor.

(2) The department may waive the filing of the certificate of assumed name if a TNC:

(a) Demonstrates compliance with the relevant provisions of KRS Chapter 365;

(b) Certifies in writing to the department that Kentucky law either prohibits or does not require the filing; and

(c) States the reasons in writing why the filing is not required.

(3) In order to apply for a certificate to operate, a TNC shall submit to the Division of Motor Carriers:

(a) A completed Transportation Network Company Authority Application, TC 95-627;

(b) An application fee of \$250 pursuant to KRS 281.630(3)(b); and

(c) A vehicle qualification fee of thirty (30) dollars per vehicle prorated for the month the vehicle is qualified pursuant to KRS 281.631(3)(a)1. and (8).

(4) A TNC shall annually submit the following to the Division of Motor Carriers to renew a certificate:

(a) A completed Motor Carrier Passenger Certificate, Vehicle Qualification and Renewal Application, TC 95-605;

(b) A certificate renewal fee of \$250 pursuant to KRS 281.630(4)(d); and

(c) A vehicle qualification fee of thirty (30) dollars per vehicle pursuant to KRS 281.631(3)(a)1. and (8).

(5) A TNC vehicle shall be added by submitting the following to the Division of Motor Carriers:

(a) A completed Motor Carrier Passenger Certificate, Vehicle Qualification and Renewal Application, TC 95-605; and

(b) A vehicle qualification fee of thirty (30) dollars per vehicle prorated for the month the vehicle is qualified pursuant to KRS 281.631(3)(a)1. and (8).

(6) An application may be submitted electronically, by mail, or by hand delivery.

(7) Operating authority obtained pursuant to this section shall not be transferable.

(8) The TNC shall submit the following documents if submitting an application for certificate, annual renewal, or adding a driver during the year:

(a) An affidavit from the corporate officer in charge of Kentucky operations certifying that the national criminal background check of TNC drivers established in KRS 281.630 and 281.6301 shall be completed prior to allowing the TNC driver to accept rides through the TNC mobile application; and

(b) One (1) copy of the current contractual agreement between the TNC and TNC drivers.

(9) A deficient application shall be returned to the applicant with no formal action taken by the department.

Section 3. Demonstration of Financial Responsibility and Insurance. (1) A TNC shall maintain primary automobile insurance that:

(a) Recognizes that a driver is a TNC driver or using a vehicle to transport passengers for compensation; and

(b) Provides insurance coverage for a TNC driver who is:

1. Logged on to the TNCs mobile application; or
2. Engaged in a prearranged ride.

(2) The following pre-trip acceptance liability automobile insurance requirements shall apply if a TNC driver is logged on to the TNC's mobile application and available to receive transportation requests but not engaged in a prearranged ride:

(a) Primary automobile liability insurance in the minimum amounts required by KRS 281.655(12);

(b) Basic reparation benefits;

(c) Uninsured vehicle coverage; and

(d) Underinsured vehicle coverage.

(3) The pre-trip acceptance liability insurance coverage requirements of KRS 281.655(12) shall be satisfied by one (1) of the following:

(a) Automobile insurance maintained by the TNC;

(b) Automobile insurance maintained by the TNC driver; or

(c) A combination of paragraphs (a) and (b) of this subsection.

(4) The following automobile insurance requirements shall apply while a TNC driver is engaged in a prearranged ride:

(a) Primary automobile liability insurance in the minimum amounts required by KRS 281.655(4);

(b) Basic reparation benefits;

(c) Uninsured vehicle coverage; and

(d) Underinsured vehicle coverage.

(5) The prearranged ride liability insurance coverage requirements of KRS 281.655(4) shall be satisfied by one (1) of the following:

(a) Automobile insurance maintained by the TNC;

(b) Automobile insurance maintained by the TNC driver; or

(c) A combination of paragraphs (a) and (b) of this subsection.

(6) If the insurance maintained by a TNC driver has lapsed or does not provide the required coverage, the TNC shall provide the required insurance coverage beginning with the first dollar of a claim. The TNC shall have the duty to defend a claim for damages.

(7) Coverage under an automobile insurance policy maintained by the TNC shall not be dependent on a personal automobile insurer or policy first denying a claim.

(8) The insurance required by this section shall be placed with an insurer licensed pursuant to KRS 304.3-070, or with a surplus lines insurer eligible under KRS 304.10-010 through KRS 304.10-070.

(9) A TNC driver shall carry proof of insurance coverage satisfying KRS Chapter 304, KRS 281.655, and this administrative regulation during his or her use of a vehicle in connection with a TNC's mobile application. In the event of an accident, and upon request, a TNC driver shall provide this insurance coverage information directly to interested parties, automobile insurers, and investigating police officers.

(10) A TNC driver shall disclose directly to interested parties, automobile insurers, the department, and investigating police officers, whether he or she was logged on to the TNC's mobile application or on a prearranged ride at the time of an accident.

Section 4. Insurance Exclusions. (1) A Kentucky automobile insurer may exclude the following coverage under a TNC driver's insurance policy for loss or injury that occurs while a TNC driver is logged on to a TNC's mobile application or while a TNC driver provides a prearranged ride:

(a) Liability coverage for bodily injury and property damage;

(b) Personal injury protection coverage as established in KRS Chapter 304;

(c) Uninsured and underinsured motorist coverage;

(d) Medical payments coverage;

(e) Comprehensive physical damage coverage; and

(f) Collision physical damage coverage.

(2) Nothing in this administrative regulation shall require a personal automobile insurer to provide coverage while a driver is:

(a) Logged on to the TNC mobile application;

(b) Engaged in a prearranged ride; or

(c) Using a vehicle to transport passengers for compensation.

(3) Nothing in this administrative regulation shall preclude an insurer from providing coverage for the TNC driver's vehicle.

(4) An automobile insurer whose policy excludes coverage for a TNC vehicle or TNC driver shall have no duty to defend or indemnify a claim for personal or property damages.

(5) An automobile insurer that defends or indemnifies a claim against a TNC driver that is excluded under the terms of its policy shall have a right of contribution against other insurers that provide automobile insurance to the same driver.

(6) In a claims coverage investigation, the TNC and an insurer potentially providing coverage shall cooperate to facilitate the exchange of relevant information with directly involved parties.

(7) Information relevant to a claims coverage situation may include:

(a) The name of the insurer or potential insurer of the TNC driver;

(b) The precise times the TNC driver logged off and on the TNC mobile application in the twelve (12) hour period immediately before and after the incident; and

(c) A complete description of the insurance coverage including the exclusions and limits.

Section 5. Vehicles. (1) A vehicle used by a driver for TNC services shall be qualified by the department to operate by submitting a completed Transportation Network Company Authority Application, TC 95-627 and submitting the fees required in Section 2 of this administrative regulation.

(2) The TNC shall ensure that the vehicles used by TNC drivers to transport passengers shall be subject to an annual inspection by an automotive technician who holds a valid automotive service excellence (A.S.E.) certification from the National Institute for Automotive Service Excellence.

(3) The annual inspection shall be completed on one (1) of the

following forms:

- (a) The vehicle inspection form provided in Transportation Network Company Authority Application, TC 95-627;
- (b) Motor Carrier Passenger Certificate, Vehicle Qualification and Renewal Application, TC 95-605; or
- (c) An equivalent form provided by the TNC and approved by the Division of Motor Carriers.

(4) A TNC shall collect and maintain information on the vehicles being used to provide service by TNC drivers including:

- (a) The VIN and license plate number; and
- (b) Records of official vehicle inspections by the automotive technician.

(5) Records of vehicle inspection and VIN and license plate numbers shall be kept by the TNC for a minimum of three (3) years from the date of inspection and the TNC shall make the records available to the department or its representative on request. The information and records may be submitted as personal or proprietary information pursuant to KRS 61.878(1)(c)1 and 61.931(6).

(6) A vehicle used to provide TNC services shall be readily identifiable by the following:

- (a) A decal affixed to the front windshield on the passenger side of the vehicle provided by the department to the TNC to distribute to qualified vehicles;
- (b) An optional decal or trade dress that is company specific and issued by the TNC; and
- (c) A vehicle fee receipt card that shall be presented on inspection.

(7) A driver who is no longer providing TNC service shall return the department issued decal and the vehicle fee receipt card to the TNC who shall return it to the Division of Motor Carriers.

(8) A TNC shall ensure that the vehicles used by drivers to provide TNC services shall:

- (a) Have at least four (4) doors;
- (b) Be designed to carry no more than eight (8) persons including the driver; and
- (c) Be no more than ten (10) model years old with an odometer reading of less than 200,000 miles.

Section 6. TNC Drivers. (1) A TNC shall require each driver to undergo a national criminal background check before providing TNC services pursuant to KRS 281.6301.

(2) The TNC shall certify the criminal background check during the application process established in Section 2 of this administrative regulation. The national criminal background check shall be either:

- (a) A comprehensive background check using fingerprint analysis; or
  - (b) An individual analysis using a social security number.
- (3) The analysis required in subsection (1) of this section shall be conducted by a business or firm engaged in determining criminal background history.

(4) A TNC shall also require that each TNC driver:

- (a) Is at least twenty-one (21) years old;
- (b) Is the owner or lessee of the TNC vehicle or has a statement from the registered owner authorizing the use of the vehicle for TNC services pursuant to KRS 281.631;
- (c) Is listed as an insured of the TNC vehicle;
- (d) Has a valid state-issued driver's license and vehicle registration;
- (e) Has personal automobile insurance coverage as established in Section 3 of this administrative regulation;
- (f) Has completed an annual driver safety training course approved by the department;
- (g) Provides a written or electronic affirmation that he or she is fit and able to operate a motor vehicle to provide TNC services; and
- (h) Is in compliance with applicable state law and local ordinances.

(5) A current list of drivers shall be kept on file with the TNC and made available for inspection by the department on request. A TNC driver's electronic file shall include the following:

- (a) A current driving history record to be updated annually;

- (b) The current address of the driver;
- (c) A copy of a valid state-issued driver's license and the operator's license number;
- (d) Proof of his or her personal automobile insurance coverage;
- (e) Proof of personal vehicle registration;
- (f) Proof of the written or electronic affirmation that a TNC driver is fit and able to operate a motor vehicle to provide TNC services;
- (g) Verification of the criminal background check required in subsection (1) of this section;
- (h) Records indicating whether a driver has refused to accept a prearranged ride and the reason for doing so; and
- (i) Records of complaints against a driver.

Section 7. Passenger Service. (1) A TNC shall adopt a policy of non-discrimination based on the following:

- (a) Destination;
- (b) Race or color;
- (c) National origin;
- (e) Religious belief or affiliation;
- (f) Sex and sexual orientation or identity;
- (g) Disability;
- (h) Age; and
- (i) The presence of a passenger's service animal.

(2) A TNC shall notify TNC drivers of the adopted policy of non-discrimination established in subsection (1) of this section.

(3) After acceptance, a TNC driver may refuse to transport a passenger who is acting in an unlawful, disorderly, or endangering manner but shall comply with the non-discriminatory policy in subsection (1) of this section. A driver may also refuse to transport a passenger with a service animal if the driver has a documented medical allergy.

(4) A TNC driver shall not transport a passenger under the age of fourteen (14) unless accompanied by a person over the age of eighteen (18).

(5) A TNC shall establish policies regarding TNC driver behavior that shall include the following prohibitions:

- (a) Being under the influence of alcohol or another substance or combination of substances that impair the driving ability while providing TNC services;
- (b) Accepting a street hail by a potential rider;
- (c) Directly soliciting a passenger or responding to a direct solicitation; and
- (d) Providing services for cash.

(6) A driver shall immediately report the following to the driver's affiliated TNC:

- (a) A refusal to transport a passenger and the reasons for the refusal within forty-eight (48) hours after the refusal where the refusal occurred after the ride had been accepted by the driver;
- (b) Information regarding a driving citation, incident, or accident within twenty-four (24) hours after the event; or
- (c) Information regarding a conviction within twenty-four (24) hours.

(7) A TNC shall provide the following information to the public on its Web site and mobile device application software:

- (a) A schedule of its rates or the method used to calculate rates and peak pricing; and
- (b) Information indicating a zero tolerance policy related to drug and alcohol usage by its drivers while performing TNC services and a passenger support telephone number or email address where a suspected violation may be immediately reported.

(8) A TNC shall provide the following information to a person requesting a ride through its mobile application:

- (a) The expected cost of the trip if requested by a potential passenger;
- (b) The first name and a photograph of the TNC driver accepting the ride request; and
- (c) A photograph or description, including license plate number, of the vehicle that will be used for the ride.

(9) At the completion of the prearranged ride, a TNC shall electronically provide the passenger with a receipt showing:

- (a) The point of origin and destination of the ride;

- (b) The duration and distance of the ride;
  - (c) The cost of the ride broken down into base fare and additional charges; and
  - (d) The driver's first name.
- (10) Hours of service for a TNC driver shall be the same as established in KRS 281.730(1).

Section 8. Terms of Service. (1) The TNC shall not require a hold harmless or indemnification clause in the terms of service for a TNC driver or passenger that may be used to evade the insurance requirements of this administrative regulation and KRS Chapter 281.

(2) A TNC shall not disclose to a third party the personally identifiable information of a user of the TNC's mobile application unless:

- (a) The TNC obtains the user's consent to disclose personally identifiable information;
- (b) The disclosure is required to comply with a legal obligation; or
- (c) The disclosure is required to protect or defend the terms of use of the service or to investigate violations of the terms of use.

(3) A TNC may disclose a passenger's name and telephone number to the TNC driver in order to facilitate correct identification of the passenger by the driver, or to facilitate communication between the passenger and the driver.

Section 9. Penalties. (1) A TNC that operates in violation of the requirements of this administrative regulation shall be fined \$200 pursuant to KRS 281.990(1).

(2) A TNC that operates in violation of the terms of its certificate or permit or operates without a valid permit shall be fined \$500 per occurrence pursuant to KRS 281.990(2).

(3) A TNC that fails to produce requested records and information pursuant to KRS 281.820 within forty-eight (48) hours of the request by the department shall be fined \$200.

(4) A TNC shall be responsible for an affiliated TNC driver's failure to comply with this administrative regulation if the driver's violation has been previously reported to the TNC in writing and the TNC has failed to take action within ten (10) days of the report.

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

- (a) "Transportation Network Company Authority Application," TC 95-627, November, 2014; and
- (b) "Motor Carrier Passenger Certificate, Vehicle Qualification and Renewal Application," TC 95-605, May, 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Vehicle Regulation, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be obtained by accessing the department's Web site at <http://transportation.ky.gov/>.

MICHAEL W. HANCOCK, P. E., Secretary

RODNEY KUHLE, Commissioner

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: June 30, 2015

FILED WITH LRC: July 8, 2015 at noon

CONTACT PERSON: D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for a transportation network company to operate in the state of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to address the growing use

of online mobile applications to connect riders with vehicles for hire.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 281.600 authorizes the cabinet to promulgate administrative regulations to establish requirements for the safe operation of motor vehicles and motor carriers. KRS 281.630 authorizes the department to establish the requirements for a transportation network company to apply for authority to operate in Kentucky. KRS 281.655 requires the department to set standards for pre-trip acceptance liability policies and prearranged ride liability insurance policies for transportation network company vehicles.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the regulatory requirements for the safe operation of a transportation network company.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: 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 companies desiring to operate as a transportation network company and the cabinet's Division of Motor Carriers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A business desiring to operating as a transportation network company will be required to submit an application and attachments to the department; ensure that a criminal background check is performed for each driver; ensure that a vehicle safety check has been performed on vehicles used to transport the public; and maintain up to date files on drivers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A transportation network company applying to operate in Kentucky will submit a fee pursuant to KRS 281.630.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If compliant with the requirements of this regulation, businesses desiring to operate as transportation network companies will be granted operating authority.

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

(a) Initially: Approximately \$7,500

(b) On a continuing basis: Approximately \$1,000 annually

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: road funds

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Fees shall be pursuant to statute.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees shall be pursuant to statute.

(9) TIERING: Is tiering applied? No. Tiering is not applied. All TNC applications for operating authority will be handled 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? KYTC Division of Motor Carriers, Department of Vehicle Regulation

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 281.600, 281.630, 281.655

(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. Initial programming fees of approximately \$7,500 will affect the expenditures and revenue of the Division of Motor Carriers at KYTC.

(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 may generate approximate \$9,000 annually. The amount is dependent on the number of TNC vehicles qualified under the 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? This administrative regulation is not expected to generate revenue.

(c) How much will it cost to administer this program for the first year? Approximately \$7,500.

(d) How much will it cost to administer this program for subsequent years? Approximately \$1,000.

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 804 KAR 4:015E

This emergency administrative regulation is being promulgated to comply with KRS 243.110 as it relates to incompatibility of licenses. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a)(3) 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)(3) compromises the department's ability to comply with the provisions of KRS 243.110 on the date that the Act becomes effective as law (June 24, 2015), thereby interfering with the board's ability to act quickly in its efforts to address any incompatible license types before the next renewal date following the change in statute. 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  
FREDERICK A. HIGDON, Commissioner  
AMBROSE WILSON IV, Secretary

#### PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (Emergency Amendment)

**804 KAR 4:015E. Interlocking substantial interest between licensees prohibited.**

RELATES TO: KRS 243.030, 243.040, 243.110, 244.240, 244.590

STATUTORY AUTHORITY: KRS 241.060

EFFECTIVE: June 23, 2015

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. The control of alcoholic beverages in the Commonwealth of Kentucky, as codified in Chapters 241 - 244 of the Kentucky Revised Statutes, has been established by the Kentucky legislature as a "three tiered" system. The three (3) tiers of this system are designated as manufacturer/producer[producer], wholesaler[wholesale]/distributor, and retailer[retail]. Each of these three (3) levels operates[operate] separately and apart from each other for the purpose of control. In order for this control to be

effectively administered by this board, it is necessary to prevent any type of interlocking substantial interest by and among[between] the three (3) separate levels. The purpose of this administrative regulation is to describe[clarify ~~the~~] interlocking substantial interests which will be prohibited by this board.

Section 1. Definitions. As used in this administrative regulation unless otherwise specified: (1) "Manufacturer" means any person who is a distiller, rectifier, blender, winery, brewer, or who produces alcoholic beverages. [Manufacturers include distillers, rectifiers, blenders, wineries, and brewers] whether located within or without this state.

(2) "Retailer" means any person who sells alcoholic beverages at retail, whether located within or without this state, excepting manufacturers with limited retail privileges.

(3) "Substantial interest" means:

(a) A direct or indirect ownership interest in, or membership in, a business, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or other legal entity, which amounts to five (5) percent or greater of the total ownership or membership interests;

(b) A common officer, director, or manager in a business, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or other legal entity;

(c) A common owner, partner, or member, including an immediate family member, the aggregate share of which is five (5) percent or greater of the total ownership of, or membership in, a business, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or other legal entity; or

(d) Any other direct or indirect interest which provides an ability to control decisions by a business, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or other legal entity.

(4) "Wholesaler" means any person who is a wholesaler, distributor, or who sells alcoholic beverages at wholesale. [Wholesalers include wholesalers of distilled spirits and wine and distributors of malt beverages], located within this state.

Section 2. No manufacturer, or their immediate family members, [of distilled spirits or wine] shall have or acquire a substantial interest [a financial interest, directly or indirectly, by stock ownership, or through interlocking directors in a corporation,] in the establishment, maintenance, or operation of [in] the business of a [liquor and wine] wholesaler or a retailer. No manufacturer, or their immediate family members, shall have or acquire, by ownership, leasehold, mortgage, or otherwise, directly or indirectly, a financial interest in the premises of a retailer.

Section 3. No [manufacturer or] wholesaler, or their immediate family members, shall have or acquire a substantial interest [a financial interest, directly or indirectly, by stock ownership, or through interlocking directors in a corporation, or otherwise,] in the establishment, maintenance, or operation of [in] the business of a manufacturer or retailer. No [A manufacturer or] wholesaler, or their immediate family members, shall have or [not] acquire, by ownership, leasehold, mortgage, or otherwise, directly or indirectly, a financial interest in the premises of a retailer.

Section 4. No retailer, or their immediate family members, shall have or acquire a substantial interest in the establishment, maintenance, or operation of the business of a manufacturer or wholesaler.

Section 5. The malt beverage administrator and [or] distilled spirits administrator shall [may] examine the ownership and management of new applicants or existing licensees to determine the presence of any substantial [an interlocking] interest herein prohibited prior to issuance or renewal of licenses.

Section 6. [5.] This administrative regulation shall not apply to licenses issued prior to December 1, 1976.



## VOLUME 42, NUMBER 2 – AUGUST 1, 2015

FREDERICK A. HIGDON, Commissioner  
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: June 23, 2015

FILED WITH LRC: June 23, 2015 at 3 p.m.

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 addresses impermissible interlocking interests.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to define impermissible substantial interlocking interests between the various tiers of Kentucky's three-tier alcohol distribution system.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060 authorizes the board to promulgate regulations relating to the supervision and control of the manufacture, sale, transportation, and trafficking of alcoholic beverages, and all other matters over which the board has jurisdiction.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation will assist the board and the licensees with determining what interactions are impermissible as between the tiers.

(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 adds definitions and it also defines what interests are impermissible among the three tiers.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with statutory changes which take effect on June 24, 2015.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment addresses activities that the board is directly authorized to regulate pursuant to KRS 241.060.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist the board and the licensees with determining what interlocking substantial interests are impermissible as between the tiers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees were previously affected by this regulation. The amendments will specifically address interlocking substantial interests that are impermissible between malt beverage producers and distributors.

(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 licensees will have to ensure that they are in compliance with the statutory requirements which pertain to their license in order for their license to be renewed.

(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? There is no expected impact on any unit, part or division of state or local government.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate administrative regulations and KRS 243.110 establishes incompatible license types.

(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.

**STATEMENT OF EMERGENCY  
804 KAR 4:400E**

This emergency administrative regulation is being promulgated to comply with KRS 243.110 as it relates to incompatibility of licenses. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a)(3) 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)(3) compromises the department's ability to comply with the provisions of KRS 243.110 on the date that the Act becomes effective as law (June 25, 2015), thereby interfering with the board's ability to act quickly in its efforts to address any incompatible license types before the next renewal date following the change in statute. 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  
FREDERICK A. HIGDON, Commissioner  
AMBROSE WILSON IV, Secretary

**PUBLIC PROTECTION CABINET  
Department of Alcoholic Beverage Control  
(Emergency Amendment)**

**804 KAR 4:400E. ABC basic application and renewal form incorporated by reference.**

RELATES TO: KRS 164.772, 241.060(1), 243.090, 243.380, 243.390

STATUTORY AUTHORITY: KRS 241.060(1), 243.380, 243.390

EFFECTIVE: June 23, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for and revocation of licenses. KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the license application form. This administrative regulation prescribes the basic forms to be used to apply for and renew an alcoholic beverage license.

Section 1. An applicant for an alcoholic beverage license shall complete and submit to the Department of Alcoholic Beverage Control the Basic Application for Alcoholic Beverage License, with the exception of an applicant for:

(1) A special agent/solicitor license, out-of-state producer/supplier of distilled spirits/wine license, or out-of-state producer/supplier of malt beverage license;

(2) A temporary license; or

(3) An extended hours, supplemental bar, special Sunday, or sampling license.

Section 2. In addition to the Basic Application for Alcoholic Beverage License required by Section 1 of this administrative regulation, an applicant shall complete and submit to the Department of Alcoholic Beverage Control the special application form required by 804 KAR 4:410 if applicable.

Section 3. A licensee who is renewing a license pursuant to KRS 243.090 shall complete and submit to the Department of Alcoholic Beverage Control the Application for License Renewal.

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

(a) "Basic Application for Alcoholic Beverage License", June 2015[September 2014]; and

(b) "Application for License Renewal", June 2015[February 2014].

(2) This material may be inspected, copied, or obtained,

subject to applicable copyright law, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site, <http://www.abc.ky.gov/>.

FREDERICK A. HIGDON, Commissioner  
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: June 23, 2015

FILED WITH LRC: June 23, 2015 at 3 p.m.

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 incorporates the forms the department uses to issue and renew alcoholic beverage licenses.

(b) The necessity of this administrative regulation: This regulation is necessary because the department is required by statute to set forth what information is needed to obtain or renew an alcoholic beverage license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 243.380 and 243.390 require the department to set forth what information is required to obtain or renew a license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation clarifies what information needs to be provided to the department in order to obtain or renew an alcoholic beverage license. By incorporating the application and renewal application, the information that is required to apply for, or renew, an alcoholic beverage license is ascertainable.

(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 replaces the prior renewal form with the current version, which has had questions added to it. The basic application was also amended to add a few additional questions and this amendment will replace the old application with a revised version.

(b) The necessity of the amendment to this administrative regulation: The renewal application needed to be amended to reflect current statutory changes and the amended form needs to be incorporated into the administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 243.380 and 243.390 require the department to set forth what information is required to obtain or renew a license.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation clarifies what information needs to be provided to the department in order to obtain or renew an alcoholic beverage license. By incorporating the application and renewal application, the information that is required to apply for, or renew, an alcoholic beverage license is ascertainable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any person or entity who wishes to obtain or renew an alcoholic beverage license 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: The required actions are no different than the process the licensees and applicants currently follow to obtain or renew an alcoholic beverage license. They will have to complete and submit the application as they are currently required

to do.

(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? The Department of Alcoholic Beverage Control is the only government agency 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. 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.

#### STATEMENT OF EMERGENCY 804 KAR 4:410E

This emergency administrative regulation is being promulgated to comply with KRS 243.884 as it relates to the amount of tax to be charged to microbrewers' sales. This action must be taken on an emergency basis in accordance with KRS 13A.190(1)(a)(3) 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)(3) compromises the department's ability to comply with the provisions of KRS 243.884 on the date that the tax rate becomes effective as law (July 1, 2015), thereby interfering with the department's ability to provide a form with accurate information on it following the change in statute. 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  
FREDERICK A. HIGDON, Commissioner  
AMBROSE WILSON IV, Secretary

#### PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (Emergency Amendment)

#### 804 KAR 4:410E. Special applications and registration forms incorporated by reference.

RELATES TO: KRS 241.060(1)

STATUTORY AUTHORITY: KRS 241.060(1), 243.380, 243.390

EFFECTIVE: July 10, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for licensing. This administrative regulation incorporates by reference special application forms for specific licenses and required registration forms.

Section 1. Special application forms. An applicant applying for an alcoholic beverage license not included in 804 KAR 4:400 shall complete and submit to the Department of Alcoholic Beverage Control the applicable special application form for the specific license type for which the application is made. The special application forms are listed below:

(1) Special Agent/Solicitor, Out-of-State Producer/Supplier of Distilled Spirits/Wine, Out-of-State Producer/Supplier of Malt Beverage Application;

(2) Special Temporary License Application;

(3) Supplemental License Application; or

(4) Distiller's License: Change of License Application.

Section 2. Registration Forms. An applicable licensee shall complete and submit the following registration forms:

(1) Microbrewer's Retail Gross Receipts Report to Distributor to be submitted to the Department of Revenue; or

(2) Product Registration Online to be completed electronically at:

(a)

<https://www.productregistrationonline.com/GetStarted/Ky#selectPermit>;

(b) <https://www.productregistrationonline.com/distributor/login>;

or

(c) <https://www.productregistrationonline.com/producer/login>.

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

(a) "Special Agent/Solicitor, Out-of-State Producer/Supplier of Distilled Spirits/Wine, Out-of-State Producer/Supplier of Malt Beverage Application", September 2014;

(b) "Special Temporary License Application", September 2014;  
 (c) "Supplemental License Application", June 2015[July 2014];  
 (d) "Microbrewer's Retail Gross Receipts Report to Distributor", June 2015[2013];  
 (e) "Product Registration Online", September 2014;[and]  
 (f) "Distiller's License: Change of License Application", July 2014;  
 (g) "Dormancy Request for Quota Retail Licenses", June 2013;  
 (h) "Amendment to Application Authorization Form", July 2014;  
 (i) "ABC Retailer Sampling Request", June 26, 2013;  
 (j) "Request for Minors on Premises", June 2013;  
 (k) "Affidavit of Ownership", June 2013;  
 (l) "Affidavit of Non-Transfer", June 2013;  
 (m) "Notice of Surrender of License(s)", June 2013;  
 (n) "Request to Participate in the Master File Licensing Process";  
 (o) "Application Request for Approval of Partial Transfer of Ownership to my Original Application", June 2013; and  
 (p) "Remittance Form", 3/27/2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site, <http://www.abc.ky.gov>.

FREDERICK A. HIGDON, Commissioner  
 AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: July 10, 2015

FILED WITH LRC: July 10, 2015 at 4 p.m.

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 incorporates by reference special application forms for specific licenses and required registration form.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to notify applicants and licensees of the forms used by the department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060 authorizes the board to promulgate administrative regulations relating to the licensing of alcoholic beverages.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation will assist applicants and licensees in determining which forms the department uses in the alcoholic beverage licensing process.

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

(a) How the amendment will change this existing administrative regulation: The amendment incorporates forms the department uses and specifically changes the tax rate on the Microbrewer's Retail Gross Receipts Report to Distributor.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with statutory changes.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with the tax rate specified in KRS 243.884.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will bring the department's form into compliance with the rate specified in KRS 243.884.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All microbrewery licensees will be

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 licensees will have to complete the Microbrewer's Retail Gross Receipts Report to Distributors form, a process they are already required to complete.

(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): The tax rate is less than it was previously, so the licensees benefit from that tax rate change.

(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? The Department of Alcoholic Beverage Control and the Department of Revenue are expected to be 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 241.060(1) authorizes the board to promulgate administrative regulations and KRS 243.884 sets the tax rate.

(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. This amendment changes the tax rate licensees pay to the Department of Revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The revenue generated is dependent on the sales of the microbrewers.

(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 is dependent on the sales of the microbrewers.

(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 (+/-): This amendment changes the tax rate listed on a form generated by the Department of Alcoholic Beverage Control. The tax amount is set by statute (KRS 243.884) and the tax is paid directly to the Department of Revenue. The amount of revenue generated by the tax is wholly dependent on the sales of the microbrewers and is not likely to be a static number.

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.

**STATEMENT OF EMERGENCY  
902 KAR 20:420E**

This emergency administrative regulation is being promulgated to update 902 KAR 20:420 for compliance with House Bill 329 from the 2015 Session of the General Assembly. This amendment will permit no more than two (2) satellite facilities to open and operate under the license of a pain management facility that is licensed in good standing under this administrative regulation, as well as allow for a transfer of ownership between existing practitioner owners or to a new owner if the new owner is a physician having a full and active license to practice in Kentucky. 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) will compromise the state's ability to update 902 KAR 20:420 for consistency with House Bill 329 on the date that the legislation is effective, June 24, 2015. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation differs from this emergency administrative regulation because the ordinary administrative regulation requires pain management facilities, including satellite facilities, to participate in the Kentucky Health Information Exchange (KHIE). In addition, the ordinary administrative regulation requires all pain management facility employees to submit to a fingerprint-supported national and state criminal background check. The new requirements for participation in KHIE as well as fingerprint-supported criminal background checks have been excluded from this emergency administrative regulation to provide pain management facilities with a sufficient period of time to demonstrate compliance.

STEVEN L. BESHEAR, Governor  
AUDREY TAYSE HAYNES, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES  
Office of Inspector General  
Division of Health Care  
(Emergency Amendment)**

**902 KAR 20:420E. Pain management facilities.**

RELATES TO: KRS 216B.010-216B.131, 216B.990, 218A.175

STATUTORY AUTHORITY: KRS 216B.042, 216B.105, 218A.175

EFFECTIVE: June 25, 2015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. KRS 216B.105 allows the cabinet to deny, revoke, modify, or suspend a license issued by the cabinet if it finds that there has been a substantial failure to comply with the provisions of KRS Chapter 216B or this administrative regulation. KRS 218A.175 imposes a physician-ownership or investment requirement on all pain management facilities except for those health facilities operating as a pain

management facility on April 24, 2012, unless there is an administrative sanction or criminal conviction relating to controlled substances imposed on the facility or any person employed by the facility for an act or omission done within the scope of the facility's license or the person's employment. This administrative regulation establishes the minimum licensure requirements for the operation of a pain management facility that is exempt from the physician-ownership requirement of KRS 218A.175.

Section 1. Definitions. (1) "Adverse action" means action taken by the Cabinet for Health and Family Services, Office of Inspector General to deny, suspend, or revoke a pain management facility's license to operate.

(2) "License" means an authorization issued by the cabinet for the purpose of operating a pain management facility.

(3) "Licensee" means the owner, individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the pain management facility, including a satellite facility, is vested.

(4) "National and State Background Check Program" means an initiative implemented by the cabinet pursuant to 906 KAR 1:190[~~], with available appropriations and funding,~~] for the performance of:

(a) Registry checks; and

(b) Fingerprint-supported criminal background checks performed by the Department of Kentucky State Police and the Federal Bureau of Investigation.

(5) "Pain management facility" or "facility" is defined by KRS 218A.175(1), and includes a satellite facility.

(6) "Satellite facility" means a facility permitted by KRS 218A.175(2)(b) to open and operate under the license of a pain management facility that:

(a) Is licensed under this administrative regulation pursuant to the physician-ownership exemption of KRS 218A.175(2)(a); and

(b) Does not have a pending adverse action.

(7) "Unencumbered license" means a license that has not been restricted by the state professional licensing board due to an administrative sanction or criminal conviction relating to a controlled substance.

Section 2. Satellite Facilities. A satellite facility shall comply with the requirements established by this administrative regulation for parent pain management facilities, including background checks, administration, staffing, equipment, and physical environment.

Section 3. Ownership. (1) A facility licensed pursuant to this administrative regulation shall be immediately disqualified from the physician-ownership exemption of KRS 218A.175, and the cabinet shall revoke the facility's license pursuant to Section 11[40](3) of this administrative regulation if:

(a) An administrative sanction or criminal conviction relating to a controlled substance is imposed on the facility, including a satellite facility, or any person contracted or employed by the facility or satellite facility for an act or omission done within the scope of the facility's licensure or the person's employment; or

(b) A change of ownership occurs, except for a transfer of whole or partial ownership as permitted by KRS 218A.175(2)(b).

(2)(a) A change of ownership shall be deemed to occur if any ownership interest, or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another for an existing facility licensed pursuant to this administrative regulation.

(b) The pain management facility's license shall not be transferred to a new owner, except for a transfer of whole or partial ownership interest in the facility as permitted by KRS 218A.175(2)(b).

Section 4.[3-] Background Checks and Prohibition Against Employment. (1) All owners, operators, and employees, including contract employees of a pain management facility, shall submit to an in-state criminal background check from the Justice and Public Safety Cabinet or Administrative Office of the Courts until each individual is phased into the cabinet's National and State

Background Check Program.

(2) A facility shall not be licensed if owned in part by, contracts with, or employs a physician or prescribing practitioner:

(a) Whose Drug Enforcement Administration number has ever been revoked;

(b) Whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by any jurisdiction;

(c) Who has had any disciplinary limitation placed on his or her license by:

1. The Kentucky Board of Medical Licensure;

2. The Kentucky Board of Nursing;

3. The Kentucky Board of Dentistry;

4. The Kentucky Board of Optometric Examiners;

5. The State Board of Podiatry;

6. Any other board that licenses or regulates a person who is entitled to prescribe or dispense controlled substances to humans; or

7. A licensing board of another state if the disciplinary action resulted from illegal or improper prescribing or dispensing of controlled substances; or

(d) Who has been convicted of or pleaded guilty or nolo contendere to, regardless of adjudication, an offense that constitutes a felony for receipt of illicit and diverted drugs, including a controlled substance listed as Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V in this state or the United States.

(3) In addition to physicians and prescribing practitioners, a facility shall not employ any individual directly, or by contract, who has been convicted of or pleaded guilty or nolo contendere to, regardless of adjudication, a drug-related offense as described in subsection (2)(d) of this section.

Section 5.4. Licensure Application, Fee, and Renewal. (1) A licensee which elects to open and operate no more than two (2) additional satellite facilities~~[An applicant for an initial license as a pain management facility]~~ shall:

(a).] As a condition precedent to adding a satellite facility to the parent pain management facility's license, ensure that the satellite facility is~~[licensure, be]~~ in compliance with this administrative regulation and KRS 218A.175, which may be determined through an on-site inspection of the satellite facility; and

(b) Submit a completed Application for License to Operate a Pain Management Facility prior to opening the satellite facility accompanied by a fee of \$2,000 per each satellite facility.

~~(2) To qualify for licensure under this administrative regulation, a completed Application for License to Operate a Pain Management Facility shall be:~~

~~(a) Submitted to and received by the cabinet no later than close of business, July 20, 2012; and~~

~~(b) Submitted to the cabinet annually thereafter.~~

~~(3) The initial fee for licensure and annual fee for re-licensure as a pain management facility shall be \$2,000, per facility.~~

~~(4)] A license shall:~~

~~(a) Expire one (1) year from the date of issuance; and~~

~~(b) Be renewed if the licensee:~~

~~1. Submits a completed Application for License to Operate a Pain Management Facility accompanied by an annual re-licensure fee of~~[the]~~ \$2,000, plus a fee of \$2,000 per satellite facility~~[annual re-licensure fee]~~; and~~

~~2. Has no pending adverse action.~~

~~(3)] (5)] A pain management facility that does not have a pending adverse action but has failed to renew its license on or before the expiration date shall cease operating the facility unless:~~

~~(a) The items required under subsection (2)] (4)] (b) of this section have been submitted; and~~

~~(b) The Office of Inspector General has provided the facility with a notice granting temporary authority to operate pending completion of the renewal process.~~

Section 6.5. Facility Patients. To determine if the majority of patients of the practitioners at the facility are provided treatment for pain that includes the use of controlled substances, the Office of

Inspector General:

(1) Shall have access to the facility pursuant to KRS 216B.042, including the facility's patient records;

(2) Shall calculate the majority of patients based upon the number of unduplicated patients treated in a one (1) month time period; and

(3) May use data from the Kentucky All Schedule Prescription Electronic Reporting (KASPER) Program to determine if the majority of the patients of the facility's practitioners are prescribed controlled substances.

Section 7.6.] Administration Requirements for Parent and Satellite Pain Management Facilities. (1) A~~[pain management]~~ facility shall be located in a fixed site.

(2) Each~~[pain management]~~ facility shall:

~~(a) Be licensed separately regardless of whether the facility is operated under the same business name or management as another facility; and~~

~~(b)] post the license conspicuously in a public area of the facility.~~

(3) Licensee.

(a) The licensee shall be legally responsible for:

1. All activities within the~~[pain management]~~ facility, including the actions of the physicians and prescribing practitioners; and

2. Compliance with federal, state, and local laws and regulations pertaining to the operation of the facility, including the Drug Abuse Prevention and Control Act (21 U.S.C. 801 et. seq.) and KRS Chapter 218A.

(b) The licensee shall establish lines of authority and designate an administrator who:

1. May serve in a dual role as the facility's medical director; and

2. Shall be principally responsible for the daily operation of the facility.

(4) Policies. The facility shall establish and follow written administrative policies covering all aspects of operation, including:

(a) A description of organizational structure, staffing, and allocation of responsibility and accountability;

(b) A description of linkages with inpatient facilities and other providers;

(c) Policies and procedures for the guidance and control of personnel performances;

(d) A written program narrative describing in detail each service offered, methods and protocols for service delivery, qualifications of personnel involved in the delivery of the services, and goals of each service;

(e) A description of the administrative and patient care records and reports;

(f) Procedures to be followed if the facility performs any functions related to the storage, handling, and administration of drugs and biologicals; and

(g) Procedures for compliance with KRS 218A.175(4).

(5) Referral. If an individual seeks or is in need of care and treatment beyond the scope of services offered by the~~[pain management]~~ facility, the facility:

(a) Shall immediately advise the individual that he or she should seek services elsewhere; and

(b) May make a referral on behalf of the individual.

(6) Personnel.

(a) Prescribers. Each prescriber employed or contracted by a~~[pain management]~~ facility shall be board certified and have a full, active, and unencumbered license to practice in the commonwealth issued under KRS Chapter 311 or 314.

(b) Medical director.

1. The facility's medical director shall:

a. Be responsible for complying with all requirements related to the licensure and operation of the facility;

b. Be physically present practicing medicine in the facility for at least fifty (50) percent of the time that patients are present in the facility;~~[and]~~

c. Be board certified and have a full, active, and unencumbered license to practice medicine in the commonwealth issued under KRS Chapter 311; and

d. Not be permitted to serve in a dual role as the medical director of both the parent facility and a satellite facility.

(c) Medical director's qualifications. The facility's medical director shall ~~[- 4.]~~ meet one (1) of the requirements established in KRS 218A.175(3)(a) through (e) ~~[- or~~

2. ~~Be an owner of or practice in the specific facility applying for licensure as a pain management facility and who:~~

a. ~~Has completed an accredited residency which included a component in the practice of pain management;~~

b. ~~Is eligible for and has provided the Kentucky Board of Medical Licensure and the Office of Inspector General with written verification that the facility's medical director has registered to complete the certification examination offered by the American Board of Pain Medicine or the American Board of Interventional Pain Physicians in April 2013; and~~

c. ~~Becomes certified by the American Board of Pain Medicine or by the American Board of Interventional Pain Physicians by September 1, 2013. If the physician fails the certification examination or fails to become certified by the American Board of Pain Medicine or the American Board of Interventional Pain Physicians by September 1, 2013, the physician shall meet one (1) of the requirements established in KRS 218A.175(3) to continue to be qualified as the facility's medical director].~~

(d) Within ten (10) calendar ~~[-(40)]~~ days after termination of the medical director, the facility shall notify the cabinet of the identity of the individual designated as medical director, including the identity of any interim medical director until a permanent director is secured for the facility.

(e) The facility's medical director shall sign and submit the Pain Management Facility Data Reporting Form to the cabinet within thirty (30) calendar days of the quarter ending March 31, June 30, September 30, and December 31 of each year. The medical director shall document the following on the Pain Management Facility Data Reporting Form:

1. The number of new and repeat patients seen and treated at the facility who are prescribed controlled substance medications for the treatment of chronic, nonmalignant pain;

2. The number of patients discharged due to drug abuse;

3. The number of patients discharged due to drug diversion; and

4. The number of patients treated at the facility whose domicile is located somewhere other than in Kentucky. A patient's domicile shall be the patient's fixed or permanent home to which he or she intends to return even though he or she may temporarily reside elsewhere.

(f) The medical director shall, within ten (10) days after the facility hires a prescriber of controlled substances or ten (10) days after termination of a prescriber of controlled substances, notify the cabinet in writing and report the name of the prescriber.

(7) Staffing. At least one (1) physician and one (1) practical nurse, licensed practical nurse, or registered nurse shall be on duty in the facility during all hours the facility is operational.

(8) Job descriptions. There shall be a written job description for each position which shall be reviewed and revised as necessary.

(9) Personnel records. Current personnel records shall be maintained for each employee and include the following:

(a) Name, address, and social security number;

(b) Evidence of current certification or licensure of personnel;

(c) Records of training and experience;

(d) Records of each performance evaluation; and

(e) Annual verification of certification or licensure.

(10) In-service training.

(a) All personnel shall participate in orientation and annual in-service training programs relating to their respective job activities.

(b) All licensed prescribers in a ~~[- pain management]~~ facility shall comply with the professional standards established by their respective licensing boards for the completion of continuing professional education. Each licensed physician who prescribes or dispenses a controlled substance to a patient in the facility as part of his or her employment agreement with the facility shall successfully complete a minimum of ten (10) hours of Category I continuing medical education in pain management during each registration period throughout his or her employment agreement

with the facility.

(11) Quality assurance program.

(a) Each ~~[- pain management]~~ facility shall have an ongoing quality assurance program that:

1. Monitors and evaluates the quality and appropriateness of patient care;

2. Evaluates methods to improve patient care;

3. Identifies and corrects deficiencies within the facility;

4. Alerts the designated physician or prescribing practitioner to identify and resolve recurring problems; and

5. Provides for opportunities to improve the facility's performance and to enhance and improve the quality of care provided to the public.

(b) The medical director shall establish a quality assurance program that includes the following components:

1. The identification, investigation, and analysis of the frequency and causes of adverse incidents to patients;

2. The identification of trends or patterns of incidents;

3. The development and implementation of measures to correct, reduce, minimize, or eliminate the risk of adverse incidents to patients; and

4. The documentation of these functions and periodic review no less than quarterly of this information by the designated physician or prescribing practitioner.

(12) Medical records. Each ~~[- pain management]~~ facility shall maintain accurate, readily accessible, and complete medical records that conform to the professional standards established by the respective licensing board for prescribers of controlled substances in the facility.

(13) Professional standards for prescribing and dispensing controlled substances.

(a) Each licensed prescriber in a ~~[- pain management]~~ facility shall comply with the professional standards relating to the prescribing and dispensing of controlled substances established by the respective professional licensing board.

(b) A representative from the Office of Inspector General shall review facility records, including the facility's patient records, to verify facility compliance with administrative regulations promulgated by professional licensing boards pursuant to KRS 218A.205 which establish standards for licensees authorized to prescribe or dispense controlled substances.

Section 8 ~~[- 7.]~~ Equipment. Equipment used for direct patient care by a ~~[- pain management]~~ facility shall comply with the requirements established in this section. (1) The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative and properly calibrated.

(2) All personnel engaged in the operation of diagnostic equipment shall have adequate training and be currently licensed, registered, or certified in accordance with applicable state statutes and administrative regulations.

(3) A written plan shall be developed and maintained to provide for training of personnel in the safe and proper usage of the equipment.

Section 9 ~~[- 8.]~~ Physical Environment. (1) Accessibility. The facility shall meet requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

(2) Fire safety. A ~~[- new]~~ ~~[- An initial]~~ license to operate a ~~[- satellite]~~ ~~[- pain management]~~ facility or a new license to operate a facility upon approval of a change of location shall not be issued before the facility obtains approval from the State Fire Marshal's office for the satellite facility or new location.

(3) Physical location and overall environment.

(a) The facility shall:

1. Comply with building codes, ordinances, and administrative regulations which are enforced by city, county, or state jurisdictions;

2. Display a sign that can be viewed by the public that contains the facility name, hours of operation, and a street address;

3. Have a publicly listed telephone number and a dedicated

phone number to send and receive faxes with a fax machine that shall be operational twenty-four (24) hours per day;

4. Have a reception and waiting area;
5. Provide a restroom;
6. Have an administrative area, including room for storage of medical records, supplies, and equipment;
7. Have private patient examination rooms;
8. Have treatment rooms, if treatment is being provided to the patients; and

9. Display a printed sign located in a conspicuous place in the waiting room viewable by the public with the name and contact information of the facility's medical director and the names of all physicians and prescribers practicing in the facility.

(b) The condition of the physical location and the overall environment shall be maintained in such a manner that the safety and well-being of patients, personnel, and visitors are assured.

(4) Housekeeping and maintenance services.

(a) The facility shall maintain a clean and safe facility free of unpleasant odors.

(b) Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans, and other sources.

(c)1. The facility shall provide a hand washing facility in each exam room with:

- a. Hot and cold water and blade type operating handles;
- b. Knee or foot controls; or
- c. Motion activated technology.

2. A soap dispenser, disposable towels or electronic hand dryers, and a waste receptacle shall be provided at each hand washing sink.

(d) The premises shall be well kept and in good repair. Requirements shall include:

1. The facility shall ensure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences are in good repair;

2. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing, and electrical fixtures shall be in good repair. Windows and doors which can be opened for ventilation shall be screened;

3. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly; and

4. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(5) The facility shall develop written infection control policies that are consistent with Centers for Disease Control guidelines and include:

(a) Prevention of disease transmission to and from patients, visitors, and employees, including:

1. Universal blood and body fluid precautions;
2. Precautions against airborne transmittal of infections;
3. Work restrictions for employees with infectious diseases;

and

4. Cleaning, disinfection, and sterilization methods used for equipment and the environment.

(b) The facility shall provide in-service education programs annually on the cause, effect, transmission, prevention, and elimination of infections.

(6) Hazardous cleaning solutions, compounds, and substances shall be:

- (a) Labeled;
- (b) Stored in closed metal containers;
- (c) Kept separate from other cleaning materials; and
- (d) Kept in a locked storage area apart from the exam room.

(7) The facility shall be kept free from insects and rodents, and their nesting places.

(8) Garbage and trash:

- (a) Shall be removed from the premises regularly; and
- (b) Containers shall be cleaned daily.

(9) A facility shall establish and maintain a written policy for the

handling and disposal of wastes, including any infectious, pathological, or contaminated wastes, which shall include the requirements established in this subsection.

(a) Sharp wastes shall be segregated from other wastes and placed in puncture-resistant containers immediately after use.

(b) A needle or other contaminated sharp shall not be recapped, purposely bent, broken, or otherwise manipulated by hand as a means of disposal, except as permitted by the Centers for Disease Control and the Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).

(c) A sharp waste container shall be incinerated on or off-site or rendered nonhazardous.

(d) Any nondisposable sharps shall be placed in a hard walled container for transport to a processing area for decontamination.

(10)(a) Disposable waste shall be:

1. Placed in a suitable bag or closed container so as to prevent leakage or spillage; and

2. Handled, stored, and disposed of in such a way as to minimize direct exposure of personnel or patients to waste materials.

(b) The facility shall establish specific written policies regarding handling and disposal of waste material.

Section 10.[9-] Inspections. (1) The cabinet shall conduct unannounced inspections of the pain management facility no less than annually, including a review of the patient records, to ensure that the facility complies with the provisions of this administrative regulation and KRS 218A.175.

(2) A representative from the Office of Inspector General shall have access to the facility and the facility's records pursuant to KRS 216B.042.

(3) Violations.

(a) The Office of Inspector General shall notify the pain management facility in writing of a regulatory violation identified during an inspection.

(b) The facility shall submit to the Office of Inspector General, within ten (10) days of the notice, a written plan for the correction of the regulatory violation.

1. The plan shall be signed by the facility's administrator, the licensee, or the medical director and shall specify:

- a. The date by which the violation shall be corrected;
- b. The specific measures utilized to correct the violation; and
- c. The specific measures utilized to ensure the violation will not recur.

2. The Office of Inspector General shall review the plan and notify the facility of the decision to:

- a. Accept the plan;
- b. Not accept the plan; or
- c. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2).

3. The notice specified in subparagraph 2.b. of this paragraph shall:

- a. State the specific reasons the plan is unacceptable; and
- b. Require an amended plan of correction within ten (10) days of receipt of the notice.

4. The Office of Inspector General shall review the amended plan of correction and notify the facility in writing of the decision to:

- a. Accept the plan;
- b. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2); or
- c. Require the facility to submit an acceptable plan of correction.

5. A facility that fails to submit an acceptable amended plan of correction shall be notified that the license shall be denied, suspended, or revoked in accordance with KRS 216B.105(2).

(4) Complaints. An unannounced inspection shall be conducted:

(a) In response to a credible, relevant complaint or allegation; and

(b) According to procedures established in this section.

Section 11.[10-] Denial and Revocation. (1) The cabinet shall deny an Application for License to Operate a Pain Management



Facility at the time of annual renewal or the addition of a satellite facility ~~received~~ if:

(a) ~~The initial application is received by the cabinet after close of business on July 20, 2012;~~

(b) The facility fails to comply with Section 4[3](2) through (3), or 7[6](6) of this administrative regulation;

(b) ~~(e)~~ Any person with ownership interest in the facility has had previous ownership interest in a health care facility which had its license revoked or voluntarily relinquished its license as the result of an investigation or pending disciplinary action;

(c) ~~(d)~~ An administrative sanction or criminal conviction relating to controlled substances has been imposed on the facility or any person employed by the facility for an act or omission done within the scope of the facility's license or the person's employment; or

(d) ~~(e)~~ The facility fails ~~after the initial inspection~~ to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by Section 10[9](3) of this administrative regulation.

(2) If during ~~the initial~~ inspection of the pain management facility the cabinet has probable cause to believe that a physician or other prescriber practicing at the facility may be engaged in the improper, inappropriate, or illegal prescribing or dispensing of a controlled substance, the cabinet shall:

(a) Refer the physician or other prescriber practicing at the pain management facility to the appropriate professional licensing board and appropriate law enforcement agency; and

(b) Suspend a facility's ~~Withhold issuing a~~ license ~~to the facility~~ pending resolution of any investigation into the matter by a licensing board or law enforcement agency, and resolution of the appeals process if applicable.

(3) The cabinet shall revoke a license if it finds that:

(a) In accordance with KRS 216B.105(2), there has been a substantial failure by the facility, or its satellite facility, to comply with the provisions of this administrative regulation;

(b) An administrative sanction or criminal conviction relating to controlled substances is imposed on the facility or any person employed by the facility for an act or omission done within the scope of the facility's license or the person's employment;

(c) A change of ownership has occurred, except for a transfer of whole or partial ownership as permitted by KRS 218A.175(2)(b);

(d) The facility fails to accept private health insurance as one (1) of the facility's allowable forms of payment for goods or services provided, or the facility fails to accept payment for services rendered or goods provided only from the patient or the patient's insurer, guarantor, spouse, parent, guardian, or legal custodian;

(e) The facility fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by Section 10(3)[9(3)] of this administrative regulation; or

(f) The facility fails to comply with Section 4[3](2) through (3), 7[6](6)(a), (b), or (c), or 7[6](7) of this administrative regulation.

(4) The denial or revocation of a facility's license shall be mailed to the applicant or licensee, by certified mail, return receipt requested, or by personal service. Notice of the denial or revocation shall set forth the particular reasons for the action.

(5) The denial or revocation shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee, within the thirty (30) day period, files a request in writing for a hearing with the cabinet.

(6) Emergency action to suspend a license.

(a) The cabinet shall take emergency action to suspend a pain management facility's license if the cabinet has probable cause to believe that:

1. The continued operation of the facility would constitute a danger to the health, welfare, or safety of the facility's patients or of the general public; or

2. A physician or other prescriber practicing at the facility may be engaged in the improper, inappropriate, or illegal prescribing or dispensing of a controlled substance.

(b)1. The pain management facility shall cease operating immediately on the date the facility is served with the notice of

emergency suspension.

2. Notice of the emergency suspension shall set forth the particular reasons for the action.

(c) If the cabinet issues an emergency suspension of the facility's license pursuant to paragraph (a)2 of this subsection, the cabinet shall refer the physician or other prescriber practicing at the pain management facility to the appropriate professional licensing board and appropriate law enforcement agency.

(7) Notice of an emergency suspension shall be served on the facility by certified mail, return receipt requested, or by personal service.

(8)(a) Any facility required to comply with an emergency suspension issued under subsection (6) of this section may submit a written request for an emergency hearing within five (5) calendar days of receipt of the notice to determine the propriety of the suspension.

(b) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing.

(c) Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the emergency suspension.

(d) The emergency suspension shall be affirmed if there is substantial evidence of an immediate danger to the public health, safety, or welfare.

(9) The decision rendered under subsection (8) of this section shall be a final order of the agency on the matter, and any party aggrieved by the decision may appeal to circuit court.

(10) If the cabinet issues an emergency suspension, the cabinet shall take action to revoke the facility's license pursuant to subsection (3) of this section if:

(a) The facility fails to submit a written request for an emergency hearing within five (5) calendar days of receipt of notice of the emergency suspension;

(b) The decision rendered under subsection (8) of this section affirms that there is substantial evidence of an immediate danger to the public health, safety, or welfare; or

(c) Referral to a professional licensing board and law enforcement agency in accordance with subsection (6)(c) of this section results in an administrative sanction or criminal conviction relating to controlled substances against a physician or prescribing practitioner employed by, or under contract with, the facility.

(11) Pursuant to KRS 216B.050, the cabinet may compel obedience to its lawful orders.

Section 12[14-] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) OIG 20:240, "Application for License to Operate a Pain Management Facility", July 2015 ~~June 2012~~ edition; and

(b) OIG 20:240-1, "Pain Management Facility Data Reporting Form", June 2012 edition.

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

MARYELLEN B. MYNEAR, Inspector General

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 25, 2015 at noon

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for the licensure of pain management facilities that are exempt from the physician ownership or investment requirements of KRS 218A.175.

(b) The necessity of this administrative regulation: This

administrative regulation is necessary to establish the licensure requirements for the operation of pain management facilities that are exempt from the physician ownership or investment requirements of KRS 218A.175.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities. This administrative regulation also conforms to KRS 218A.175, which provides for an exemption from the physician ownership or investment requirement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by setting forth the cabinet's licensure requirements for pain management facilities.

(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: In accordance with the passage of HB 329 from the 2015 Session of the General Assembly, this amendment will permit no more than two (2) satellite facilities to open and operate under the license of a pain management facility that is licensed in good standing under this administrative regulation, as well as allow for a transfer of ownership between existing practitioner owners or to a new owner if the new owner is a physician having a full and active license to practice in Kentucky. This amendment also requires all satellite facilities to comply with the requirements established by this administrative regulation for parent pain management facilities, including background checks, administration, staffing, equipment, and physical environment. This amendment further establishes a fee of \$2,000 for each satellite facility and removes obsolete language which had previously allowed a facility's medical director to become certified by the American Board of Pain Medicine or American Board of Interventional Pain Physicians by September 1, 2013.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure consistency with the passage of HB 329 from the 2015 Session of the General Assembly.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 218A.175(2)(b).

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by updating this administrative regulation for consistency with the passage of HB 329, thereby allowing for the operation of no more than two (2) satellite facilities by a pain management facility that is licensed in good standing under this administrative regulation, as well as permitting a transfer of ownership to occur between existing practitioner owners or to a new owner if the new owner is a physician having a full and active license to practice in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation affects the five (5) pain management facilities licensed under 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: Pain management facilities exempt from the physician-ownership requirement of KRS 218A.175 are required to comply with the licensure standards established in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The initial and annual fee for licensure as a pain management facility is \$2,000. In addition, the fee for operating a satellite facility is \$2,000 per satellite.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An entity that is exempt from the physician-ownership requirement of KRS 218A.175(2)(a) and which demonstrates compliance with this administrative regulation may continue operating as a pain management facility.

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

(a) Initially: The cost of implementing this administrative regulation is absorbable because the licensure fee covers the cost of regulating pain management facilities, including initial and annual surveys conducted by at least one (1) nurse consultant inspector and one (1) pharmacist consultant, investigation of complaints, processing applications, supervisory review, travel costs, and other indirect costs.

(b) On a continuing basis: The cost of implementing this administrative regulation is absorbable as the licensure fee covers the cost of regulating pain management facilities on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation is from licensure fees collected from licensed pain management facilities and state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees. However, a fee of \$2,000 is established per each satellite facility added to the pain management facility's license, not to exceed two satellites.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: See response to question 7.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities 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 relates to the licensure of pain management facilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042 and KRS 218A.175

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The cabinet collects an annual licensure fee of \$2,000 from the five (5) pain management facilities licensed under 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? The cabinet collects an annual licensure fee of \$2,000 from the five (5) pain management facilities licensed under this administrative regulation

(c) How much will it cost to administer this program for the first year? The cost of implementing this administrative regulation is absorbable.

(d) How much will it cost to administer this program for subsequent years? The cost of implementing this administrative regulation is absorbable.

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

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

**STATEMENT OF EMERGENCY**  
**921 KAR 3:090E**

This emergency administrative regulation is necessary to adjust the monthly benefit amounts for the Simplified Assistance for the Elderly Program (SAFE). SAFE is a demonstration project approved by the United States Department of Agriculture, Food and Nutrition Service (FNS). It is designed to improve access and delivery of benefits and increase participation of elderly Supplemental Security Income (SSI) recipients in the Supplemental Nutrition Assistance Program (SNAP), the food benefit program for low-income households. SAFE must be cost neutral in relation to the regular SNAP. During the most recent evaluation of the project, SAFE was found to no longer be cost neutral. Adjustments in the monthly benefits amounts are necessary to comply with federal mandates governing the demonstration project, avoid detrimental financial consequences for the state administering agency or federal discontinuation of SAFE, and continue to meet health and welfare needs of the elderly and disabled served through SAFE. An ordinary administrative regulation would not allow the agency to meet the federally required implementation date of July 1, 2015. The ordinary administrative regulation is not identical to the emergency administrative regulation. The ordinary administrative regulation includes additional revisions to incorporated materials for consistency and congruency with the new eligibility and enrollment system to be used by SAFE and other public assistance programs starting in late calendar year 2015. This emergency administrative regulation shall be replaced by an ordinary 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 3:090E. Simplified assistance for the elderly program or "SAFE".**

RELATES TO: 7 C.F.R. 273.1, 273.2, 273.9, 273.10, 273.12, 273.14

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4  
EFFECTIVE: July 2, 2015

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 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 delegates the administration of the Supplemental Nutrition Assistance Program (SNAP) to the state agency. This administrative regulation establishes requirements for the Simplified Assistance for the Elderly Program (SAFE), a demonstration project administered by the cabinet to improve access to SNAP for elderly and disabled individuals.

Section 1. Definitions. (1) "Regular SNAP benefits" means SNAP benefits received in accordance with the procedures specified in:

- (a) 921 KAR 3:020, Financial Requirements;
  - (b) 921 KAR 3:025, Technical Requirements;
  - (c) 921 KAR 3:030, Application Process; and
  - (d) 921 KAR 3:035, Certification Process.
- (2) "Shelter costs" means monthly rent or mortgage expenses

as stated by the applicant.

(3) "Simplified Assistance for the Elderly" or "SAFE" means an optional SNAP program for SSI participants who are age sixty (60) or older.

(4) "State Data Exchange" or "SDX" means files administered by the Social Security Administration that provide states with eligibility and demographic data relating to SSI applicants and participants.

Section 2. SAFE Program Procedures. Unless a different procedure or process for a SNAP requirement is specified in this administrative regulation, all SNAP requirements specified in 921 KAR Chapter 3 shall apply to SAFE, including the process for:

- (1) A fair hearing;
- (2) An administrative disqualification hearing;
- (3) An appeal;
- (4) A disqualification;
- (5) A claim and collection of a claim; and
- (6) EBT issuance.

Section 3. Eligibility for SAFE. (1) An individual may qualify for SAFE benefits if the individual:

- (a) Is a Kentucky resident;
- (b) Is:
  1. A current SSI recipient; or
  2. SSI eligible, but SSI benefits are currently suspended;
- (c) Is age sixty (60) or older;
- (d) Is not institutionalized;
- (e) Is:
  1. Single, widowed, divorced, or separated; or
  2. Married and living with a spouse who meets the criteria specified in (a) through (f) of this subsection; and

(f) Purchases and prepares food separately from another individual who shares the same residence, but is not a member of the applicant's household as defined in 921 KAR 3:010.

(2) The cabinet shall use SDX to verify an applicant's marital and institutional status.

(3) If a household member does not meet the criteria listed in subsection (1) of this section, the household:

- (a) Shall not be eligible for SAFE; and
- (b) May apply for regular SNAP benefits in accordance in 921 KAR 3:030.

(4) An individual who meets the criteria of subsection (1) of this section may apply for regular SNAP benefits instead of SAFE benefits.

(5) An individual shall not receive SAFE benefits and regular SNAP benefits at the same time.

Section 4. SAFE Application Process. (1) Through use of the SDX files, the cabinet shall:

(a) Identify SSI participants who are potentially eligible for SAFE; and

(b) Mail each identified SSI household a SF-1, Simplified Assistance for the Elderly (SAFE) Application, and a return envelope.

(2) A SAFE application shall be considered filed if the SF-1 is:

- (a) Signed; and
- (b) Received at the Department for Community Based Services, Division of Family Support.

(3) In accordance with 7 C.F.R. 273.2(g), the cabinet shall provide an eligible household an opportunity to participate within thirty (30) days of the date the application is filed.

Section 5. SAFE Certification Process. (1) The cabinet shall process a SAFE application without requiring an interview.

(2) Information necessary to certify a SAFE application shall be obtained from SDX with the exception of the information provided by the applicant on the SF-1 or the SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form.

(3) The cabinet shall certify an eligible household for SAFE benefits for up to thirty-six (36) months.

(4) In accordance with 7 C.F.R. 273.10(g), the cabinet shall send an applicant a notice upon certification or denial.

(5) The cabinet shall send a SF-2 to a SAFE household in the month preceding the last month of the household's certification period.

Section 6. SAFE Benefits. (1) The cabinet shall provide a SAFE household a standard monthly benefit amount approved by the U.S. Department of Agriculture's Food and Nutrition Service and listed in the SF-1.

(2) The standard SAFE benefit amounts shall be based on:

(a) Shelter costs;

(b) Household size; and

(c) The average benefits received by a similar household in the regular SNAP.

Section 7. Changes in Household Circumstances. (1) A household receiving SAFE benefits shall not be required to report any changes during the certification period.

(2) The cabinet shall process changes in household circumstances based on information received from SDX.

(3) If information voluntarily reported by the household is contradictory to SDX data, the cabinet shall not act upon the information unless the information is a change in a household member's:

(a) Name;

(b) Date of birth; or

(c) Address.

(4) Unless a change in household circumstance results in a change in benefits, the cabinet shall not provide a SAFE household with notification of a change being made in household circumstances.

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

(a) "SF-1, Simplified Assistance for the Elderly (SAFE) Application", 7/15[44/44]; and

(b) "SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form", 11/14.

(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: June 11, 2015

FILED WITH LRC: July 2, 2015 at 4 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, 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: The administrative regulation establishes the Simplified Assistance for the Elderly (SAFE) Program, a federally approved demonstration project administered by the cabinet to improve access to the Supplemental Nutrition Assistance Program (SNAP) for elderly and disabled individuals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform requirements for SAFE.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing requirements for SAFE.

(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 SAFE.

(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 change the monthly allotments received by SAFE recipients. The allotments are provided in the SF-1, Simplified Assistance for the Elderly (SAFE) Application, which is included in the incorporation by reference. In addition, this amendment revises incorporated material to conform to the public assistance programs' new web-based eligibility and enrollment system to be implemented in late calendar year 2015. The amendment also makes other technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to change the monthly SAFE allotment to qualified households to maintain the demonstration project's cost neutrality, a federal requirement to continue operating the project. The changes are based on the U.S. Department of Agriculture-Food and Nutrition Service's latest evaluation of the project's cost in relation to regular SNAP. In addition, the amendment also aligns incorporated material with the program's new web-based eligibility and enrollment system to be implemented in late calendar year 2015. The new eligibility and enrollment system will be more efficient than the decades-old legacy system currently in use and result in improved business processes, resource management, timeliness, and accuracy.

(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 aligning with federal requirements, new technology supports, and improved practice standards for the administering agency.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by assuring compliance with federal requirements applicable to the demonstration project and congruency with new technology supports and improve practice standards for the administering agency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All SAFE recipients and potential applicants are affected by this administrative regulation. As of April 2015, approximately 13,750 households participate in SAFE.

(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 actions on the part of SAFE 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): The amendment to this administrative regulation will change the monthly SAFE allotments to qualified individuals to assure cost neutrality of SAFE in relation to regular SNAP. Cost neutrality is a federal requirement of the SAFE demonstration project to continue its operation. An SAFE applicant or recipient may apply for regular SNAP instead of SAFE.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The SAFE demonstration project simplifies the application and recertification processes for qualified elderly and disabled recipients. Without the amendment, the demonstration project may become non-operational and/or be subject to federal shutdown, which would curtail access to safety net food benefits for a vulnerable population.

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

(a) Initially: The administrative regulation will not create a new or additional cost to the administrative body.

(b) On a continuing basis: The administrative regulation will not create a new or additional cost to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP and SAFE benefits are 100 percent federally funded by the U.S. Department of Agriculture-Food and Nutrition Service.

Program administrative costs are funded by a fifty (50) percent by federal resources and fifty (50) percent by state resources. Program administrative costs have 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: An increase in fees or funding is not necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 273.2

2. State compliance standards. KRS 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 273.2

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 imposes 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. This administrative regulation imposes no stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 7 C.F.R. 271.4, 273.2

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The SAFE Program has been operational for numerous years, and it does not directly generate new revenue for the state or local government. No new revenue is anticipated for the first year.

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

(c) How much will it cost to administer this program for the first year? No additional costs will be 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 will be 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 STATE BOARD OF ELECTIONS  
(As Amended at ARRS, July 14, 2015)

**31 KAR 3:040. Electronic Voter Registration System.**

RELATES TO: KRS 116.045, 116.0452, 116.065, 116.155

STATUTORY AUTHORITY: KRS 116.045(4)(e), 117.015(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) requires the State Board of Elections to supervise the registration of voters within the state. KRS 116.045(4)(e) provides that a person may register to vote or change party affiliation by methods of registration or reregistration approved by the State Board of Elections. KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. This administrative regulation approves and establishes procedures for use of an electronic voter registration system to register or reregister to vote or to update voter registration information.

Section 1. Definition. "Applicant" means a person who uses the electronic voter registration system established by the State Board of Elections to register or reregister to vote or to update voter registration information.

Section 2. Use of Electronic Voter Registration System. (1) The State Board of Elections shall, as funds permit, establish an electronic voter registration system by which persons may register or reregister to vote or update voter registration information.

(2) In addition to the methods set forth in KRS 116.045(4), a person who meets all eligibility requirements may register or reregister to vote or update voter registration information by using the electronic voter registration system established by the State Board of Elections pursuant to this administrative regulation.

Section 3. Contents of Electronic Voter Registration System Application Form. The electronic voter registration system application shall:

(1) Include the electronic equivalent of the registration application form prescribed and furnished by the State Board of Elections under KRS 116.155, including a warning relating to the potential penalties applicable to an applicant knowingly filing an application with untrue information and a voter declaration affirmation as required by KRS 116.065;

(2) Require the applicant who has a Kentucky driver's license or Kentucky personal identification card to fill the applicant has a Kentucky driver's license or Kentucky personal identification card;

(a) ~~Require the applicant to~~ Agree to the use of his or her Kentucky driver's license signature or Kentucky personal identification card signature for voter registration purposes; and

(b) ~~Require the applicant to~~ Provide his or her Kentucky driver's license number or Kentucky personal identification card number.

(3) Require the applicant who fill the applicant does not have a Kentucky driver's license or Kentucky personal identification card, ~~require the applicant~~ to either:

(a) Provide an electronic signature to be used for voter registration purposes; or

(b) Print the registration application, sign it, and return it to the county clerk for the county in which the applicant resides.

Section 4. Processing Voter Registration Application Submitted Via the Electronic Voter Registration System. (1) The electronic voter registration system shall not allow an applicant to submit an application unless:

(a) The entire application form, including the voter declaration affirmation as required by KRS 116.065, is completed by the

applicant; and

(b) The applicant has either:

1. Agreed to the use of his or her Kentucky driver's license signature or Kentucky personal identification card signature for voter registration purposes and provided his or her Kentucky driver's license number or Kentucky personal identification card number pursuant to Section 3(2) of this administrative regulation; or

2. Provided an electronic signature to be used for voter registration purposes pursuant to Section 3(3)(a) of this administrative regulation.

(2) Immediately upon the applicant's submission of an application that meets the requirements of subsection (1) of this section, the State Board of Elections shall:

(a) If the applicant agreed to the use of his or her Kentucky driver's license signature or

Kentucky personal identification card signature for voter registration purposes and provided his or her Kentucky driver's license number or Kentucky personal identification card number pursuant to Section 3(2) of this administrative regulation:

1. Check the information submitted by the applicant to ensure that the Kentucky driver's license number or Kentucky personal identification card number submitted by the applicant matches the information maintained by the Transportation Cabinet; and

2. If a match is made:

a. Electronically forward the information provided in the application, along with a digital copy of the applicant's signature obtained from the Transportation Cabinet, to the county clerk for the county in which the applicant resides; and

b. Notify the applicant that the application has been electronically forwarded to the county clerk for the county in which the applicant resides, but that the applicant will not be officially registered to vote or that changes to the applicant's existing registration will not be made until the application is received and processed by the county clerk.

3. If a match cannot be made, notify the applicant that the application cannot be processed and instruct the applicant to print the application, sign it, and mail or hand deliver it to the county clerk for the county in which the applicant resides.

(b) If the applicant provided an electronic signature to be used for voter registration purposes pursuant to Section 3(3)(a) of this administrative regulation:

1. Electronically forward the information provided in the application, along with the applicant's electronic signature, to the county clerk for the county in which the applicant resides; and

2. Notify the applicant that the application has been electronically forwarded to the county clerk for the county in which the applicant resides, but that the applicant will not be officially registered to vote or that changes to the applicant's existing registration will not be made until the application is received and processed by the county clerk.

(3) An electronic voter registration application shall be deemed to have been made and received by the appropriate county clerk as of the date the applicant is informed pursuant to subsection (2) of this section that the application has been electronically forwarded to the county clerk for the county in which the applicant resides.

(4) Except as otherwise specifically provided, an electronic voter registration application electronically forwarded by the State Board of Elections shall be considered an application for registration by mail.

**Section 5. Incorporation by Reference:**

**(1) "Voter Registration Form", SBE 01, 8/03, is incorporated by reference.**

**(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of**

**Elections. 140 Walnut Street, Frankfort, Kentucky 40601. Monday through Friday, 8:00 a.m. to 4:30 p.m., or on the board Web site, <http://elect.ky.gov/register tovot e/Pages/default.aspx>.**

ALISON LUNDERGAN GRIMES, Chair

APPROVED BY AGENCY: February 13, 2015

FILED WITH LRC: March 16, 2015 at 1 p.m.

CONTACT PERSON: Lindsay Hughes Thurston, Assistant Secretary of State, 700 Capital Ave., Ste. 152, Frankfort, Kentucky 40601, phone (502) 564-3490, fax (502) 564-5687.

**KENTUCKY STATE BOARD OF ELECTIONS  
(As Amended at ARRS, July 14, 2015)**

**31 KAR 4:120. Additional and emergency precinct officers.**

RELATES TO: KRS 117.015, 117.045

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.045(5), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 117. ~~[KRS 117.045(5) requires the county board of elections to submit a list of emergency election officer appointments to the State Board of Elections after all reasonable efforts have been made to find two (2) qualified officers, for each precinct, who are affiliated with the two (2) qualified parties having representation on the State Board of Elections.]~~ KRS 117.045(6) requires the State Board of Elections to promulgate an administrative regulation establishing conditions under which additional precinct officers may be approved. This administrative regulation establishes the conditions under which additional precinct officers may be approved, ~~[as required by KRS 117.045(6).]~~ and establishes the form of the list of emergency election officer appointments required by KRS 117.045(5).

Section 1. Request to Appoint Additional Precinct Officers. A county board of elections seeking permission to appoint additional precinct officers, pursuant to KRS 117.045(6), shall file with the State Board of Elections SBE 23, Additional Precinct Officer Request, that contains the following information:

(1) The precinct number of each precinct for which approval of additional officers is sought[will be appointed];

(2) For each designated precinct, the reasons additional precinct officers are necessary; ~~[and]~~

(3) For each designated precinct, whether one (1) or two (2) additional precinct officers are requested; and

(4) The election for which approval is sought, designating whether the election is a primary, general, or special election.

Section 2. Approval of Request. (1) ~~[Nondiscretionary Grounds for Approving Request. The State Board of Elections shall approve a request to appoint additional precinct officers at a precinct in which any of the following apply:~~

(1) ~~Two (2) or more voting machines will be used in the precinct;~~

(2) ~~Two (2) or more precincts use the same voting location; or~~

(3) ~~More than 600 voters are registered in the precinct.~~

Section 3. Discretionary Grounds for Approving Request. The State Board of Elections may approve a request to appoint additional precinct officers if the request sets forth a reasonable explanation why voting may not be conducted safely and expediently unless additional precinct officers are appointed.

~~[Section 4. Approval of Request. (1) Approval of a request made under Section 2 of this administrative regulation may, be granted for one (1) election only or for a primary, the run-off primary, if required, and the following regular election.]~~

(2) Approval of a request to appoint additional precinct officers ~~[made under Section 3 of this administrative regulation]~~ shall be

granted for one (1) election only.

(3) Approval of a request to appoint additional precinct officers ~~may authorize[authorizes]~~ a county board of elections to appoint[.] one (1) or two (2) additional precinct officers.

(4) If a county board of elections requests and is approved to appoint two (2) additional precinct officers:

(a) The two (2) additional precinct officers shall not be of the same political party; and

(b) If it appears from the list of precinct officers submitted to the State Board of Elections pursuant to KRS 117.045(8) that the two (2) additional precinct officers are of the same political party, then the State Board of Elections shall[may] revoke its approval of the request to appoint additional precinct officers and the appointments [made pursuant thereto] shall be[deemed] invalid.

Section 3. ~~[5.]~~ Duties of Additional Precinct Officers. The duties of additional precinct officers shall be prescribed by the county board of elections.

Section 4. ~~[6.]~~ Request to Appoint Emergency Precinct Officers. A county board of elections seeking permission to appoint emergency precinct officers pursuant to KRS 117.045(5) shall file with the State Board of Elections SBE 24, Emergency Precinct Officer Request, which contains the following information:

(1) The precinct number of each precinct for which approval of additional officers is sought[will be appointed];

(2) The name of the officer requested, the registered party of the officer, and the party the officer will be serving as for the specified election;

(3) The election for which approval is sought, designating whether the election is a primary, general, or special election; and

(4) A description of the efforts made to acquire precinct officers in the party, ~~[[]]democrat or republican,[]]~~ which did not have enough workers as required by KRS 117.045(5).

Section 5. ~~[7.]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Additional Precinct Officer Request", SBE 23, January 2015 [November 2007] edition; and

(b) "Emergency Precinct Officer Request", SBE 24, August 2007 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALISON LUNDERGAN GRIMES, Chair

APPROVED BY AGENCY: February 13, 2015

FILED WITH LRC: March 16, 2015 at 1 p.m.

CONTACT PERSON: Lindsay Hughes Thurston, Assistant Secretary of State, 700 Capital Ave., Ste. 152, Frankfort, Kentucky 40601, phone (502) 564-3490, fax (502) 564-5687.

**KENTUCKY STATE BOARD OF ELECTIONS  
(As Amended at ARRS, July 14, 2015)**

**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, 117.065, 117.085(1)(c), 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 requirements for activities that are prohibited within 100 feet of the entrance to a building in which a voting machine is

~~located, the building that houses the county clerk's office, and a building in which absentee voting is being conducted, so that law and order in that area may be maintained pursuant to KRS 117.235(5)[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. Prohibited Activities During Voting~~[Activities prohibited within 100 feet of the entrance to a building in which a voting machine is located].~~ (1) Election Day Voting. Except as otherwise provided in this administrative regulation:

(a) Certain activities shall be prohibited on the day of any election, if the activities take place within the area designated by paragraph (b) of this subsection. These activities shall include, if the activities are 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:

1. Display of signs;

2. Distribution of campaign literature, cards, or handbills; or

3. Solicitation of signatures to any petition or solicitation of votes; and

(b) During the hours voting is being conducted, the activities listed in paragraph (a) of this subsection shall not take place within 100 feet of the entrance to a building in which a voting machine is located if the entrance is:

1. Unlocked; and

2. Used by voters.

(2) Absentee Voting. Except as otherwise provided in this administrative regulation:

(a) The following activities shall be prohibited if they take place within the area designated by paragraph (b) of this subsection. These activities shall include, if the activities are 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:

1. Display of signs;

2. Distribution of campaign literature, cards, or handbills;

3. Solicitation of signatures to any petition or solicitation of votes; or

4. The affixing of any material listed in this paragraph to the exterior or interior of a building that meets the criteria in paragraph (b) of this subsection; and

(b) The activities listed in paragraph (a) of this subsection shall not take place:

1. During the hours absentee voting is being conducted by the county clerk pursuant to KRS 117.085(1)(c); and

2. In a building;

a. Where the county clerk's office is located; or

b. Designated by the county board of elections and approved by the State Board of Elections for absentee voting [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.

GENERAL GOVERNMENT CABINET  
Kentucky Board of Pharmacy  
(As Amended at ARRS, July 14, 2015)

201 KAR 2:015. Continuing education.

RELATES TO: KRS ~~214.610,~~ 315.065, ~~315.116,~~ 315.120  
STATUTORY AUTHORITY: KRS 315.065, 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. Definitions. (1)[Definition.] "Continuing education unit" or "CEU" is defined by KRS 315.010(7).

(2) "Sponsor" means a person, school, association, company, corporation, or group who wishes to develop a continuing education program.



## VOLUME 42, NUMBER 2 – AUGUST 1, 2015

Section 2. ~~[(4)]~~ Continuing education hours for credit may be compiled in the following areas if the sponsor grants the participant a certificate of completion:

- ~~(1)[(a)]~~ Cassette and audiovisual presentation;
- ~~(2)[(b)]~~ In-company professional seminars;
- ~~(3)[(c)]~~ Accredited school of pharmacy continuing education programs;
- ~~(4)[(d)]~~ Postgraduate courses in pharmaceutical sciences;
- ~~(5)[(e)]~~ Correspondence courses;
- ~~(6)[(f)]~~ Programs granted continuing education credit by other states;
- ~~(7)[(g)]~~ The Accreditation Council for Pharmacy Education;
- ~~(8)[(h)]~~ Continuing education television series;
- ~~(9)[(i)]~~ Programs sponsored by allied professional groups; or
- ~~(10)[(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 ~~submit~~**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.

~~(2)[(3)]~~ Program changes shall be ~~submitted~~**made** to and accredited by the board, or the evaluation and accreditation of the program shall be void.

~~(3)[(4)]~~ Continuing education credit shall be given only once for each program per participant.

~~(4)[(5)]~~ Sponsors shall retain a file of each participant's program completion for three (3) years.

**[(5)] The board approval of each program shall expire at the end of three (3) years.**

Section 4. (1) Sponsors and pharmacists requesting approval of continuing pharmacy education shall submit ~~the~~ 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 **for that year.**

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 or her 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 or her 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

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.

### GENERAL GOVERNMENT CABINET Kentucky Board of Pharmacy (As Amended at ARRS, July 14, 2015)

#### 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 **requires**~~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; **and**

~~(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 ~~may~~**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, including[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, if desired by the physician in accordance with KRS 217.186(5)(b)3;

(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 pharmacists[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, 7/2015[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.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Hairdressers and Cosmetologists  
(As Amended at ARRS, July 14, 2015)**

**201 KAR 12:083. Educational requirements.**

RELATES TO: KRS 317A.050, 317A.140, 317B.025(1)(c), (4)(c)

STATUTORY AUTHORITY: KRS 317A.050, 317A.060, 317B.020(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.050, 317A.060, and 317B.020 require the board to promulgate administrative regulations governing the operation of schools of cosmetology and esthetics, including the proper education and training of students. This administrative regulation establishes proof of education and other enrollment requirements.

Section 1. (1) Any person enrolling in a school for a cosmetology, nail technician, or esthetics course shall complete a Student Enrollment Application provided by the board.

(2) The applicant shall furnish proof that the applicant has:

(a) A high school diploma, unless the applicant is enrolled in a board approved cosmetology program in an approved Kentucky high school;

(b) A General Educational Development (GED) diploma; or

(c) Results from the Test for Adult Basic Education indicating a score equivalent to the twelfth grade of high school.

(3) The applicant shall provide with the application a passport style photograph taken within thirty (30) days before submitting the application.

(4) A student enrolling in a school of cosmetology who desires to transfer hours from another state shall provide to the board prior to enrollment certification from the state agency that governs the school where the credit hours have been acquired. Hours shall not be accepted without certification from an appropriate state agency.

Section 2. (1) The Student Enrollment Application, accompanied by the applicant's proof of education, shall be received by the board no later than ten (10) working days after the student's date of enrollment.

(2) A student shall not receive credit hours if the application is not received within the ten (10) day period.

(3) The school shall forward to the board the enrollment application and proof of education so that the board receives the information no later than ten (10) working days after the student date of enrollment.

(4) Failure of the school to timely forward the information to the board may result in suspension or revocation of the school's license or a fine of twenty-five (25) dollars a day for every day the application is late.

Section 3. (1) A person shall not be permitted to enroll in a school of cosmetology for a brush-up course unless the applicant:

(a)[~~The applicant~~] Holds a current license issued by this board; or

(b)[~~The applicant~~] Has obtained special permission from the board through written request.

(2) The applicant shall complete the Student Enrollment Application.

Section 4. Incorporation by Reference. (1) "Student Enrollment

Application", January 30, 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BEA COLLINS, President

APPROVED BY AGENCY: April 13, 2015

FILED WITH LRC: April 15, 2015 at 10 a.m.

CONTACT PERSON: Charles Lykins, Administrator, Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort Kentucky 40601, phone (502)-564-4262, fax (502)564-0481.

**GENERAL GOVERNMENT CABINET  
Board of Nursing  
(As Amended at ARRS, July 14, 2015)**

**201 KAR 20:063. Restrictions on use of amphetamine-like anorectic controlled substances.**

RELATES TO: KRS 314.011, 314.042, 314.091, 314.195

STATUTORY AUTHORITY: KRS 314.131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131 authorizes the board to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314 and 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, ~~or [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) Meet the requirements for the Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS) as required by KRS 314.042 and 201 KAR 20:057; and

(2) Take into account the:

- (a) Drug's potential for abuse;
- (b) [(2)] Possibility that a drug may lead to dependence;
- (c) [(3)] Possibility a patient will obtain the drug for a nontherapeutic use;
- (d) [(4)] Possibility a patient will distribute it to others; and
- (e) [(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, ~~ordering, or~~ 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 mellitus, 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. **(1) For a legitimate medical purpose, such as a change in the Federal Food and Drug Administration's (FDA's) approval or an off-label use of a Schedule III or IV amphetamine-like controlled substance, an APRN may apply in writing for a written waiver of any requirement in this administrative regulation.**

**(2) An off-label use shall occur when a Schedule III or IV amphetamine-like controlled substance is used in a manner not specified in the FDA's approved packaging label or insert.**

**(3) The board may issue a waiver with terms and conditions as agreed upon by the board and the APRN [it deems appropriate].**

Section 5. Failure to comply with the requirements of this administrative regulation **and the scope and standards of practice in 201 KAR 20:057** 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.

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.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Licensed Diabetes Educators  
(As Amended at ARRS, July 14, 2015)**

**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. **(1) An applicant for licensure as a licensed diabetes educator pursuant to KRS 309.335(1)(b)1. shall submit to the board:**

**(a) [(4)] 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; and**

**(b) Payment of the licensure fee as established in 201 KAR 45:100.**

**(2) An applicant for licensure as a licensed diabetes educator pursuant to KRS 309.335(1)(b)2. shall submit to the board:**

**(a) Evidence showing the successful completion of the credentialing program of the American Association of Diabetes Educators or the National Certification Board for Diabetes Educators; and**

**(b) Payment of the licensure fee as established in 201 KAR 45:100.**

**(3) An applicant for licensure as a licensed diabetes educator pursuant to KRS 309.335(1)(b)3. shall submit to the board:**

**(a) Evidence showing the successful completion of an equivalent credentialing program; and**

**(b) [(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

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.

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

**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 that[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 may[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.

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

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

**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 the department[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) Pennyryle 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 not apply:
    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 not apply:
  - (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) ~~[A]~~ Department-issued quota hunt permit;

(b) ~~[A]~~ Valid Kentucky hunting license or proof of exemption; and

(c) ~~[A]~~ Hunter education card, if required pursuant to 301 KAR 2:185.

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

(8) A quota hunt applicant who is not selected and who 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. The youth statewide turkey season; and
3. The 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 from the landowner, ~~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.

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](mailto:fwpubliccomments@ky.gov).



## VOLUME 42, NUMBER 2 – AUGUST 1, 2015

### ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Forestry (As Amended at ARRS, July 14, 2015)

**402 KAR 3:010. Timber sales**~~[Policies incorporated by reference].~~

RELATES TO: KRS~~[13A.130,]~~ 149.010, 149.020~~[149.540]~~  
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 cash/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 No. 1[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 No. 2[number two (2)] common lumber may be substituted for No. 1[number one (1)] common lumber 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) If time is insufficient, 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

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov.

**ENERGY AND ENVIRONMENT CABINET**  
**Department for Natural Resources**  
**Division of Forestry**  
**(As Amended at ARRS, July 14, 2015)**

**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 bad actor[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 bad actor[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 bad actor[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

CONTACT PERSON: Michael Mullins, Regulation Coordinator, #2 Hudson Hollow, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-5698, email Michael.Mullins@ky.gov.

**JUSTICE AND PUBLIC SAFETY CABINET**  
**Internal Investigations Branch**  
**(As Amended at ARRS, July 14, 2015)**

**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 of 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 established in this section[~~;~~]:

(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 off that are substantiated special incidents that may involve/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 are protected may be inadmissible in court proceedings under Garrity v. New Jersey, 385 U.S. 493[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

CONTACT PERSON: Kerry Holleran, Staff Attorney, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8225, fax (502) 564-6686.

**JUSTICE AND PUBLIC SAFETY CABINET  
Kentucky Law Enforcement Council  
(As Amended at ARRS, July 14, 2015)**

**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[4](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)[~~ecouncil~~] 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.

(e) 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. (1) The basic training curriculum shall consist of training segments and topics listed in the current KLEC-approved curriculum. Each training segment shall at a minimum include one (1) or more of the topics listed in subsection (2) of this section. All topics listed in subsection (2) of this section shall be covered to qualify for graduation.

(2) Basic Training Topics.

(a)[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;

(b)[(2)](4)] Physical training;

(c)[(3)](5)] Defensive tactics;

(d)[(4)](6)] Patrol;

(e)[(5)](7)] Vehicle operations;

(f)[(6)](8)] Firearms;

(g)[(7)](9)] Criminal investigation;

(h)[(8)](10)] D.U.I./Field sobriety testing;

(i)[(9)](11)] Breath testing; or

(j)[(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

## VOLUME 42, NUMBER 2 – AUGUST 1, 2015

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

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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Kentucky Board of Education  
Department of Education  
(As Amended at ARRS, July 14, 2015)

**704 KAR 3:370. Professional Growth and Effectiveness System.**

RELATES TO: KRS 156.557, 156.800(7), 161.740  
STATUTORY AUTHORITY: KRS 156.070, 156.557(2), (5)(c)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.557(2) and (5)(c) require the Kentucky Board of Education to promulgate administrative regulations to establish a statewide professional growth and effectiveness system for the purposes of supporting and improving the performance of all certified school personnel and to develop written guidelines for local school districts to follow in implementing a statewide system of evaluation for certified school personnel. This administrative regulation establishes a statewide professional growth and effectiveness system to support and improve the performance of all certified school personnel.

Section 1. Definitions. (1) "Artifact" means a product of a certified school personnel's work that demonstrates knowledge and skills.

(2) "Assistant principal" means a certified school personnel who devotes the majority of employed time in the role of assistant principal, for which administrative certification is required by the Education Professional Standards Board pursuant to 16 KAR Chapter 3[Title 16 KAR].

(3) "Certified administrator" means a certified school personnel, other than principal or assistant principal, who devotes the majority of employed time in a position for which administrative certification is required by the Education Professional Standards Board pursuant to 16 KAR Chapter 3[Title 16 KAR].

(4) "Certified school personnel" means a certified employee, below the level of superintendent, who devotes the majority of employed time in a position in a district for which certification is required by the Education Professional Standards Board pursuant to Title 16 KAR and includes certified administrators, assistant principals, principals, other professionals, and teachers.

(5) "Conference" means a meeting between the evaluator and the evaluatee for the purposes of providing feedback, analyzing the results of an observation or observations, reviewing other evidence to determine the evaluatee's accomplishments and areas for growth, and leading to the establishment or revision of a professional growth plan.

(6) "Evaluatee" means the certified school personnel who is being evaluated.

(7) "Evaluator" means the primary evaluator as described in KRS 156.557(5)(c)2.

(8) "Formative evaluation" is defined by KRS 156.557(1)(a).

(9) "Improvement plan" means a plan for improvement of up to twelve (12) months in duration for:

(a) Teachers and other professionals who are rated ineffective in professional practice and have a low overall student growth rating; and

(b) Principals who are rated ineffective in professional practice and have high, expected, or low overall student growth rating.

(10) "Job category" means a group or class of certified school personnel positions with closely related functions.

(11) "Local contribution" means a rating based on the degree to which a teacher, other professional, principal, or assistant principal meets student growth goals and is used for the student growth measure.

(12) "Local formative growth measures" is defined by KRS 156.557(1)(b).

(13) "Observation" means a data collection process conducted by a certified observer, in person or through video, for the purpose of evaluation, including notes, professional judgments, and examination of artifacts made during one (1) or more classroom or worksite visits of any duration.

(14) "Observer calibration" means the process of ensuring

that certified school personnel have maintained proficiency and accuracy in observing teachers and other professionals for the purposes of evaluation and providing feedback.

~~(15) "Observer certification" means a process of training and ensuring that certified school personnel who serve as observers of evaluatees have demonstrated proficiency in rating teachers and other professionals for the purposes of evaluation and feedback. [(15) "Observer calibration" [recalibration]] "means the process of ensuring that certified school personnel have maintained proficiency and accuracy in observing teachers and other professionals for the purposes of evaluation and providing feedback."~~

(16) "Other professionals" means certified school personnel, except for teachers, administrators, assistant principals, or principals.

(17) "Overall student growth rating" means the rating that is calculated for a teacher or other professional evaluatee pursuant to the requirements of Section 7(9) and (10) of this administrative regulation and that is calculated for an assistant principal or principal evaluatee pursuant to the requirements of Section 10(8) of this administrative regulation.

(18) "Peer observation" means observation and documentation by trained certified school personnel below the level of principal or assistant principal.

(19) "Performance criteria" means the areas, skills, or outcomes on which certified school personnel are evaluated.

(20) "Performance rating" means the summative description of a teacher, other professional, principal, or assistant principal evaluatee's performance, including the ratings listed in Section 7(8) of this administrative regulation.

~~(21) ["Preschool teacher" means a certified school personnel who holds a certificate required by 16 KAR 2:040 and who meets the preschool lead teacher qualifications required by 704 KAR 3:410, Section 7.~~

(22)] "Principal" means a certified school personnel who devotes the majority of employed time in the role of principal, for which administrative certification is required by the Education Professional Standards Board pursuant to Title 16 KAR [3:050].

~~(22) [(23)]~~ "Professional growth and effectiveness system" or "system" means an evaluation system to support and improve the performance of certified school personnel that meets the requirements of KRS 156.557(1)(c), (2), and (3) and that uses clear and timely feedback to guide professional development.

~~(23) [(24)]~~ "Professional growth plan" means an individualized plan for a certified personnel that is focused on improving professional practice and leadership skills, aligned with performance standards and the specific goals and objectives of the school improvement plan or the district improvement plan, built using a variety of sources and types of data that reflect student needs and strengths, evaluatee data, and school and district data, produced in consultation with the evaluator as described in Section 9(1), (2), (3), and (4) and Section 12(1), (2), (3), and (4) of this administrative regulation, and includes:

(a) Goals for enrichment and development that are established by the evaluatee in consultation with the evaluator;

(b) Objectives or targets aligned to the goals;

(c) An action plan for achieving the objectives or targets and a plan for monitoring progress;

(d) A method for evaluating success; and

(e) The identification, prioritization, and coordination of presently available school and district resources to accomplish the goals.

~~(24) [(25)]~~ "Professional practice" means the demonstration, in the school environment, of the evaluatee's professional knowledge and skill.

~~(25) [(26)]~~ "Professional practice rating" means the rating that is calculated for a teacher or other professional evaluatee pursuant to Section 7(8) of this administrative regulation and that is calculated for a principal or assistant principal evaluatee pursuant to the requirements of Section 10(7) of this administrative regulation.

~~(26) [(27)]~~ "Self-reflection" means the annual process by which certified school personnel assess the effectiveness and adequacy of their knowledge and performance for the purpose of identifying

areas for professional learning and growth.

(27)[(28)] "Sources of evidence" means the multiple measures listed in KRS 156.557(4) and in Sections 7[8] and 10 of this administrative regulation.

(28)[(29)] "State contribution" means the student growth percentiles, as defined in 703 KAR 5:200, Section 1(11), for teachers and other professionals, and the next generation learners goal for principals and assistant principals.

(29)[(30)] "Student growth" is defined by KRS 156.557(1)(c).

(30)[(31)] "Student growth goal" means a goal focused on learning, that is specific, appropriate, realistic, and time-bound, that is developed collaboratively and agreed upon by the evaluatee and evaluator, and that uses local formative growth measures.

(31)[(32)] "Student growth percentile" means each student's rate of change compared to other students with a similar test score history.

(32)[(33)] "Student voice survey" means the student perception survey provided by the department that is administered annually to a minimum of one (1) district-designated group of students per teacher or other professional evaluatee if the evaluatee directly instructs students throughout the school year, and provides data on specific aspects of the instructional environment[classroom experience] and professional practice of the teacher or other professional evaluatee.

(33)[(34)] "Summative evaluation" is defined by KRS 156.557(1)(d).

(34)[(35)] "Teacher" means a certified school personnel who has been assigned the[lead] responsibility for student learning in a classroom, grade level, subject, or course and holds a teaching certificate under Title 16 KAR[46 KAR 2:010 or 46 KAR 2:020].

(35)[(36)] "Working conditions survey goal" means a school improvement goal set by a principal or assistant principal every two (2) years with the use of data from the department-approved working conditions survey.

Section 2. Implementation Timeline. (1) Beginning with the 2015-2016[During the 2014-2015] school year, all local districts shall fully implement the requirements of KRS 156.557 and this administrative regulation for all certified school personnel except certified school personnel[other professionals, preschool teachers, and][teachers] of career and technical education in area technology centers, and results from the system shall be included in the overall school and district accountability model.[If the system plan is approved by the local board of education, a local school district may use the results from the system to inform personnel decisions. The use of a district's present evaluation plan, in addition to the system, during the 2014-2015 school year, shall comply with this administrative regulation. During the 2014-2015 school year, the overall school and district accountability scores described in 703 KAR 5:225 shall not include the results from the system.]

(2) Beginning with the 2015-2016 school year, a local school district shall use the results from the system to inform personnel decisions for teachers, principals, and assistant principals.

(3) Beginning with the 2016-2017 school year:

(a) The Office of Career and Technical Education shall fully implement the requirements of KRS 156.557 and this administrative regulation for all certified school personnel of career and technical education in area technology centers.

(b) A local school district shall use the results from the system to inform personnel decisions for other professionals, certified administrators, and teachers in career and technical education in area technology centers.[Teachers of career and technical education in area technology centers shall fully implement the requirements of KRS 156.557 and this administrative regulation beginning with the 2016-2017 school year. Beginning in the 2015-2016 school year, a local school district shall use the results from the system to inform personnel decisions for teachers, principals, and assistant principals and results from the system shall be included in the overall school and district accountability model. Beginning with the 2016-17 school year, a local school district shall use

the results from the system to inform personnel decisions for other professionals, certified administrators, and teachers of career and technical education in area technology centers][During the 2014-2015 school year, all school districts shall pilot the system for other professionals and preschool teachers. During the 2014-2015 school year, school districts shall evaluate preschool teachers and other professionals pursuant to the requirements of Section 13 of this administrative regulation. Beginning in the 2015-2016 school year, all school districts shall fully implement the system for other professionals and preschool teachers.

(3) Beginning in the 2015-2016 school year, all school districts shall fully implement the system for all certified school personnel, use the system to inform personnel decisions for all certified school personnel, and the overall school and district accountability scores described in 703 KAR 5:225 shall include the results from the system].

Section 3. Approval of Local Professional Growth and Effectiveness System Plan and Procedures. (1) Each local school district shall submit to the department a professional growth and effectiveness system plan and procedures to establish the district's evaluation system for all certified school personnel.

(2) The department shall approve each local school district's plan and procedures that comply with the requirements established in KRS 156.557 and this administrative regulation.

Section 4. Local Professional Growth and Effectiveness Policies. The local board of education shall establish a written policy for implementing the system for all certified school personnel in the district, consistent with the requirements of KRS 156.557 and this administrative regulation. The local board of education shall develop, adopt, and submit to the department for approval a policy for evaluation of the district superintendent, consistent with the requirements of KRS 156.557(6) and this administrative regulation.

Section 5. Local Evaluation Procedures and Forms. (1) A local evaluation committee shall develop, and the local board of education shall review and approve, system procedures and forms for the evaluation of certified school personnel positions.

(2) The local board of education shall review and approve procedures and forms that meet the requirements of KRS 156.557(5)(c) and include the requirements established in this subsection.

(a) The district may require the utilization of additional trained administrative personnel to observe and provide information to the evaluator.

(b) The district shall require a minimum of one (1) peer observation of a teacher or other professional evaluatee during the summative evaluation year[, documentation of peer observations in the department-approved technology platform,] and sharing the documentation with the teacher or other professional for formative evaluation purposes. Documentation of peer observations may be documented in the department approved technology platform. At the request of a teacher or other professional, peer observations may be used in the summative[formative] process.

(c) Beyond the minimum observation requirements set forth in KRS 156.557 and this administrative regulation, the district may establish uniform requirements for the length, frequency, and nature of observations conducted by an evaluator for the purpose of evaluation.

(d) The district shall require a teacher or other professional evaluator to conduct a minimum of three (3) observations of a teacher or other professional evaluatee during the summative evaluation cycle, except that the district may reduce the number of minimum observations of a teacher or other professional evaluatee during the summative evaluation cycle for teacher or other professional evaluatees who do not report for work sixty (60) or more consecutive school days. A district shall include a detailed plan for reduction of minimum observations of teachers or other professional evaluatees who do not report for work sixty (60) or more consecutive school days in the district's system plan and



procedures submitted to the department for approval pursuant to Section 3 of this administrative regulation.~~[and,] At a minimum, one (1) full[classroom] observation shall be conducted during the summative year. Observations may be documented[and to document all observations]~~ in the department-approved technology platform.

(e) The district shall require a principal evaluator to conduct a minimum of two (2) site visits each year.

(f) The district shall create a process for selection of peer observers.

(g) The district shall require a formative evaluation conference between the evaluator and the evaluatee within five (5) working days following each observation by the evaluator.

(h) The district shall require the summative evaluation conference to be held at the end of the summative evaluation cycle and to include all applicable system data.

(i) The district shall require summative evaluation, with multiple observations, to occur annually for each teacher or other professional who has not attained continuing service status under KRS 161.740 or continuing status under KRS 156.800(7) and may utilize the formative data collected during the beginning teacher internship period, pursuant to 16 KAR 7:010, in the summative evaluation of an intern teacher.

(j) The district shall require multiple observations of a certified school personnel who has attained continuing service status under KRS 161.740 or continuing status under KRS 156.800(7) and whose observation results are determined to be ineffective.

(k) The district shall require summative evaluation at least once every three (3) years for a teacher or other professional who has attained continuing service status under KRS 161.740 or continuing status under KRS 156.800(7).

(l) The district, upon the request of a teacher or other professional, may use peer observation data in the formative process.

(m) The district shall require summative evaluation annually for a certified administrator, assistant principal, or principal. The evaluation criteria and process used to evaluate a certified administrator, assistant principal, or principal shall be explained to and discussed with the evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of reporting for employment each school year.

(n) The district shall require a summative evaluation of a certified school personnel to be documented in writing and to be included in the evaluatee's official personnel record.

(o) The district shall require documentation of a summative evaluation of a teacher, other professional, principal, and assistant principal in the department-approved technology platform.

(p) All evidence used to produce a certified school personnel's overall performance rating shall be included in the documentation of the summative evaluation.

(q) The district shall provide an opportunity for a written response by the evaluatee and require the response to be included in the official personnel record.~~[(3) The local board of education shall develop, adopt, and submit to the department for approval procedures for evaluation of the district superintendent, consistent with the requirements of KRS 156.557(6) and this administrative regulation.]~~

#### Section 6. Training and Testing of Evaluators and Observers.

(1) The district shall include evaluation and observation training in the district's system plan and procedures submitted to the department for approval pursuant to Section 3 of this administrative regulation.

(2) The district shall ensure an evaluator meets the requirements of the district's system plan and procedures prior to evaluating a certified school personnel.

(3) An evaluator shall be trained,~~[and]~~ tested, and approved on a four (4) year cycle.

(4) Year one (1) of the district's evaluator training cycle shall include the following training requirements:

(a) Training on KRS 156.557 and the requirements of this administrative regulation;

(b) Training in identifying effective teaching and management

practices, in effective observation and conferencing techniques, in development of student growth goals, in providing clear and timely feedback, in establishing and assisting with a professional growth plan, and in summative decision techniques;

(c) Training provided by the department for all certified administrator evaluators who have never evaluated certified school personnel. Other certified administrators who have not received training in the skill areas listed in paragraph (b) of this subsection may also be trained by the department; and

(d) Training, for all other evaluators, by a provider who has been approved by the department as a trainer for the Instructional Leadership Improvement Program established in 704 KAR 3:325.

(5) Year one (1) of the district's evaluator training cycle shall include the testing requirements established in this subsection.

(a) An evaluator shall successfully complete testing of research-based and professionally accepted teaching and management practices and effective evaluation techniques.

(b) The testing shall be conducted by the department or an individual or agency approved by the department.

(c) The testing shall include certification as an observer through the department-approved observer certification process for an evaluator who is evaluating~~[observing]~~ teachers or other professionals~~[for the purpose of evaluation]~~.

(6) The department shall issue year one (1) approval as an evaluator upon the evaluator's successful completion of the required evaluation training and testing program and successful completion of observer certification.

(7) Years two (2) and three (3) of the district's evaluator training and testing cycle shall include a minimum of six (6) hours in each year and shall include:

(a) Observer calibration~~[recalibration]~~ training, in the department-approved technology platform, for all evaluators who observe teachers or other professionals for the purpose of evaluation;

(b) Update training on professional growth and effectiveness statutes and administrative regulations; and

(c) Training for evaluators on any changes to the Professional Growth and Effectiveness System and certified evaluation plan, policies, or procedures.

(8) Year four (4) of the district's evaluator training and testing cycle shall include refresher evaluator training and, if evaluating teachers or other professionals, recertification~~[refresher-observer certification]~~ training and testing.

(9) The district shall require peer observers to complete the department-approved~~[developed]~~ peer observer training at least once every three (3) years.

(10) The district shall designate a contact person responsible for monitoring evaluator training and for implementing the system.

Section 7. Professional Practice Rating and Student Growth Rating for Teachers and Other Professionals. (1) The district's professional practice rating form shall utilize The Framework for Teaching Evaluation Instrument, 2011 Edition, in conjunction with the Teacher and Other Professionals Evaluation Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation and shall include the following:

(a) Planning and Preparation Domain~~[-Components shall include: Knowledge of Content and Pedagogy, Demonstrating Knowledge of Students, Setting Instructional Outcomes, Demonstrating Knowledge of Resources, Designing Coherent Instruction, and Designing Student Assessments];~~

(b) Classroom Environment Domain~~[-Components shall include: Creating an Environment of Respect and Rapport, Establishing a Culture of Learning, Managing Classroom Procedures, Managing Student Behavior, and Organizing Physical Space];~~

(c) Instruction Domain~~[-Components shall include: Communicating with Students, Questioning and Discussion Techniques, Engaging Students in Learning, Using Assessment in Instruction, and Demonstrating Flexibility and Responsiveness];~~ and

(d) Professional Responsibilities Domain~~[-Components shall include: Reflecting on Teaching, Maintaining Accurate Records,~~

Communicating with Families, Participating in a Professional Community, Growing and Developing Professionally, and Showing Professionalism].

(2) The district's professional practice rating evaluation form shall list, in each component, the performance criteria that characterize effective practice[teaching] and apply to the teacher[evaluator].

(3) The district shall explain and discuss the professional practice rating domains, components, and performance criteria, and the evaluation process with an[a teacher] evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of reporting for employment each school year. Amendments to local systems of teacher evaluation approved by the department after the end of the evaluatee[s][teacher's] first thirty (30) calendar days of the school year shall not apply to the evaluatee[teacher] until the following school year.

(4) A professional practice rating evaluation form shall be specific to the evaluatee's[teacher's] job category.

(5) The evaluator shall utilize The Framework for Teaching Evaluation Instrument, 2011 Edition, in conjunction with the Teacher and Other Professional Evaluation Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation, to determine ratings for the evaluatee[teacher] on each of the four (4) domains.

(6) The evaluator shall use evidence from professional growth plans and self-reflection, observation, and student voice surveys, in combination with professional judgment, to inform the teacher's or other professional's rating on each of the four (4) domains listed in subsection (1) of this section.

(7) The evaluator may, if included in the district's approved evaluation plan, use additional district-determined sources of evidence to inform the teacher's or other professional's professional practice rating.

(8) The evaluator shall utilize the decision rules in this subsection for determining the professional practice rating for a teacher or other professional.

(a) The evaluator shall use the following ratings:

1. "Exemplary" shall be the rating for performance that consistently exceeds expectations for effective performance;
2. "Accomplished" shall be the rating for performance that consistently meets expectations for effective performance;
3. "Developing" shall be the rating for performance that inconsistently meets expectations for effective performance; and
4. "Ineffective" shall be the rating for performance that consistently fails to meet expectations for effective performance.

(b) At a minimum, the evaluator shall use the [following] decision rules in this paragraph[subsection] to determine a professional practice rating.

1. [(c)] If a teacher or other professional is rated ineffective in the classroom environment domain or in the instruction domain, the teacher's or other professional's professional practice rating shall be not be exemplary or accomplished.

2. [(d)] [(e)] If a teacher or other professional is rated ineffective in the classroom environment domain and in the instruction domain, the teacher's or other professional's professional practice rating shall be ineffective.

3. [(e)] [(d)] If a teacher or other professional is rated ineffective in any domain, the teacher's or other professional's professional practice rating shall be accomplished, developing, or ineffective.

4. [(f)] [(e)] If a teacher or other professional is rated developing in two (2) domains and accomplished in two (2) domains, the teacher's or other professional's professional practice rating shall be accomplished.

5. [(g)] [(f)] If a teacher or other professional is rated developing in two (2) domains and exemplary in two (2) domains, the teacher's or other professional's professional practice rating shall be accomplished.

6. [(h)] [(g)] If a teacher or other professional is rated accomplished in two (2) domains and exemplary in two (2) domains, the teacher's or other professional's professional practice rating shall be exemplary.

(9) The district shall determine the teacher's or other professional's overall student growth rating as established in this

subsection.

(a) The student growth measure shall consist of a state contribution, if[when] available, and a local contribution.

(b) The Kentucky Board of Education shall determine the scale for low, expected, and high growth regarding the state contribution, and the department shall provide the scale to local school districts.

(c) Student growth goals shall be determined as established in this paragraph.

1. The teacher or other professional shall develop and implement a minimum of one (1) student growth goal each year.

2. Because individualized education plan (IEP) goals are student-specific, IEP goals may inform, but shall not be used as, student growth goals.

3. The district shall ensure that student growth goals and measures of student growth are rigorous and comparable across schools in the local school district.

(d) The local school district shall determine the scale for low, expected, and high student growth goal ratings. In determining the scale, local school districts shall consider the definition of typical yearly growth contained in 703 KAR 5:200, Section 1(12).

(10) The local school district shall develop a process for using professional judgment and the following sources of evidence to determine the overall student growth rating:

(a) Growth trends consisting of the three (3) most recent years of student growth percentile data, if available, for teachers; and

(b) Growth trends consisting of the three (3) most recent years of student growth goal data, if available, for all teachers and other professionals.

Section 8. Overall Performance Category of Teachers or Other Professionals. (1) The overall performance category for teachers or other professionals shall be determined by combining the teacher's or other professional's professional practice rating and [the teacher's] overall student growth rating, as illustrated by the Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Teachers or Other Professionals.

(2) The district shall determine the teacher's or other professional's overall performance category with the decision rules established in this subsection.

(a) A teacher's or other professional's overall performance rating shall be exemplary if:

1. The professional practice rating is exemplary and the overall student growth rating is high;
2. The professional practice rating is exemplary and the overall student growth rating is expected; or
3. The professional practice rating is accomplished and the overall student growth rating is high.

(b) A teacher's or other professional's overall performance rating shall be accomplished if:

1. The professional practice rating is exemplary and the overall student growth rating is low;
2. The professional practice rating is accomplished and the overall student growth rating is expected; or
2. 3. The professional practice rating is developing and the overall student growth rating is high;

(c) A teacher's or other professional's overall performance category shall be developing if:

1. The professional practice rating is exemplary and the overall student growth rating is low;
2. The professional practice rating is accomplished and the overall student growth rating is low;
3. 2. The professional practice rating is developing and the overall student growth rating is expected;
4. 3. The professional practice rating is developing and the overall student growth rating is low; or
5. 4. The professional practice rating is ineffective and the overall student growth rating is high.

(d) A teacher's or other professional's overall performance category shall be ineffective if:

1. The professional practice rating is ineffective and the overall student growth rating is expected; or
2. The professional practice rating is ineffective and the overall student growth rating is low.

Section 9. Professional Growth Plan and Cycle for Tenured Teachers or Other Professionals. A teacher or other professional shall be placed on an appropriate plan and summative evaluation cycle based on the professional practice rating and the overall student growth rating, as illustrated by the Kentucky Professional Growth Plan and Cycle for Tenured Teachers or Other Professionals. (1) A teacher or other professional whose professional practice rating is exemplary or accomplished and who has an expected or high overall student growth rating shall have a professional growth plan that includes: goals set by the teacher or other professional, with evaluator input; activities that are evaluatee[teacher]-directed and implemented with colleagues; a formative review annually; and a summative evaluation that occurs at the end of year three (3) of the evaluation cycle.

(2) A teacher or other professional whose professional practice rating is accomplished or exemplary, with a low overall student growth rating, or developing, with a high overall student growth rating, shall have a professional growth plan that includes: goals set by the teacher or other professional with evaluator input; if there is a low student growth rating, one (1) goal shall focus on low student growth outcome; an annual formative review; and a summative evaluation that occurs at the end of year three (3) of the evaluation cycle.

(3) A teacher or other professional whose professional practice rating is developing, with an expected overall student growth rating, shall have a professional growth plan that includes: goals set by the teacher or other professional with evaluator input; one (1) goal that addresses professional practice or student growth; activities that are evaluatee[teacher]-directed and implemented with colleagues; an annual formative review; and a summative evaluation that occurs at the end of year three (3) of the evaluation cycle.

(4) A teacher or other professional whose professional practice rating is developing, with a low overall student growth rating, or whose professional practice rating is ineffective, with an expected or high overall student growth rating, shall have a professional growth plan that includes goals determined by the evaluator: goals shall focus on professional practice and student growth, include an annual formative review, and include a summative evaluation that occurs at the end of one (1) year.

(5) A teacher or other professional whose professional practice rating is ineffective, with a low overall student growth rating, shall have an improvement plan with goals determined by the evaluator: the goals shall focus on low performance areas and a summative evaluation shall occur at the end of the plan, whose duration is determined by the evaluator and may last up to one (1) year.

Section 10. Professional Practice Rating and Overall Student Growth Rating for Principals and Assistant Principals. (1) The district's professional practice rating form shall utilize the Principal and Assistant Principal Performance Standards and the Principal and Assistant Principal Performance Standards Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation, and shall include the performance standards and descriptors established in this subsection.

(a) Instructional Leadership Performance Standard. **This standard shall be met if** the evaluatee fosters the success of all students by facilitating the development, communication, implementation, and evaluation of a shared vision of teaching and learning that leads to student academic growth and school improvement.

(b) School Climate Performance Standard. **This standard shall be met if** the evaluatee fosters the success of all students by developing, advocating, and sustaining an academically rigorous, positive, and safe school climate.

(c) Human Resources Management Performance Standard. **This standard shall be met if** the evaluatee fosters effective human resources management by assisting with selection and induction and by supporting, evaluating, and retaining quality instructional and support personnel.

(d) Organizational Management Performance Standard. **This standard shall be met if** the evaluatee fosters the success of all

students by supporting, managing, and overseeing the school's organization, operation, and use of resources.

(e) Communication and Community Relations Performance Standard. **This standard shall be met if** the evaluatee fosters the success of all students by communicating and collaborating effectively with stakeholders.

(f) Professionalism Performance Standard. **This standard shall be met if** the evaluatee fosters the success of all students by demonstrating professional standards and ethics, engaging in continuous professional learning, and contributing to the profession.

(2) The district's professional practice rating evaluation form for assistant principals and principals shall list, in each standard, the performance criteria that characterize professional effectiveness and apply to the evaluatee.

(3) The district shall explain and discuss the professional practice rating standards, indicators, and performance criteria, and the evaluation process to assistant principal and principal evaluatees no later than the end of the evaluatee's first thirty (30) calendar days of the school year. Amendments to local systems of certified personnel evaluation approved by the department after the end of an evaluatee's first thirty (30) calendar days of the school year shall not apply to the evaluatee until the following school year.

(4) The district's professional practice rating evaluation form shall be specific to the evaluatee's job category. The district, at its discretion, may utilize forms for pre- and post-evaluation conferences.

(5) The evaluator shall utilize the Principal and Assistant Principal Performance Standards and the Principal and Assistant Principal Performance Standards Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation, to determine ratings for an assistant principal or principal evaluatee on each of the performance standards.

(6) The evaluator shall use evidence from professional growth plans and self-reflection, the department-approved survey of perception of superintendents, district personnel, and teachers on principal practice; and the department-approved working conditions survey goal. The evaluator shall also use evidence from site visits, for principals only. The evaluator may, if included in the district's approved evaluation plan, use additional district-determined sources of evidence to inform the evaluatee's rating on each of the six (6) standards listed in subsection (1) of this section.

(7) **At a minimum**, the evaluator shall use the decision rules in this subsection to determine a professional practice rating.

(a) If the evaluatee is rated exemplary in at least four (4) of the standards and no standard is rated developing or ineffective, the professional practice rating shall be exemplary.

(b) If the evaluatee is rated accomplished in at least four (4) standards and no standard is rated ineffective, the professional practice rating shall be accomplished.

(c) If the evaluatee is rated developing in at least five (5) standards, the professional practice rating shall be developing.

(d) If the evaluatee is rated ineffective in two (2) or more standards, the professional practice rating shall be ineffective.

(8) The overall student growth rating for principals and assistant principals shall be determined as established in this subsection.

(a) The student growth measure for principals and assistant principals shall consist of a state contribution and a local contribution.

(b) The state contribution for principals and assistant principals shall be based on the degree to which the evaluatee meets the next generation learners goal. A principal's next generation learners goal shall be the assistant principal's next generation learners goal as well. **For schools that do not receive state assessment data, principals shall develop two (2) local student growth goals.**

(c) The local contribution for the student growth measure for principals and assistant principals shall be a rating based on the degree to which the principal or assistant principal meets student growth goals. Assistant principals shall share the principal's student growth goals.

(d) All principals and assistant principals shall develop and

implement a minimum of two (2) student growth goals each year, one (1) of which shall focus on school gap population data.

~~(e)[One (1) goal shall address the needs outlined in the school's comprehensive school improvement plan.~~

~~(f)[One (1) goal shall be based on local student growth data.~~

~~(f)(g)~~ The district shall ensure that student growth goals are rigorous and comparable across schools in the local district.

~~(g)(h)~~ The scale for low, expected, and high student growth goal ratings shall be determined by the local school district. In determining the scale, local school districts shall consider the schools goals and measures of success in the comprehensive school improvement plan required in 703 KAR 5:225, Section 9.

~~(h)(i)~~ The district shall develop a process for using professional judgment and evidence from the following sources of evidence to determine the overall student growth rating:

1. Growth trends over the three (3) most recent years of next generation learners student growth data, calculated pursuant to 703 KAR 5:200; and

2. Growth trends over the three (3) most recent years of student growth goal data.

Section 11. Overall Performance Category of Principals and Assistant Principals. (1) The overall performance category for principals and assistant principals shall be determined by combining the principal or assistant principal's professional practice rating and overall student growth rating, as illustrated by the Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Assistant Principals and Principals.

(2) The district shall determine the overall performance category for principals and assistant principals with the decision rules established in this subsection.

(a) An evaluatee's overall performance category shall be exemplary if:

1. The professional practice rating is exemplary and the overall student growth rating is high;

2. The professional practice rating is exemplary and the overall student growth rating is expected; or

3. The professional practice rating is accomplished and the overall student growth rating is high.

(b) An evaluatee's overall performance category shall be accomplished if:

1. The professional practice rating is accomplished and the overall student growth rating is expected; or

2. The professional practice rating is developing and the overall student growth rating is high.

(c) An evaluatee's overall performance category shall be developing if:

1. The professional practice rating is exemplary and the overall student growth rating is low;

2. The professional practice rating is accomplished and the overall student growth rating is low;

3. The professional practice rating is developing and the overall student growth rating is expected; or

4. The professional practice rating is developing and the overall student growth rating is low.

(d) An evaluatee's overall performance category shall be ineffective if the professional practice rating is ineffective.

Section 12. Professional Growth Plan for Principals and Assistant Principals. The evaluator shall place an assistant principal or principal evaluatee on an appropriate professional growth plan based on the professional practice rating and the overall student growth rating, as illustrated by the Kentucky Professional Growth Plan for Assistant Principals and Principals. (1) An evaluatee whose professional practice rating is exemplary, with an expected to high overall student growth rating, shall have, at a minimum, a professional growth plan with goals set by the evaluatee with evaluator input and a summative evaluation that occurs at the end of each school year.

(2) An evaluatee whose professional practice rating is accomplished, with an expected to high student overall student growth rating, shall have, at a minimum, a professional growth plan

with goals set by the evaluatee with evaluator input and a summative evaluation that occurs at the end of each school year.

(3) An evaluatee whose professional practice rating is developing, with a high overall student growth rating, shall have, at a minimum, a professional growth plan with goals set by the evaluatee with evaluator input and a summative evaluation that occurs at the end of each school year.

(4) An evaluatee whose professional practice rating is developing, with a low to expected overall student growth rating, shall have, at a minimum, a professional growth plan with goals determined by the evaluator and a summative evaluation at the end of each school year.

(5) An evaluatee whose professional practice rating is ineffective shall have, at a minimum, an improvement plan with the goals determined by the evaluator and a summative evaluation at the end of the plan, as determined by the evaluator, not to exceed one (1) year in duration.

Section 13. Evaluation of Certified Administrators Assigned to the District Level for Purposes of Evaluation. (1) The district's evaluation form for certified administrators assigned to the district level for purposes of evaluation shall:

(a) Utilize the performance criteria outlined in KRS 156.557(4), in compliance with KRS 156.557 and the requirements of this administrative regulation; and

(b) List the performance criteria that characterizes professional effectiveness and apply to the evaluatee.

(2) The district shall explain and discuss performance criteria and the evaluation process to an evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of the school year. Amendments to local systems of certified personnel evaluation approved by the department after the end of an evaluatee's first thirty (30) calendar days of the school year shall not apply to the evaluatee until the following year.

(3) The district evaluation form for certified administrators assigned to the district level for purposes of evaluation shall be specific to the evaluatee's job category. The district, at its discretion, may utilize forms for pre- and post-evaluation conferences.

(4) The evaluator shall use evidence from professional growth plans and self-reflection, one (1) site visit, student growth, and professional judgment to determine the overall performance of certified administrators assigned to the district level for purposes of evaluation[Evaluation of Other Professionals and Preschool Teachers During the 2014-2015 School Year. (1) The district shall include, in its professional growth and effectiveness plan, a plan for the evaluation of other professionals and preschool teachers during the 2014-2015 school year.

(2) The district's procedures for other professional and preschool teacher evaluatees, whose evaluation cycle requires evaluation during the 2014-2015 school year, shall include the requirements established in this subsection.

(a) Beyond the minimum requirements set forth in this administrative regulation, the local district may establish requirements as to the length, frequency, and nature of observations conducted by an evaluator.

(b) The district shall require the evaluation to include a formative evaluation conference between the evaluator and the evaluatee within five (5) working days following each observation, the summative evaluation conference held at the end of an evaluation cycle that ends during the 2014-2015 school year, all evaluation data.

(c) The district shall require multiple observations to be conducted of an evaluatee who has earned continuing service status pursuant to KRS 161.740 and whose observation results are ineffective.

(d) The district shall require a summative evaluation to occur, if required by the evaluation cycle of the evaluatee.

(e) The district shall include the evaluation in the evaluatee's official personnel record.

(f) The district shall provide in the evaluation process an opportunity for a written response by the evaluatee and shall include the response in the evaluatee's official personnel record.

(g) A copy of the evaluation shall be provided to the evaluatee.

(3) The evaluation form shall include a list of performance criteria. Under each criterion, specific descriptors or indicators that can be measured or observed and recorded shall be listed. Additionally, standards of performance shall be established for each criterion. The performance criteria shall include those that are identified in KRS 156.557(4) applicable to the evaluatee.

(4) The evaluation criteria and process shall be explained to and discussed with the evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of the 2014-2015 school year.

(5) An evaluative form shall be specific to each job category. The district may use forms for pre and post-evaluation conferences.

(6) The district shall provide evaluatees an opportunity for an appeal to the local evaluation appeals committee as outlined in Section 18 of this administrative regulation.

(7) An evaluatee who believes that the local district is not properly implementing the evaluation plan as approved by the department shall have the opportunity to appeal to the Kentucky Board of Education as outlined in Section 19 of this administrative regulation.

Section 14. Evaluation of Certified Administrators in the 2014-2015 School Year. (1) The district shall include, in the professional growth and effectiveness plan, a plan for the evaluation of certified administrators.

(2) Beyond the minimum requirements set forth in KRS 156.557 and this administrative regulation, the local district may establish requirements as to the length, frequency, and nature of observations conducted by an evaluator.

(3) The district shall require the evaluation to include a formative evaluation conference between the evaluator and the evaluatee within five (5) working days following each observation; the summative evaluation conference held at the end of the summative evaluation cycle; and the inclusion of all professional growth and effectiveness data.

(4) The district shall document the certified administrator's summative evaluation decision, include documentation of the sources of evidence used in determining the performance rating of the evaluatee, and include these documentations in the evaluatee's official personnel record.

(5) The district shall provide an opportunity for a written response by the evaluatee, and the response shall be included in the evaluatee's official personnel record.

(6) A copy of the evaluation shall be provided to the evaluatee.

(7) The evaluation form for certified administrators shall include a list of performance criteria that characterize effective administrative practices.

(8) Under each criterion, specific descriptors or indicators shall be listed.

(9) The performance criteria shall include those that are identified in KRS 156.557(4) applicable to the evaluatee.

(10) The evaluation criteria and process used to evaluate certified administrators shall be explained to and discussed with the evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of the school year.

(11) The district's evaluation form shall be specific to the evaluatee's job category. The district may utilize forms for pre and post-evaluation conferences.

(12) The district shall provide certified administrator evaluatees an opportunity for an appeal to the local evaluation appeals committee as outlined in Section 18 of this administrative regulation.

(13) An evaluatee who believes that the local district is not properly implementing the evaluation plan as approved by the department shall have the opportunity to appeal to the Kentucky Board of Education as outlined in Section 19 of this administrative regulation].

Section 14.[15:] District Evaluation Plan. (1) The local board of education shall review, as needed, the district's evaluation plan to ensure compliance with KRS 156.557 and this administrative

regulation.

(2) If a substantive change is made to the district's evaluation plan, the local board of education shall utilize the evaluation committee, described in KRS 156.557(5)(c)1, in formulating the revision. Examples of substantive change shall include changes in the evaluation cycle, observation frequency, forms, or appeal procedures.

(3) The local board of education shall review and approve revisions to the plan and submit the amended plan to the department for approval.

Section 15.[16:] Reporting. (1)[Beginning in the 2014-2015 school year,] Districts shall report to the department the percentage of principals, assistant principals,[and] teachers, and other professionals in each professional practice rating category, student growth rating category and overall performance category listed in Sections 7, 8, 10, and 11 of this administrative regulation[and the percentage of teachers on each plan listed in Section 9 of this administrative regulation].

(2) The department shall publicly report, by district, the aggregate number of principals, assistant principals,[and] teachers, including other professionals, in each overall performance category.

Section 16.[17:] Monitoring. A district implementing an alternative professional growth and effectiveness plan or system approved by the department pursuant to KRS 156.557(7) shall be monitored within three (3) years of the initial implementation of the alternative plan, and subsequently at the discretion of the department.

Section 17.[18:] Local Evaluation Appeals Panel. The district shall provide the following in its system plan for an appeal to the local evaluation appeals panel:

(1) A right to a hearing as to every appeal;

(2) An opportunity, five (5) days in advance of the hearing, for the evaluator and evaluatee to adequately review all documents that are to be presented to the local evaluation appeals panel; and

(3) A right to have the evaluatee's chosen representative present at the hearing.

Section 18.[19:] State Evaluation Appeals Panel. (1) A certified school personnel who believes that the local district is not properly implementing the evaluation plan as approved by the department shall have the opportunity to appeal to the Kentucky Board of Education.

(2) The appeal procedures shall be as established in this subsection.

(a) The Kentucky Board of Education shall appoint a committee of three (3) state board members to serve on the state evaluation appeals panel (SEAP). The SEAP's jurisdiction shall be limited to procedural matters already addressed by the local appeals panel related to the district's alleged failure to implement an evaluation plan as approved by the department. The SEAP shall not have jurisdiction of a complaint involving the professional judgment conclusion of an evaluation, and the SEAP's review shall be limited to the record of proceedings and documents therein, or lack thereof, at the local district level.

(b) No later than thirty (30) calendar days after the final action or decision at the local district level, a certified school personnel may submit a written request to the chief state school officer for a review before the SEAP. If a certified school personnel does not appeal within the time frame listed in this paragraph, the request shall not be considered. A specific description of the complaint and grounds for appeal shall be submitted with the request.

(c) A brief, written statement or other document that a party wishes to submit for consideration by the SEAP shall be filed with the panel and served on the opposing party at least twenty (20) days prior to the scheduled review.

(d) A decision of the SEAP shall be rendered within fifteen (15) working days after the review.

(e) A determination of district noncompliance with the local evaluation plan or absence of a district local evaluation plan shall

render the evaluation void, and the certified employee shall have the right to be reevaluated.

Section 19.[20-] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "The Framework for Teaching Evaluation Instrument, 2011 Edition", May 2014;

(b) "Principal and Assistant Principal Performance Standards", May 2014;

(c) "Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Teachers and Other Professionals", April 2015[May 2014];

(d) "Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Assistant Principals and Principals", May 2014;

(e) "Teacher and Other Professional Evaluation Crosswalk", April 2015[May 2014];

(f) "Principal and Assistant Principal Performance Standards Crosswalk", May 2014;

(g) "Kentucky Professional Growth Plan and Cycle for Tenured Teachers and Other Professionals", April 2015[July 2014]; and

(h) "Kentucky Professional Growth Plan for Assistant Principals and Principals", July 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Next Generation Learners, 18th[1st] Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

TERRY HOLLIDAY, Ph.D.

ROGER L. MARCUM, Chairperson

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 11, 2015 at 3 p.m.

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

**PUBLIC PROTECTION CABINET  
Department of Alcoholic Beverage Control  
(As Amended at ARRS, July 14, 2015)**

**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 authorizes 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. A[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: May 13, 2015

FILED WITH LRC: May 14, 2015 at 1 p.m.

CONTACT PERSON: Melissa McQueen, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-7479.

**PUBLIC PROTECTION CABINET  
Department of Alcoholic Beverage Control  
(As Amended at ARRS, July 14, 2015)**

**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 authorizes 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 requires[establishes that] a city alcoholic beverage control administrator to[shall] take an oath and execute a \$1,000 or greater bond as a condition of assuming the role as city alcoholic beverage control 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. A[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.

CONTACT PERSON: Melissa McQueen, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-7479.

**PUBLIC PROTECTION CABINET  
Department of Alcoholic Beverage Control  
(As Amended at ARRS, July 14, 2015)**

**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 authorizes 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 ~~requires~~ establishes that an urban-county alcoholic beverage control administrator ~~to~~ shall 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 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. ~~An~~ 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.

CONTACT PERSON: Melissa McQueen, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-7479.

**PUBLIC PROTECTION CABINET  
Office of Occupations and Professions  
Board of Home Inspectors  
(As Amended at ARRS, July 14, 2015)**

**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 Initial Licensure 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. 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 the applicant's/your lifetime, a misdemeanor conviction within the past five (5) years or a pending charge, the applicant shall not use the optional affidavit; 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 approved by the board pursuant to subsection (8) of this section and that is 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 preclicensing 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 preclicensing 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) An online preclicensing training course shall not be accepted by the board unless the applicant:

(a) Is enrolled in a preclicensing course on or before the effective date of this administrative regulation;

(b) Maintains continuous enrollment; and

(c) Completes the preclicensing course no later than six (6) months from the effective date of this administrative regulation.

(10) Criminal background checks and other disciplinary proceedings.

(a) Except as established in subsection (1)(f) of this section, 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 Initial Licensure 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 the fee established in Section 1(1)(g) of this administrative regulation[a nonrefundable fee of \$250].

Section 3. Nonresident Licensees. A nonresident licensee shall:

(1) Submit a completed Initial Licensure 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 precursing 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 precursing 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, or[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, or[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 a license or[,] refuse to renew~~[,]~~ or reactivate a license to an applicant or licensee who:

(a) Has entered a guilty plea to, pled[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 a license or[,] 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) "Initial Licensure Application", Form KBHI-1, July 2015[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.

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.

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Electrical Division**  
**(As Amended at ARRS, July 14, 2015)**

**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)[(40)] "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)[(4)] 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-4], 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-4A].

(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)[480] 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 (6)[(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 **Kentucky Building Code as adopted and incorporated by reference in 815 KAR 7:120, the Kentucky Residential Code as adopted and incorporated by reference in 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[44]. 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[42]. 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[43]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form EL-11[SFM-EL-4], "Application for Electrical Inspector Certification" [Inspectors], May 2015[-, 2004-], Department [Office] for Housing, Buildings and Construction;

(b) Form EL-12[SFM-EL-4A], "Electrical Inspector Certification Renewal Application" [for Electrical Inspector Certification], May 2015[-, 2004-], 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.

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.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Kentucky Office of Health Benefit and Information Exchange**  
**(As Amended at ARRS, July 14, 2015)**

**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", "KOHBE[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)[(24)] "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 if the employee selects another health plan[elect other plans], the employee shall[and] pay the premium differential between the selected health plan and the reference plan.

(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)[(34)] "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) and subsection (2) of this section[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 (6)[(5)][(6)] of this section; and

2. Contributes a minimum of fifty (50) percent toward the QHP 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 may elect to offer SADP coverage to only its full-time employees.

(3) 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.

(4)[(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](http://www.kynect.ky.gov);

(b) By telephone by contacting the office contact center at 1-800-459-6328[KHBE customer service center]; or

(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].

(5)[(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].

(6)(5) An employee participation rate shall be calculated:

(a) As the number of qualified employees accepting **medical** coverage under the employer's group health plan **plus the number of qualified employees enrolled in other medical coverage as described in subsection (7) of this section** divided by the number of qualified employees offered **medical** coverage; and

(b) At the time the employer submits the SHOP group enrollment.

(7) Other medical coverage shall include: ~~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].

(8)(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.

(9)(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 ~~a/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) A qualified employee who is enrolled in an SADP shall enroll a dependent or spouse in an SADP if:

(a) The offer of coverage from a qualified employer includes an offer of dependent or spousal coverage in an SADP; and

(b) The dependent or spouse is three (3) years of age up to twenty-one (21) years of age.

(5) If the offer of coverage from a qualified employer includes an offer of stand-alone dental coverage, a qualified employee up to twenty-one (21) years of age who is not otherwise enrolled in dental coverage shall enroll in an SADP.

(6) An employee shall apply to enroll in a QHP or SADP:

(a) Via the internet at [www.kynect.ky.gov](http://www.kynect.ky.gov);

(b) By contacting the office contact center at 1-800-459-6328;

or

(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].

(7)(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.

(8)(6) A qualified employee who does not want to enroll in a QHP offered by a qualified employer shall waive coverage.

(9)(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~~ its:
  - (a) ~~Its~~ Method by which the qualified employer makes QHPs available to qualified employees in accordance with Section 3 of this administrative regulation;
  - (b) ~~the~~ employer contribution towards the premium of a qualified employee made in accordance with Section 6[4] of this administrative regulation;
  - (b) ~~The~~ and (c)] QHP or QHPs offered to a qualified employee ~~employees]~~ in accordance with Section 5[3] of this administrative regulation; ~~and]~~
  - (c) ~~The~~ SADP or SADPs offered to a qualified employee in accordance with Section 5 of this administrative regulation;
  - (d) Its election to offer dependent or spousal coverage; and
  - (e) The waiting period for newly qualified employees.

~~[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)(a) Except as provided in paragraph (b) of this subsection, an effective date of coverage for a newly qualified employee shall be:

1. [(a)] On the first day of the month; and

2. [1.] Subject to an effective date of coverage determined in accordance with subsection (5) of this section.

(b) [1.] or

2. [1.] 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 an/a SADP[QHPs] during a special enrollment period if:

(a) The qualified employee or the spouse or dependent of a qualified employee loses minimal essential coverage;

(b) The qualified employee gains a spouse or dependent through marriage, birth, adoption, or placement for adoption;

(c) The qualified employee or the spouse 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 the spouse or dependent of the qualified employee demonstrates to the KHBE that the QHP in which the qualified employee or the spouse 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 the spouse or dependent of the qualified employee gains access to new QHPs as a result of a permanent move;

(f) The qualified employee or the spouse or dependent of the qualified employee demonstrates that the qualified employee or the spouse 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 the spouse or dependent of the qualified employee loses eligibility for coverage under Medicaid or CHIP; or

(i) The qualified employee or the spouse or dependent of a qualified employee becomes eligible for premium assistance through KHIPP.

(2) A qualified employee or the spouse 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 or SADP through the SHOP.

(3) A qualified employee or the spouse 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 or SADP through the SHOP.

(4) A spouse or dependent of a qualified employee shall not be eligible for a special enrollment period if a small employer does not offer coverage to a spouse or 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) or/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:

VOLUME 42, NUMBER 2 – AUGUST 1, 2015

(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 ~~the employee's~~[their] own or ~~the~~[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.~~[40.]~~ 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:

1. The last day of any calendar month if the employer has given notice to the SHOP on or before the fifteenth of any month; or

2. The last day of the following calendar month if notice was given after the fifteenth of any month[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 last day of the month in which premiums were paid in full[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.]~~~~[14.]~~~~[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](http://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.

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](mailto:tricia.orme@ky.gov).

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Kentucky Office of Health Benefit and Information Exchange**  
**(As Amended at ARRS, July 14, 2015)**

**900 KAR 10:040. KHBE Consumer Assistance Program and kynector Certification.**

RELATES TO: KRS 194A.050(1), 42 U.S.C. 18031, 45 C.F.R. Part 155.

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Kentucky Office of ~~[the]~~ Health Benefit and ~~[Health]~~ Information Exchange, has responsibility to administer the state-based American Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the consumer assistance program of the Kentucky Office of ~~[the]~~ Health Benefit and ~~[Health]~~ Information Exchange and the policies and procedures relating to the certification of kynector, including a certified application counselor, in-person assistor, or navigator in accordance with 42 U.S.C. 18031 and 45 C.F.R. Part 155.

Section 1. Definitions. (1) "Agent" is defined by KRS 304.9-020(1).

(2) "Certified application counselor" or "CAC" means an individual employed by, or volunteer of, an entity designated by the office to perform the functions described in 45 C.F.R. 155.225.

(3) "Department" or "DOI" is defined by KRS 304.1-050(2).

(4) "Enrollee" means an eligible individual enrolled in a qualified health plan.

(5) "Individual exchange" means the Kentucky Health Benefit Exchange that serves the individual health insurance market.

(6) "Individual market" is defined by KRS 304.17A-005(26).

(7) "In-person assistor" or "IPA" means an entity or individual selected by the office to perform the functions described in 45 C.F.R. 155.205 and 45 C.F.R. 155.215.

(8) "Insurance affordability program" means one (1) of the following:

(a) A state Medicaid program under title XIX of the Social Security Act, 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. 18701.

(9) "Issuer" is defined by 45 C.F.R. 144.103.

(10) ~~["Issuer application assister" means an employee, contractor, or agent of a QHP issuer who is not licensed as an agent, broker, or producer under state law and who assists individuals in the individual market with applying for a determination or redetermination of eligibility for coverage through the exchange or for insurance affordability programs.~~

~~(11)~~ ~~(12)~~ "Kentucky Health Benefit Exchange" ~~[or]~~ "KHBE", or "exchange" means the Kentucky state-based exchange conditionally approved by the Department of Health and Human Services pursuant to 45 C.F.R. 155.105 to offer a QHP beginning January 1, 2014.

~~(11)~~~~(12)~~ **"Kentucky Insurance Code" means KRS Chapter 304 and associated administrative regulations.**

~~(13)~~ "Kentucky online gateway" means the system for identity authentication services for users requesting access to the KHBE portal.

~~(12)~~~~(14)~~ "kynector" means a CAC, in-person assister, or navigator.

~~(13)~~~~(15)~~ "Navigator" means an entity as described in 45 C.F.R. 155.210 selected by the Office of KHBE.

~~(14)~~~~(16)~~ "Office" means the office created to administer the Kentucky Health Benefit Exchange.

~~(15)~~~~(17)~~ "Organization" means an entity as follows:

- (a) Community health center;
- (b) Hospital;
- (c) Health care provider;
- (d) Indian health service provider;
- (e) Ryan White HIV/AIDS provider;
- (f) Behavioral or mental health provider; or
- (g) An agency with experience providing social services, energy assistance, or tax assistance which is a:
  - 1. Non-federal government entity;
  - 2. 501(c) organization; or
  - 3. Local government agency.

~~(16)~~~~(18)~~ "Participating agent" means an agent as defined by KRS 304.9-020(1) who has been registered by the office to participate on the KHBE.

~~(17)~~~~(19)~~ "Qualified health plan" or "QHP" means a health plan that meets the standards described in 45 C.F.R. 156 Subpart C and that has in effect a certification issued by the office.

~~(18)~~~~(20)~~ "Qualified individual" means an individual who has been determined eligible to enroll through the KHBE in a QHP in the individual market.

(19) "SHOP" means a Small Business Health Options Program operated by the KHBE through which a qualified employer can provide a qualified employee and the employee's[their] dependents with access to one (1) or more QHPs.

~~(20)~~~~(21)~~ "Training" means the training established by the office for agents and kynector.

Section 2. KHBE Consumer Assistance Programs. (1) The Kentucky kynector Program, in accordance with the accessibility standards of 42 C.F.R. 155.205(c) and (d), shall include the following programs:

(a) The certified application counselor program described in Section 3 of this administrative regulation;

(b) The in-person assister program described in Section 4 of this administrative regulation; and

(c) The navigator program described in Section 5 of this administrative regulation.

(2)(a) A kynector shall receive initial training in accordance with 45 C.F.R. 155.215(b)(2).

(b) The kynector training shall be provided by the office or an approved vendor.

(c) All kynector shall participate in annual continuing education training established by the office.

(3) The office and kynector program shall refer consumers to other consumer assistance programs in Kentucky when available and appropriate.

(4) The kynector shall be prepared to serve both the individual exchange and SHOP.

Section 3. Certified Application Counselor Program. (1) The certified application counselor program shall comply with the provisions of 45 C.F.R. 155.225.

(2) Organizations seeking designation to participate in the certified application counselor program shall:

(a) Enter into an agreement with the office to comply with the applicable standards of 45 C.F.R. 155.210, 155.225, and this administrative regulation;

(b) Maintain a registration process for staff and volunteers of the organization who wish to serve as a certified application counselor;

(c) Track the performance of CAC staff and volunteers of the organization in accordance with any tracking tools provided by the office;

(d) Comply with the office privacy and security standards in accordance with 45 C.F.R. 155.260;

(e) Act in the best interest of an applicant; and

(f) Provide information in a manner that is accessible to individuals with disabilities directly or through a referral to a kynector or the office contact center.

(3) The office shall certify staff and volunteers of office-designated organizations to act as certified application counselors to:

(a) Provide information about insurance affordability programs and coverage options;

(b) Assist individuals and employees to apply for coverage in a QHP or insurance affordability programs through the KHBE; and

(c) Help to facilitate enrollment of qualified individuals in QHPs and insurance affordability programs.

(4) The office shall certify an individual as an application counselor if the individual:

(a) Is identified by a designated organization described in subsection ~~(2)~~~~(4)~~ of this section as an employee or a volunteer;

(b) Registers with the KHBE through the Kentucky online gateway;

(c) Receives KHBE training in accordance with Section 2(2) of this administrative regulation, prior to acting as a certified application counselor;

(d) Discloses to the office and potential applicants any relationships the application counselor or CAC's sponsoring organization has with QHPs or insurance affordability programs, or other potential conflicts of interest identified by the office;

(e) Complies with the privacy and security standards adopted by the office and consistent with 45 C.F.R. 155.260, and applicable authentication and data security standards;

(f) Agrees to act in the best interest of the applicants;

(g) Provides information with reasonable accommodation for an individual with a disability, as defined by the Americans with Disabilities Act, if providing in-person assistance; and

(h) Enters into an agreement with the office regarding compliance with the standards specified in this section.

(5) A certified application counselor shall:

(a) Inform an applicant of the functions and responsibilities of certified application counselors, other kynector, and participating agents; and

(b) Obtain authorization for the disclosure of applicant information prior to assisting the applicant with submitting an application.

(6) Certified application counselors shall not:

(a) Impose any charge or fee on applicants for application assistance;

(b) Receive compensation or a referral fee from an agent; or

(c) Enter into an exclusive referral agreement with an agent.

(7) In accordance with the procedures established in Section 6 of this administrative regulation, the office shall withdraw certification from an individual application counselor or from all application counselors associated with a particular organization if it finds noncompliance with the terms and conditions of the application counselor agreement or an administrative regulation within 900 KAR Chapter 10[of the office].

Section 4. In-Person Assistor Program. (1) In accordance with 45 C.F.R. 155.205(d) and (e), the office shall establish an IPA

program to authorize eligible public or private entities described in subsection (4) of this section to carry out consumer assistance functions as described in this section.

(2) An entity wishing to participate as an IPA kynector with the KHBE shall:

(a) Be awarded a contract by the office pursuant to policies and procedures established by the Finance and Administration Cabinet and KRS Chapter 45A;

(b) Designate an individual as the participating entity representative who shall:

1. Register with KHBE through the Kentucky online gateway as the individual authorized by the agency;

2. Serve as a primary contact for the office;

3. Sign an IPA kynector entity participation agreement with the office;

4. Be responsible for ensuring that only office certified kynector employees of the entity are provided access to the KHBE through the Kentucky online gateway;

5. Comply with 45 C.F.R. 155.210(d) regarding a conflict of interest; and

6. As an individual IPA employee, comply with this subsection;

(c) Designate the individual employees who shall participate on the KHBE through the IPA kynector entity and who shall:

1. Complete the KHBE kynector training provided by the office or an approved vendor;

2. Sign a kynector participation agreement;

3. Comply with the privacy and security standards of 45 C.F.R. 155.260; and

4. Register with the KHBE through the Kentucky online gateway;

(d) Submit to the office a written plan to remain free of conflicts of interest while carrying out consumer assistance functions under 45 C.F.R. 155.205(d) and (e); and

(e) Provide monthly reports of activities to the office.

(3) An employee designated as an IPA by the kynector entity shall:

(a) Be eighteen (18) years of age or older;

(b) Provide an authorization to the IPA entity to conduct a state background check for evidence of good character; and

(c) Travel, if[when] necessary, to assist applicants with enrollment.

(4) An IPA kynector entity and its employees shall:

(a) Inform applicants of the functions and responsibilities of all kynector and participating agents;

(b) Obtain authorization for the disclosure of applicant information prior to assisting the applicant with prescreening for participation with the KHBE and completion of the application process; and

(c) Provide technical support to other kynector, kynector entities, or the office upon request.

(5) Upon authorization by the office, an IPA kynector employee may assist:

(a) A qualified individual with enrollment in any QHP offered through the KHBE in the individual market;

(b) A qualified employer with selecting a QHP and enroll a qualified employee in a QHP offered through the KHBE in the small group market;

(c) An individual with applying for advance payments of the premium tax credit and cost-sharing reductions; and

(d) An individual with applying for insurance affordability programs, including Medicaid or KCHIP.

(6) An IPA entity and its employees shall:

(a) Maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about the office and KHBE; and

(b) Provide information and services in a fair, accurate, and impartial manner and provide information regarding other health programs.

(7) An issuer shall not be responsible for the activities and conduct of an IPA kynector entity or its IPA kynector employees.

(8) An IPA kynector entity and its employees[employee] shall not:

(a) Impose any charge or fee on an applicant for their

assistance;

(b) Receive compensation or a referral fee from an agent; or

(c) Enter into an exclusive referral agreement with an agent.

(9) An IPA entity and its employees shall provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the exchange, including individuals with limited English proficiency, and ensure accessibility and usability of navigator tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act, 42 U.S.C. 12101, section 504 of the Rehabilitation Act, and 29 U.S.C. 794.

(10) An IPA entity or its employees shall provide referrals to the DOI, the CHFS ombudsman, or any other appropriate state agency or agencies for any enrollee or qualified individual with a grievance, complaint, or question regarding a health plan, coverage, or a determination under the plan or coverage.

(11) An IPA entity or its employees shall demonstrate to the office that the entity has existing relationships, or could readily establish relationships, with employers and employees, consumers, including uninsured and underinsured consumers, or self-employed individuals eligible for a QHP or other insurance affordability programs.

(12)(a) In accordance with Section 6 of this administrative regulation, the office shall withdraw certification from individual in-person assistors or from all in-person assistors associated with a particular entity if it finds noncompliance with the terms and conditions of the participation agreement or an administrative regulation within 900 KAR Chapter 10, [of the office; and]

(b) In addition to withdrawal of certification, the office may enforce any penalty as specified in the contract.

Section 5. Navigator Program. (1) In accordance with 45 C.F.R. 155.210(d) and 45 C.F.R. 210, the office shall establish a navigator program to authorize an eligible public or private entity to carry out consumer assistance functions described in 45 C.F.R. 205 and 45 C.F.R. 210.

(2) An entity wishing to participate as a navigator shall:

(a) Be awarded a contract by the office pursuant to policies and procedures established by the Finance and Administration Cabinet and KRS Chapter 45A;

(b) Sign an agreement with the office that includes the following requirements:

1. Assurance that an employee designated as a navigator by the entity shall:

a. Be eighteen (18) years of age or older;

b. Provide an authorization to the entity to conduct a state background check for evidence of good character; and

c. Travel, if[when] necessary, to assist applicants with enrollment;

2. A navigator entity and its employees shall:

a. Maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities, including four (4) during open enrollment and twelve (12) outside of open enrollment per month, to raise awareness about the office and KHBE;

b. Provide information and services in a fair, accurate, and impartial manner and provide information regarding other health programs;

c. Disclose to an applicant the functions and responsibilities of all kynector and participating agents;

d. Obtain authorization for the disclosure of applicant information prior to assisting the applicant with prescreening for participation with the KHBE and completion of the application process; and

e. Provide technical support to other kynector, kynector entities, or the office upon request;

3. Upon authorization by the office, a navigator employee may assist:

a. A qualified individual with enrollment in any QHP offered through the KHBE in the individual market;

b. A qualified employer and a qualified employee with selecting a QHP;

c. An individual with applying for advance payments of the

premium tax credit and cost-sharing reductions; and

d. An individual with applying for insurance affordability programs, including Medicaid or KCHIP; and

4. A navigator entity and its navigator employees[employee] shall not:

a. Impose any charge or fee on an applicant for assistance;

b. Receive compensation or a referral fee from an agent; or

c. Enter into an exclusive referral agreement with an agent;

(c) Submit to the office a written plan to remain free of conflicts of interest while carrying out consumer assistance functions under 45 C.F.R. 155.205(d) and (e);

(d) Register with KHBE through the Kentucky online gateway;

(e) Designate an individual as the participating entity representative who shall:

1. Serve as a primary contact for the office; and

2. Be responsible for ensuring that only office certified employees of the entity are provided access to the KHBE through the Kentucky online gateway and ensure that the certified employee:

a. Completes the KHBE kynector training provided by the office or an approved vendor;

b. Signs a participation agreement;

c. Complies with the privacy and security standards of 45 C.F.R. 155.260; and

d. Registers with the KHBE through the Kentucky online gateway;

(f) Comply with 45 C.F.R. 155.210(d) regarding a conflict of interest; and

(g) Provide monthly reports of activities to the office.

(3) An issuer shall not be responsible for the activities and conduct of a navigator entity or its navigator entity employees.

(4) A navigator entity shall provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the exchange, including individuals with limited English proficiency, and ensure accessibility and usability of navigator tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act, 42 U.S.C. 12101, section 504 of the Rehabilitation Act, and 29 U.S.C. 794.

(5) A navigator entity shall provide referrals to the DOI, the CHFS ombudsman, or any other appropriate state agency or agencies for any enrollee or qualified individual with a grievance, complaint, or question regarding a health plan, coverage, or a determination under the plan or coverage.

(6) A navigator entity shall demonstrate to the office that the entity has existing relationships, or could readily establish relationships, with employers and employees, consumers, including uninsured and underinsured consumers, or self-employed individuals eligible for a QHP or other insurance affordability programs.

(7) Funding for any contract awarded under the navigator program shall not be from federal funds received by the Commonwealth to establish its exchange.

(8)(a) In accordance with Section 6 of this administrative regulation, the office shall withdraw certification from a navigator or from all navigators associated with a particular entity if it finds noncompliance with the terms and conditions of the participation agreement or an administrative regulation within 900 KAR Chapter 10.[of the office; and]

(b) In addition to withdrawal of certification, the office may enforce any penalty as specified in the contract.

Section 6. Withdrawal of Certification and Appeals. (1) If the office finds noncompliance with the terms and conditions of a participation[participating] agreement or an administrative regulation within 900 KAR Chapter 10[of the office], the office shall:

(a) Provide the kynector entity or kynector employee with notice that the applicable certification shall be withdrawn as of the date on the notice;

(b) Allow the kynector entity or kynector employee an opportunity to submit evidence of compliance or additional information within ten (10) business days;

(c) Review any information submitted by the kynector entity or

kynector employee; and

(d) Based on a review of the information provided, issue a final decision to withdraw or reinstate the applicable certification of the kynector entity or kynector[individual] employee.

(2) A kynector entity or kynector employee may appeal a final decision to withdraw the applicable certification by submitting a written request to the office within ten (10) business days of the final decision.

(3) After one (1) year following a decision to withdraw certification of a kynector entity or kynector employee, the employee[individual] or entity may reapply in accordance with this administrative regulation.

CARRIE BANAHAN, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 9, 2015

FILED WITH LRC: April 10, 2015 at 1 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Kentucky Office of Health Benefit and Information Exchange**  
**(As Amended at ARRS, July 14, 2015)**

**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) "Advance payments[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)[(40)] "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)[(41)] "Issuer" is defined by 45 C.F.R. 144.103.

(14)[(42)] "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)[(43)] "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)[(44)] "Kentucky Online Gateway" means the system for authentication services for users requesting access to the KHBE portal.

(18)[(45)] "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)[(46)] "Navigator" means an entity as described in 45 C.F.R. 155.210 selected by the Office of KHBE.

(20)[(21)][(47)] "Office of the Kentucky Health Benefit Exchange" or "office" means the office created to administer the Kentucky Health Benefit Exchange.

(48)] "Participating agent" means an agent who has been certified by the office to participate on the KHBE.

(21)[(22)][(49)] "Qualified employee" means an individual employed by a qualified employer who has been offered health insurance coverage by the qualified employer through the SHOP.

(22)[(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.

(23)[(24)][(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.

(24)[(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.

(25)[(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.

(26)[(27)][(23)] "Small group" is defined by KRS 304.17A-005(42) until superseded by 45 C.F.R. 155.201/155.1065.

(27)[(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.

(28)[(29)][(24)] "Training" means the training established by the office for individual agents and kynectors.

(29)[(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~~].[(41)] 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)-f.] 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 established/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 established/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 within 900 KAR Chapter 10~~[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 within 900 KAR Chapter 10~~[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.

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.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Kentucky Office of Health Benefit and Information Exchange**  
**(As Amended at ARRS, July 14, 2015)**

**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.~~

~~(9) ~~(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) "Department of Health and Human Services" or "HHS" means the U.S. Department of Health and Human Services.~~

~~(11) "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", "KOHBE[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 KOHBIE[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) KOHBIE[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 KOHBIE[KOHBHIE][KHBE];

(c) In person at a local DCBS office; or

(d) Via the internet at kynect.ky.gov.

(2) Upon request, the KOHBIE[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 KOHBIE[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, ~~KOHBIE[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, ~~KOHBIE[KOHBHIE]~~ shall send:

(a) The appeal request to DAH no later than five (5) business days of the completion of the informal resolution process; and

(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 ~~KOHBIE[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 ~~KOHBIE[KOHBHIE]~~ KHBE pursuant to Section 6(4)(a) of this administrative regulation~~[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 KOHBIE[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 ~~KOHBIE~~~~[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 KOHBIE[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 KOHBIE[KOHBHIE];

(2) By phone by contacting the kynect contact center;

(3) Orally to KOHBIE[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 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 KOHBIE[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 KOHBIE[KOHBHIE][KBHE] 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 pending eligibility to:

1. The appellant, if applicable; and

2. KOHBIE[KOHBHIE][KBHE].

(8) Upon receipt of a notice described in subsection (7) of this section, the KOHBIE[KOHBHIE][KBHE] 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 KOHBIE[KOHBHIE][KBHE], 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.

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.

**CABINET FOR HEALTH AND FAMILY SERVICES  
Kentucky Office of Health Benefit and Information Exchange  
(As Amended at ARRS, July 14, 2015)**

**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 42 U.S.C. 300gg-91(d)(5)[section 2791 of the Public Health Service Act].

(5) "Employer" is defined by 42 U.S.C. 300gg-91(d)(6)[section 2791 of the Public Health Service Act], except that ~~the[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", "~~KOHBE~~~~[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](http://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 requested 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.

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.

## CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(As Amended at ARRS, July 14, 2015)

### 902 KAR 20:400. Limited services clinics.

RELATES TO: KRS 311.550(12), 311.860, 314.011(7), 29 C.F.R. 1910.1030, 45 C.F.R. 160, 164

STATUTORY AUTHORITY: KRS 216B.042

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes licensure requirements for the operation of and services provided by limited services clinics.

Section 1. Definitions. (1) "Advanced practice registered nurse" is defined by KRS 314.011(7).

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

(3) "Clinic" means a limited services clinic.

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

Section 2. Licensure Application and Fee. (1) An applicant for licensure as a limited services clinic shall complete and submit to the Office of the Inspector General an Application for License to Operate a Health Facility or Service, pursuant to 902 KAR 20:008, Section 2(1)(f).

(2) The initial and annual fee for licensure as a limited services clinic shall be \$500.

Section 3. Scope of Operations and Services. (1) A limited services clinic shall:

(a) Be located in a nonmobile facility;

(b) Not have an extension or satellite;

(c) Except for the provision of health care services at an off-site location for the purpose of community vaccination or a health screening drive, assure that limited health services as described in subsection (3) of this section are provided to patients exclusively at the facility's location;

(d) Not provide services to a child younger than twenty-four (24) months of age; and

(e) Provide appropriate referrals for each patient who requires care and treatment that is beyond the scope of services provided by the clinic.

(2) If a clinic is located within a retail location, the clinic shall have policies and procedures which ensure that patients are informed that they are not required to purchase any recommended or prescribed item from the host retail location.

(3) Health care services provided by a clinic shall:

(a) Be limited to conditions that may be safely and efficiently treated on an outpatient basis; and

(b) Include assessment, diagnosis, treatment, or counseling concerning any of the following:

1. Upper respiratory infection;

2. Sinus infection;

3. Allergy symptoms;

4. Acute bronchitis;

5. Ear infection or ear ache;

6. Ear wax removal;

7. Sore throat;

8. Influenza, excluding pregnant women;

9. Cold;

10. Coughs;

11. Laryngitis;

12. Breathing treatments with nebulizer;

13. Nausea, diarrhea, and vomiting;

14. Fever, excluding patients who have had a fever longer than seventy-two (72) hours;

15. Early Lyme Disease;

16. Pink eye or sty;

17. Skin infection or skin condition, which may include insect bites, rashes, ringworm, poison oak or ivy, scabies, hives, or impetigo;

18. Minor burn;

19. Skin tag removal;

20. Head lice;

21. Scalp rash;

22. Swimmer's itch;

23. Athlete's foot;

24. Cold sores;

25. Shingles;

26. Tick or insect bites;

27. Abrasions;

28. Minor cut closure with liquid skin adhesive;

29. Splinter removal;

30. Sprains or strains;

31. Urinary infection for females only, age twelve (12) to sixty-five (65);

32. Patient education and counseling~~[, including patient education regarding diabetes, hyperlipidemia, and hypertension];~~

33. Sports physical;

34. Camp physical;

35. School physical;

36. Vaccinations for patients age eleven (11) and older;

37. Influenza vaccinations for patients age twenty-four (24) months and older;

38. Pre-employment health screening;

39. Tobacco cessation therapy;

40. ~~Skin~~ wart removal;~~[et]~~

41. Tuberculosis testing;

42. Hypertension;

43. Hypercholesterolemia;

44. Congestive heart failure;

45. Asthma;

46. Chronic obstructive airways disease;

47. Diabetes mellitus; or

48. Hyper- or hypothyroidism.

(4) If a clinic provides chronic disease management services for hypertension, hypercholesterolemia, congestive heart failure, asthma, chronic obstructive airways disease, diabetes mellitus, or hyper- or hypothyroidism, the clinic shall:

(a) Act as a source of patient and caregiver education by providing counseling and information regarding:

1. Disease management;
2. Medication use and compliance;
3. Lifestyle modification;
4. Community resources; and

5. Any other issue as appropriate and within the scope of training and knowledge of the practitioner;

(b) Within one (1) business day:

**1. Schedule a follow-up appointment for the patient, upon the patient's consent, with a primary care provider; or**

**2. Assist the patient with scheduling a follow-up appointment, if requested, with a primary care provider, which may include providing the patient with a list of primary care practices in the area that are accepting new patients;**

(c) **Ask the patient whether he or she gives consent for the clinic's practitioner to contact the patient's [physician] specialist or primary care provider to discuss the patient's treatment plan [Assure that the chronic disease management services provided by the clinic are consistent with a treatment plan established, signed, and reviewed] a minimum of once every twelve (12) months [by the physician-specialist who is responsible for the care of the patient];**

(d) Send a visit-specific report by facsimile or electronically to the patient's [physician] specialist or primary care provider, if available and with patient consent, no later than one (1) business day [within three (3) business days] after the patient receives chronic disease management services from the clinic;

(e) Participate in the Kentucky Health Information Exchange (KHIE) pursuant to the requirements of 900 KAR 9:010; and

(f) Make arrangements for the delivery of the services the clinic provides during the hours it is not open, at least through an answering service referring patients to another provider of the same services that is as geographically close as possible and is open at those hours. A clinic may provide a taped message that directs patients to a toll-free number which enables the patient to speak directly with a practitioner. These arrangements shall be reflected in a written policy which shall be made available to the clinic's patients.

(5) This administrative regulation shall not limit a clinic's ability to:

(a) Order a laboratory test specific to a patient's presenting symptoms for a condition described in subsection (3) of this section. Only CLIA (Clinical Laboratory Improvement Amendments) waived testing may be performed on-site in a limited services clinic;

(b) Provide treatment, testing, screening, or monitoring for a patient pursuant to a patient's designated plan of care or order from a practitioner other than the practitioner who is staffing the limited services clinic;

(c) Provide episodic treatment for an acute exacerbation of a chronic condition that does not rise to the level of an emergency;

(d) **Write a prescription for a patient's maintenance medication. The clinic shall document its effort to contact the prescriber; or**

(e) Make an initial diagnosis of a patient's chronic illness and refer to an appropriate practitioner, where [interim] treatment, including the prescribing of medication;

**1. Shall not exceed thirty (30) days unless further directed by the patient's appropriate practitioner; or**

**2. May continue beyond thirty (30) days for a patient who does not have a primary care provider or specialist if:**

**a. The patient provides written consent at each subsequent visit for continued treatment of his or her chronic disease while seeking a primary care or specialist provider; and**

**b. The clinic documents its efforts to assist the patient in accessing a primary care provider or specialist, which shall include:**

**(i) Providing the patient with a list of primary care providers in the area; and**

**(ii) Assisting the patient, upon consent, with scheduling an appointment with a primary care provider or specialist who is accepting new patients [e] Write a prescription for a patient's maintenance medication for a period of time not to exceed thirty (30) days. The clinic shall document its effort to contact the prescriber].**

**(6) [(5)] If a patient fails to provide written consent as required by subsection (5)(e)2.a. of this section for continued treatment of his or her chronic disease after the clinic made the initial diagnosis, the clinic shall cease treatment, including prescribing of medication for the patient's chronic disease.**

**(7)(a) If the cabinet receives a request from an individual [representing a clinic or the clinic's management entity] for modification of any part of this administrative regulation [the list of services established in subsection (3) of this section], the cabinet shall appoint and convene an advisory committee within sixty (60) calendar days of receiving the request.**

(b) The committee shall include at least one (1) representative from the:

1. Kentucky Hospital Association;
2. Kentucky Medical Association; [and]
3. Convenient Care Association; [and]
4. Kentucky Board of Nursing; [and]

**5. Kentucky Coalition of Nurse Practitioners and Nurse Midwives; and**

**6. Kentucky Academy of Family Physicians.**

(c) The committee shall:

**1. Review each request for modification within sixty (60) calendar days of receiving the request as required by paragraph (a) of this subsection; [of the list established in subsection (3) of this section] and**

**2. Make recommendations to the cabinet regarding approval or denial of the request for modification within forty-five (45) calendar days after the date the committee convenes to review the request.**

**(d) [The committee shall convene no sooner than eighteen (18) months from the date of adoption of this administrative regulation if a request for modification of the list is received within the eighteen (18) month period following adoption of this administrative regulation.**

**(e) After the committee is initially convened and makes its first set of recommendations to the cabinet, the committee shall reconvene no sooner than every eighteen (18) months thereafter to review requests and make recommendations regarding any requests received during the previous eighteen (18) month period.**

**(f) If the cabinet accepts all or any part of the committee's recommendation to modify this administrative regulation [the list of services established in subsection (3) of this section], the cabinet shall file an amendment to this administrative regulation within forty-five (45) days of the committee's recommendation.**

Section 4. Administration and Operation. (1) Licensee.

(a) A licensee shall be an entity or individual whose clinic:

1. Provides limited health care services as described by Section 3(3) of this administrative regulation; and

2. Is legally responsible for the clinic and for compliance with all federal, state, and local laws and administrative regulations pertaining to the operation of the clinic.

(b) A licensee shall establish written policies for the administration and operation of the clinic.

(c) A licensee shall establish lines of authority and designate a clinic director who shall:

1. Be employed by or under contract with the licensee;
2. Be principally responsible for the daily operation of the clinic; and
3. Maintain oversight of the clinical activities and administrative functions in the clinic.

(2) Policies.

(a) Administrative policies. A clinic shall have written

administrative policies which shall:

1. Be maintained on the premises of the clinic or maintained in an electronic format, available for copying to a disk or printing at the clinic;

2. Be subject to review, inspection, and copying by the cabinet; and

3. Cover all aspects of the clinic's operation, including:

a. A description of organizational structure, staffing, and allocation of responsibility and accountability, including the clinical/medical director's responsibilities described in subsection (3)(f) of this section if the clinic provides chronic disease management services;

b. Clinical practice guidelines for diagnosing and treating patients in each of the service categories provided by the clinic to ensure the proper identification of patients whose needs are beyond the clinic's scope of services;

c. Guidelines for referring an individual whose needs exceed the clinic's services;

d. Policies and procedures for determining if physician consultation is required;

e. Policies and procedures for the guidance and control of personnel performances;

f. Procedures to be followed if the clinic performs any functions related to the storage, handling, and administration of drugs and biologicals; and

g. Procedures for the submission of a patient's written or verbal grievance to the clinic. The grievance process shall specify time frames for review of the grievance and the provision of a response.

(b) Patient rights policies.

1. A clinic shall:

a. Adopt written policies regarding the rights and responsibilities of patients;

b. Display publicly at the clinic a copy of its written policy regarding the rights and responsibilities of patients; and

c. Provide a copy of the clinic's patients rights policies upon request by an individual who seeks services there.

2. A clinic's patient rights policies shall assure that each patient is:

a. Informed of services available at the clinic;

b. Provided a right to information regarding the charge to the patient for each service offered by the clinic and whether the clinic accepts payment for the proposed services from third-party payors, including insurance, Medicare, or Medicaid;

c. Informed of his or her medical condition, unless medically contraindicated as documented in his or her medical record;

d. Notified of all relevant treatment or maintenance courses of action and given the opportunity to participate in the clinical decision-making process;

e. Informed that he or she may voice a grievance or recommend changes in policies and services;

f. Assured confidential treatment of his or her records and is afforded the opportunity to approve or refuse the release of those records to an individual not involved in his or her care, except as required by third-party payment contract or otherwise permitted by applicable law; and

g. Treated with consideration, respect, and full recognition of his or her dignity and individuality, including privacy in treatment and in the care of his or her personal health needs.

(3) Personnel.

(a)1. During a clinic's operating hours, the clinic shall have present at least one (1) advanced practice registered nurse, physician, or physician assistant approved for off-site supervision according to KRS 311.860.

2. The clinic shall employ additional staff or ancillary personnel as needed to ensure the safe and efficient delivery of services provided by the clinic.

(b)1. Clinic personnel shall attend in-service training programs relating to their respective job duties. These training programs shall include:

a. Thorough job orientation for new personnel; and

b. Regular in-service training programs, emphasizing competence and professionalism necessary for effective health care.

2. A written document describing the training programs completed by all clinic employees shall be maintained on the premises of the clinic.

(c) During a clinic's hours of operation, at least one (1) health care professional shall be at the clinic who has:

1. Training in basic cardiac life support for health care providers; and

2. Training in the treatment of anaphylactic reaction.

(d) A clinic or its management entity shall maintain a written job description for each position that shall be reviewed and revised as necessary.

(e) A clinic or its management entity shall maintain current personnel records for each employee. An employee's personnel record shall include the following:

1. Employee's name, address, and social security number;

2. Evidence that the health care professional has a valid license or other valid credential required for the professional to be able to practice;

3. Record of training and experience; and

4. Record of performance evaluations.

(f) If a clinic provides chronic disease management services for hypertension, hypercholesterolemia, congestive heart failure, asthma, chronic obstructive airways disease, diabetes mellitus, or hyper- or hypothyroidism, the clinic shall designate a Kentucky-licensed physician or advanced practice registered nurse to serve as the clinic's clinical/medical director. The physician or advanced practice registered nurse may serve as the clinical/medical director for more than one (1) clinic and shall:

1. Assist the clinic in developing policies, procedures, and treatment plan recommendations to assist in quality patient care;

2. Participate in quality assurance and improvement activities, including monthly electronic chart reviews/audits completed by the clinical/medical director or a Kentucky-licensed physician in conjunction with a practitioner from/of each clinic in which at least ten (10) percent of the clinic's patient records shall be randomly selected for review, and of this ten (10) percent, a minimum of fifty (50) electronic chart audits each month, completed by the medical director, in which at least fifty (50) percent of the records reviewed/audits shall be randomly drawn from the clinic's chronic disease management patient records, [for a minimum of twenty-five (25) but] not to exceed fifty (50) chart reviews/audits];

3. Maintain documentation of the quality assurance and improvement activities required by subparagraph 2 of this paragraph;

4. Promptly respond to clinical questions from a practitioner [the advanced practice registered nurse or physician assistant] who renders clinical services in the clinic;

5. Ensure that the clinic for which he or she serves as clinical/medical director is:

a. Certified by the Convenient Care Association; or

b. Accredited by:

(i) The National Committee for Quality Assurance;

(ii) The Accreditation Association for Ambulatory Health Care;

(iii) The Utilization Review Accreditation Committee;

(iv) The Joint Commission; or

(v) Other nationally recognized accrediting organization with comparative standards; and

6. Provide in-service and educational sessions to the clinic's health care practitioners or assure that the clinic's practitioners have completed continuing education in compliance with the requirements of his or her professional license[requirements related to chronic disease management].

(g)1. A clinic or its management entity shall maintain the materials required by this subsection and make the materials immediately available to the cabinet or its duly appointed representative upon request.

2. The materials shall be subject to review, inspection, and copying by the cabinet or its duly appointed representative.

(4) Medical records.

(a) A clinic shall maintain medical records that contain the following:

1. Medical history relevant to services provided by the clinic;

2. Description of each medical visit or contact, including a description of the:

- a. Condition or reason for the visit or contact;
- b. Assessment;
- c. Diagnosis;
- d. Services provided;
- e. Medications and treatments prescribed; and
- f. Disposition made;

3. Reports of physical examinations, laboratory, and other test findings; and

4. Documentation of referrals made, including the reason for the referral and to whom the patient was referred.

(b) A clinic shall maintain confidentiality of patient records at all times pursuant to and in accordance with federal, state and local laws and administrative regulations including the privacy standard promulgated pursuant to Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. 160 and 164.

(c) A clinic shall:

1. Establish systematic procedures to assist in continuity of care if the patient moves to another source of care;

2. Transfer medical records or an abstract upon request, subject to required releases and authorizations; and

3. Have a specific location designated for the storage and maintenance of the clinic's medical records or maintain scanned copies of the original medical records in an electronic format or maintain electronic health records, available for copying to a disk or printing at the clinic.

(d) A licensee shall safeguard the clinic's medical records and their content against loss, defacement, and tampering.

(e) Medical records shall be maintained by the clinic for a period of six (6) years following the last treatment, assessment, or visit made by the patient, or three (3) years after the patient reaches age eighteen (18), whichever is longer.

(5) Quality assurance program. A clinic shall:

(a) Have a written quality assurance program that:

1. Includes effective mechanisms for reviewing and evaluating patient care; and

2. Provides for appropriate responses to findings; and

(b) Maintain a copy of the written quality assurance plan on the premises of the clinic.

Section 5. Provision of Services. (1) Posting requirements. A clinic shall post the following information on the door patients use to enter the clinic or prominently near the clinic's entrance:

(a) The clinic's hours of operation;

(b) The clinic's name; and

(c) A list of services provided by the clinic, accompanied by a statement which advises that the clinic is not equipped to provide emergency treatment for life threatening conditions.

(2) Visits. A clinic shall:

(a) Provide each patient with a copy of the visit summary sheet at the conclusion of the visit; and

(b) Upon request by the patient, send a copy of the visit summary sheet or visit-specific medical record, including documentation of any vaccinations administered by the clinic, by facsimile or electronically to the patient's primary care practitioner at no charge to the patient, or provide a paper copy of the visit summary sheet to the patient to deliver to the patient's primary care practitioner.

(3) Referral. If an individual seeks or is in need of care and treatment in excess of services beyond the scope of limited services offered by the clinic, the clinic:

(a) Shall immediately advise the individual that he or she should seek services elsewhere; and

(b) May make a referral on behalf of the individual.

(4) Equipment. Equipment used for direct patient care shall comply with the following:

(a) The licensee shall establish and follow a written preventive maintenance program to ensure that equipment is operative and properly calibrated;

(b) All personnel engaged in the operation of the equipment shall have adequate training and be currently licensed, registered, or certified in accordance with applicable state statutes and

administrative regulations; and

(c) A written plan shall be developed and maintained to provide for training of personnel in the safe and proper usage of the equipment.

Section 6. Compliance with Applicable Statutes and Regulations. Each health care professional who provides services at a clinic shall act at all times in compliance with:

(1) Obligations or requirements associated with his or her respective professional license or credential; and

(2) Applicable federal, state, and local laws and administrative regulations including the privacy standard promulgated pursuant to Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. 160 and 164.

Section 7. Physical and Sanitary Environment. (1) Accessibility. A clinic shall meet requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to federal, state, and local laws.

(2) Fire safety. A clinic shall be approved by the state Fire Marshal's office before licensure is granted by the cabinet.

(3) Physical location and overall environment.

(a) A clinic shall have at least one (1) exam room.

(b) The condition of the physical location and the overall environment shall be maintained in such a manner that the safety and well-being of patients, personnel, and visitors are assured.

(c) The premises shall have a waiting room or seating for waiting patients near the entrance to the clinic.

(d) The clinic shall develop written infection control policies that are consistent with Centers for Disease Control guidelines, available at [www.cdc.gov/ncidod/dhqp/guidelines.html](http://www.cdc.gov/ncidod/dhqp/guidelines.html), and shall include:

1. Prevention of disease transmission to and from patients, visitors, and employees, including:

a. Universal blood and body fluid precautions;

b. Precautions against airborne transmittal of infections; and

c. Work restrictions for employees with infectious diseases; and

2. Cleaning, disinfection, and sterilization methods used for equipment and the environment.

(e) The clinic shall provide in-service education programs on the cause, effect, transmission, prevention, and elimination of infections.

(f) The clinic's facility, equipment, and surroundings shall be kept in a condition of good repair, neat, clean, free from accumulation of dirt, rubbish, and foul, stale, or musty odors.

(g) Hazardous cleaning solutions, compounds, and substances shall be:

1. Labeled;

2. Stored in closed metal containers;

3. Kept separate from other cleaning materials; and

4. Kept in a locked storage area apart from the exam room.

(h) The clinic shall be kept free from insects and rodents, and their nesting places.

(i) Garbage and trash:

1. Shall be removed from the premises regularly; and

2. Containers shall be cleaned regularly as needed.

(j) A clinic shall establish and maintain a written policy for the handling and disposal of wastes, including any infectious, pathological, and contaminated wastes, which shall include the following:

1. Sharp wastes shall be segregated from other wastes and placed in puncture-resistant containers immediately after use; and

2. A needle or other contaminated sharp shall not be recapped, purposely bent, broken, or otherwise manipulated by hand as a means of disposal, except as permitted by the Centers for Disease Control and the Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii); and

3. A sharp waste container shall be incinerated on or off-site or rendered nonhazardous; and

4. Any nondisposable sharps shall be placed in a hard walled container for transport to a processing area for decontamination.

(k) Disposable waste shall be:

a. Placed in a suitable bag or closed container so as to prevent leakage or spillage; and  
b. Handled, stored, and disposed of in such a way as to minimize direct exposure of personnel or patients to waste materials.

2. The clinic shall establish specific written policies regarding handling and disposal of waste material.

(l)1. A clinic shall provide a hand washing facility in each exam room with:

- a. Hot and cold water and blade type operating handles;
- b. Knee or foot controls; or
- c. Motion activated technology.

2. A soap dispenser, disposable towels or electronic hand dryers, and a waste receptacle shall be provided at each hand washing sink.

(m)1. If a clinic is located on the premises of another entity and does not have toilet facilities located within the clinic, the clinic may share toilet facilities with the other entity.

2. A clinic that shares toilet facilities with another entity shall establish policies and procedures to protect the privacy and dignity of the patient.

(n) A licensee owned or operated incinerator used for the disposal of waste shall be in compliance with all applicable Kentucky statutes and administrative regulations.

MARYELLEN B. MYNEAR, Inspector General

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 9, 2015

FILED WITH LRC: April 10, 2015 at 1 p.m.

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 Public Health

#### Division of Public Health Protection and Safety

(As Amended at ARRS, July 14, 2015)

**902 KAR 45:110 Permits and fees for retail food establishments, food manufacturing plants, food storage warehouses, salvage processors and distributors, vending machine companies, and[seasonal] restricted food concessions.**

RELATES TO: KRS 217.025, 217.035, 217.037, 217.125, 217.811[, 2000 Ky. Acts ch. 549, part I.A.41]

STATUTORY AUTHORITY: KRS 217.125(2)[494A.050, 217.125(1), 2000 Ky. Acts ch. 549, part I.A. 41]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125(2) and (4) requires[authorizes], 217.811 and 2000 Ky. Acts ch. 549, part I.A. 41 authorize] the Secretary of the Cabinet for Health and Family Services to provide by administrative regulation a schedule of reasonable fees to be paid by food manufacturing plants, food storage warehouses, retail food establishments, salvage distributors, salvage processing plants, [vending machine companies,] and[seasonal] restricted food concessions for permits to operate and for inspection activities carried out by the Cabinet for Health and Family Services. This administrative regulation establishes the schedule of fees.

Section 1. Fees. (1) A permit fee shall be required for inspections conducted by the cabinet or the local health department to determine compliance with:

(a) 902 KAR 45:080 for a salvage distributor or a salvage processing plant; or

(b) KRS 217.025, 217.035, and 217.037 for a food manufacturing plant or food storage warehouse.

(2) A fee for the inspection of an establishment identified in subsection (1)(a) or (b) of this section shall be assessed according to the total square footage of the establishment:

(a) Zero - 1,000 square feet - \$120;

(b) 1,001 - 5,000 square feet - \$160;

(c) 5,001 – 20,000 square feet - \$200;

(d) 20,001 – 40,000 square feet - \$300;

(e) 40,001 – 80,000 square feet - \$400;

(f) 80,001 – 150,000 square feet - \$500; or

(g) 150,001 or more square feet - \$600.

(3) A fee shall be assessed for inspection of a retail food store conducted by the cabinet or local health department to determine compliance with the provisions of KRS 217.025, 217.035, 217.037, and 217.125(2) pertaining to:

(a) Adulteration;

(b) Misbranding;

(c) Packaging; or

(d) Labeling of food products.

(4) A fee for the inspection of a retail food store shall be assessed according to the total square footage of the establishment:

(a) Zero - 1,000 square feet – seventy-five (75) dollars;

(b) 1,001 - 10,000 square feet - \$125;

(c) 10,001 - 20,000 square feet - \$175;

(d) 20,001 - 30,000 square feet - \$200; or

(e) 30,001 or more square feet - \$300.

(5) An application for a permit to operate a mobile retail food store shall be accompanied by an annual fee of fifty (50) dollars.

(6) An application for a permit to operate a vending machine company shall be accompanied by the[an] annual fee required by KRS 217.811[;

(a) Of ten (10) dollars; and

(b) For the total number of vending machines operated by the applicant:

1. One (1) – twenty-five (25) machines - fifty (50) dollars;

2. Twenty-six (26) – fifty (50) machines - seventy-five (75) dollars;

3. Fifty-one (51) – 100 machines - \$100;

4. 101 – 150 machines - \$125; or

5. 151 and over machines - \$200].

(7) An application for a permit to operate a permanent food service establishment shall be accompanied by an annual fee of \$100, plus the following fee if applicable:

(a) Fee for the number of seats:

1. One (1) to twenty-five (25) seats - sixty (60) dollars;

2. Twenty-six (26) to fifty (50) seats - \$100;

3. Fifty-one (51) to 100 seats - \$125;

4. 101 to 200 seats - \$150; or

5. 201 or more seats - \$175;

(b) Drive-through window - \$125; and

(c) Catering operation - \$110.

(8) An application for a permit to operate a statewide mobile food unit shall be accompanied by an annual fee of \$160.

(9) An application for a permit to operate a temporary food service establishment shall be accompanied by a fee according to the length of the event:

(a) One (1) to three (3) day event – fifty (50) dollars;

(b) Four (4) to seven (7) day event – seventy-five (75) dollars;

or

(c) Eight (8) to fourteen (14) day event - \$100.

(10) An application for a permit to operate a restricted food concession or mobile restricted food concession shall be accompanied by an annual fee of \$100.

(11) A request for a certificate of free sale or export authorizing a Kentucky food manufacturing plant holding a valid permit to operate to export a product outside of the United States shall be accompanied by a service fee of ten (10) dollars for each certificate requested.

Section 2. Payment of Fees. (1) Fees shall be made payable to the local health department having jurisdiction by a:

(a) Retail food store;

(b) Mobile retail food store;

(c) Vending machine company and commissary;

(d) Mobile food unit;

(e) Temporary food establishment;

(f) Salvage distributor;

(g) Restricted food concession; or



(h) Food service establishment.

(2) Fees shall be made payable to the Kentucky State Treasurer and forwarded to the Kentucky Department for Public Health by a:

(a) Food manufacturing plant;

(b) Salvage processing plant;

(c) Food storage warehouse; or

(d) Food manufacturing ~~plant~~[plants] requesting a certificate for free sale or export~~(a) A permit fee is required for inspections conducted by the cabinet or its representatives to determine compliance with:~~

~~1. Administrative regulations for salvage distributors and salvage processing plants; and~~

~~2. KRS 217.025, 217.035, and 217.037 for food manufacturing plants and food storage warehouses.~~

~~(b) A fee shall be assessed according to the total square footage of the establishment, as follows:~~

~~1. 0 – 1,000 square feet – seventy-five (75) dollars;~~

~~2. 1,001 – 5,000 square feet – eighty-five (85) dollars;~~

~~3. 5,001 – 30,000 square feet – \$147;~~

~~4. 30,001 – 40,000 square feet – \$275; or~~

~~5. 40,001 or more square feet – \$290.~~

~~(2)(a) A fee shall be assessed for inspections of retail food stores, conducted by the cabinet or its representative to determine compliance with administrative regulations pursuant to KRS 217.025, 217.035, 217.037, and 217.125(2) pertaining to:~~

~~1. Adulteration;~~

~~2. Misbranding;~~

~~3. Packaging; and~~

~~4. Labeling of food products.~~

~~(b) A fee shall be assessed according to the total square footage of the establishment, as follows:~~

~~1. 0 – 1,000 square feet – twenty-seven (27) dollars;~~

~~2. 1,001 – 10,000 square feet – fifty-three (53) dollars;~~

~~3. 10,001 – 20,000 square feet – ninety (90) dollars;~~

~~4. 20,001 – 30,000 square feet – ninety-five (95) dollars; or~~

~~5. 30,001 or more square feet – \$100.~~

~~(c) An application for a permit to operate a mobile retail food store shall be accompanied by a fee of twenty-seven (27) dollars.~~

~~(3) An application for a permit to operate a vending machine company shall be accompanied by a fee of twenty-seven (27) dollars for each vending commissary plus a fee for the total number of vending machines operated by the applicant as follows:~~

~~(a) One (1) – twenty-five (25) machines – \$107;~~

~~(b) Twenty-six (27) – fifty (50) machines – \$160;~~

~~(c) Fifty-one (51) – 100 machines – \$213;~~

~~(d) 101-150 machines – \$253; or~~

~~(e) 151 and over machines – \$414.~~

~~(4) An application for a permit to operate a food service establishment shall be accompanied by a fee of sixty (60) dollars plus the following fees, if applicable:~~

~~(a) For a permanent food service establishment, according to the number of seats, as follows:~~

~~1. Zero to twenty-five (25) seats – sixty (60) dollars annually;~~

~~2. Twenty-six (26) to fifty (50) seats – ninety (90) dollars annually;~~

~~3. Fifty-one (51) to 100 seats – ninety-five (95) dollars annually;~~

~~4. 101 to 200 seats – \$100 annually;~~

~~5. 201 or more seats – \$105 annually;~~

~~(b) Drive-through window – \$125 per year;~~

~~(c) Catering operation – \$110 per year; or~~

~~(d) Mobile food unit – \$120 per year.~~

~~(5) An application for a permit to operate a temporary food service establishment shall be accompanied by a fee according to the length of the event, as follows:~~

~~(a) One (1) to three (3) day event – twenty-five (25) dollars;~~

~~(b) Four (4) to fourteen (14) day event – thirty (30) dollars.~~

~~(6) An application for a permit to operate a seasonal restricted food concession within a local health department jurisdiction shall be accompanied by a fee of thirty-three (33) dollars.~~

Section 2. Payment of Fees. Payment of fees shall be made to the local health department having jurisdiction. Fees received by a

local health department shall be deposited in the Kentucky State Treasury].

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 9, 2015

FILED WITH LRC: April 10, 2015 at 1 p.m.

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.

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Department for Public Health**

**Division of Public Health Protection and Safety**

**(As Amended at ARRS, July 14, 2015)**

**902 KAR 45:160. Kentucky food processing, packaging, storage, and distribution operations.**

RELATES TO: KRS 13B, 194A.050, 211.090, 211.180, 217.005 - 217.205, 217.290 - 217.390, 217.990 - 217.992, 318.130, 21 C.F.R. Part 1, 7, 70, 73, 74, 81, 82, 100 - 102, 104 - 107, **108.25, 108.35**, 109, 110, 113, 114, 120, 123, 129, 130, 133, 135 - 137, 139, 145, 146, 150, 152, 155, 156, 158, 160, 161, 163 - 166, **168**, 169, 170, 172 - 178, 180 - 189, Pub. L. 101 - 535, Pub. L. **108[08] - 282, 21 U.S.C. 373**

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.180(1), 217.125(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) and 217.125(1) authorize the Cabinet for Health and Family Services to **promulgate[adopt]** administrative regulations **to[and]** regulate food processing, packaging, storage, and distribution operations. This administrative regulation establishes procedures and requirements for food processing, packaging, storage, and distribution operations for the purpose of protecting public health.

Section 1. Definitions. (1) "Adulterated" is defined by KRS 217.025. (2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Food processing establishment" is defined by KRS 217.015(20).

(4) "Food storage warehouse" is defined by KRS 217.015(22).

(5) "Imminent health hazard" is defined by KRS 217.015(24).

(6) "Misbranded" is defined by KRS 217.035.

(7) "No Action Indicated" or "NAI" means a plant inspection classification which indicates the firm has no violating condition or that only a minor violation was noted at the time of inspection.

(8) "Official Action Indicated" or "OAI" means a plant inspection classification which indicates a condition noted during the inspection was significant enough to pose an imminent health hazard, or was an uncorrected VAI condition on **a** previous **inspection[inspections]**.

(9) "Plant" means a food processing establishment or a food storage warehouse.

(10) "State Plumbing Code" **means the code established by/is contained in]** KRS Chapter 318 **and 815 KAR Chapter 20**.

(11) "Voluntary Action Indicated" or "VAI" means a plant inspection classification which indicates that a condition was noted during the inspection that is in violation of this administrative regulation but was not significant enough to pose an imminent health hazard.

Section 2. Applicability. (1) A plant shall comply with the following federal requirements:

(a) 21 U.S.C. 373, Records;

(b) 21 C.F.R. 1.20 - 1.24, General labeling requirements;

(c) 21 C.F.R. 7.1 - 7.13, General enforcement policy provisions;

(d) 21 C.F.R. 7.40 - 7.59, Food recalls provisions;

(e) 21 C.F.R. 70.20 - 70.25, Packaging and labeling requirements;

(f) 21 C.F.R. 73.1 - 73.615, Listing of food color additives

exempt from certification;

(g) 21 C.F.R. 74.101 - 74.706, Listing of food color additives subject to certification;

(h) 21 C.F.R. **Part** 81, General specifications and general restrictions for provisional color additives for use in foods, drugs, and cosmetics;

(i) 21 C.F.R. 82.3 - 82.706, Listing of certified provisionally listed food colors and specifications;

(j) 21 C.F.R. 100.155, Salt and iodized salt;

(k) 21 C.F.R. **Part** 101, Food Labeling;

(l) 21 C.F.R. **Part** 102, Common or usual name for non-standardized foods;

(m) 21 C.F.R. **Part** 104, Nutritional quality guidelines for foods;

(n) 21 C.F.R. **Part** 105, Foods for special dietary use;

(o) 21 C.F.R. **Part** 106, Infant formula quality control procedures;

(p) 21 C.F.R. **Part** 107, Infant formula;

(q) 21 C.F.R. 108.25, Specific requirements and conditions for exemption from or compliance with an emergency permit;

(r) 21 C.F.R. 108.35, Thermal processing of low-acid foods packaged in hermetically sealed containers;

(s) 21 C.F.R. **Part** 109, Unavoidable contaminants in food for human consumption and food packaging materials;

(t) 21 C.F.R. **Part** 110, Current good manufacturing practice in manufacturing, packaging and holding human food, whether sold interstate or intrastate commerce;

(u) 21 C.F.R. **Part** 113, Low acid foods;

(v) 21 C.F.R. **Part** 114, Acidified foods;

(w) 21 C.F.R. **Part** 120, Hazard analysis and critical control point (HACCP) systems;

(x) 21 C.F.R. **Part** 123, Fish and fishery products

(y) 21 C.F.R. **Part** 129, Processing and bottling of bottled drinking water;

(z) 21 C.F.R. **Part** 130, Food standards general;

(aa) 21 C.F.R. 133.10, 133.124, 133.125, 133.167 – 133.169, 133.171, 133.173 – 133.176, 133.179 - 133.180, Cheeses and related cheese products;

(bb) 21 C.F.R. **Part** 135, Frozen desserts;

(cc) 21 C.F.R. **Part** 136, Bakery products;

(dd) 21 C.F.R. **Part** 137, Cereal flours and related products;

(ee) 21 C.F.R. **Part** 139, Macaroni and noodle products;

(ff) 21 C.F.R. **Part** 145, Canned fruits;

(gg) 21 C.F.R. **Part** 146, Canned fruit juices;

(hh) 21 C.F.R. **Part** 150, Fruit butters, jellies, preserves, and related products;

(ii) 21 C.F.R. **Part** 152, Fruit pies;

(jj) 21 C.F.R. **Part** 155, Canned vegetables;

(kk) 21 C.F.R. **Part** 156, Vegetable juices;

(ll) 21 C.F.R. **Part** 158, Frozen vegetables;

(mm) 21 C.F.R. **Part** 160, Eggs and egg product;

(nn) 21 C.F.R. **Part** 161, Fish and shellfish;

(oo) 21 C.F.R. **Part** 163, Cacao products;

(pp) 21 C.F.R. **Part** 164, Tree nut and peanut products;

(qq) 21 C.F.R. **Part** 165, Beverages;

(rr) 21 C.F.R. **Part** 166, Margarine;

(ss) 21 C.F.R. **Part** 168, Sweeteners and table syrups;

(tt) 21 C.F.R. **Part** 169, Food dressings and flavorings;

(uu) 21 C.F.R. **Part** 170, Food additives;

(vv) 21 C.F.R. **Part** 172, Food additives permitted for direct addition to food for human consumption;

(ww) 21 C.F.R. **Part** 173, Secondary direct food additives permitted in food for human consumption;

(xx) 21 C.F.R. **Part** 174, Indirect food additives: general;

(yy) 21 C.F.R. **Part** 175, Indirect food additives: adhesives and components of coatings;

(zz) 21 C.F.R. **Part** 176, Indirect food additives: paper and paperboard components;

(aaa) 21 C.F.R. **Part** 177, Indirect food additives: polymers;

(bbb) 21 C.F.R. **Part** 178, Indirect food additives: adjuvants, production aids, and sanitizers;

(ccc) 21 C.F.R. **Part** 180, Food additives permitted in food or in contact with food on an interim basis pending additional study;

(ddd) 21 C.F.R. **Part** 181, Prior sanctioned food ingredients;

(eee) 21 C.F.R. **Part** 182, Substances generally recognized as safe;

(fff) 21 C.F.R. **Part** 184, Direct food substances affirmed as generally recognized as safe;

(ggg) 21 C.F.R. **Part** 186, Indirect food substances affirmed as generally recognized as safe;

(hhh) 21 C.F.R. **Part** 189, Substances prohibited from use in human food;

(iii) Pub. L. 101 - 535, Nutritional labeling and educational act; and

(jjj) Pub. L. 108 - 282, Food allergen labeling and consumer protection act.

(2) ~~[A plant shall not comply with]~~ The following federal regulations **shall not apply**:

(a) 21 C.F.R. 101.69;

(b) 21 C.F.R. 101.108;

(c) 21 C.F.R. 102.19;

(d) 21 C.F.R. 106.120;

(e) 21 C.F.R. 107.200 - 107.280;

(f) 21 C.F.R. 120.14;

(g) 21 C.F.R. 123.12;

(h) 21 C.F.R. 130.5 - 130.6;

(i) 21 C.F.R. 130.17;

(j) 21 C.F.R. 170.6;

(k) 21 C.F.R. 170.15; and

(l) 21 C.F.R. 170.17.

Section 3. Permits. (1) Before operating, a food manufacturing or processing plant, food packaging plant, food storage warehouse, or food distribution warehouse shall obtain a permit from the cabinet in accordance with KRS 217.125.

(2) Application for a permit shall be made on Form DFS-260, Application for Permit to Operate a Food Plant, and shall be submitted to the cabinet with the annual fee established by 902 KAR 45:110.

(3) A permit for food manufacturing, food packaging, food storage, or food distribution shall only be issued:

(a) In the name of the applicant;

(b) For the location identified in the application; and

(c) For a firm that is in compliance with this administrative regulation and KRS 217.005 - 217.215.

(4) A permit shall:

(a) Be posted in a conspicuous place in the firm;

(b) Expire on December 31 of each year; and

(c) Be renewed in accordance with KRS 217.125 **(12) and by submitting the form and fee required by subsection (2) of this section.**

(5) Failure to apply for or renew a permit to operate a food processing, packaging, storage, or distribution plant shall result in the cabinet issuing a Notice to Cease Operation.

Section 4. Plan Review. (1) Approval shall be obtained from the cabinet or its local health department agent prior to beginning work, if:

(a) A plant is constructed, remodeled, or altered;

(b) A plant's plumbing is relocated;

(c) Additional plumbing is added to a plant; or

(d) An existing structure is converted for use as a plant.

(2) To obtain approval, an applicant shall submit plans and specifications for the construction, remodeling, or alteration to the local health department in the county in which the construction, remodeling, or alteration will take place.

(3) Plans shall be prepared to show:

(a) Equipment layout;

(b) Size;

(c) Location and type of facilities; and

(d) Plumbing riser diagram.

Section 5. Construction and Maintenance. (1) The floor of the food preparation, food storage, and utensil washing area, walk-in refrigerator, dressing room, locker room, toilet room, and vestibule shall be:

(a) Smooth;

- (b) Durable;
- (c) Non-absorbent; and
- (d) Easily cleaned.
- (2) Floors shall be cleaned and maintained.
- (3) A juncture of a wall with a floor shall be covered and sealed.
- (4) The juncture between the wall and floor shall be tight-fitting.
- (5)(a) A floor drain shall be provided in a floor that is water flushed for cleaning or that receives discharge of water or other fluid waste from equipment.
- (b) Floors shall be graded to drain all parts of the floor.
- (6) Drip or condensate from fixtures, ducts, and pipes shall not contaminate food, food-contact surfaces, or food-packaging materials.
- (7) Mats shall be:
  - (a) Non-absorbent;
  - (b) Slip resistant; and
  - (c) Easily cleaned.
- (8) Mats shall not be used as storage racks.
- (9) Exposed utility service lines and pipes shall be installed to prevent tripping hazards and cleaning obstructions.
- (10) Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair.
- (11) Walls and ceilings of all food preparation and ware washing areas shall be:
  - (a) Smooth;
  - (b) Non-absorbent; and
  - (c) Easily cleaned.
- (12) Studs, joists, and rafters shall not be exposed in:
  - (a) Walk-in-refrigerators;
  - (b) Food preparation areas; and
  - (c) Ware washing areas.
- (13) Doors shall be:
  - (a) Solid;
  - (b) Tight-fitting; and
  - (c) Closed, except during cleaning or maintenance.
- (14) Light fixtures, vent covers, wall-mounted fans, and similar equipment attached to walls and ceilings shall be kept clean and maintained in good repair.
- (15) Aisles and working spaces shall be:
  - (a) Unobstructed; and
  - (b) Of a width to permit employees to perform their duties and protect against contaminating food or food-contact surfaces with clothing or by personal contact.
- (16) Lighting shall be provided in:
  - (a) Hand-washing areas;
  - (b) Dressing and locker rooms;
  - (c) Toilet rooms;
  - (d) Areas where food is examined, processed, or stored; and
  - (e) Areas where equipment or utensils are cleaned.
- (17) Lighting, glass fixtures, and skylights suspended over exposed food or food packaging materials shall be made of safety glass or otherwise shielded to protect against food contamination in case of breakage.
- (18) Ventilation or exhaust control equipment shall be provided to minimize odors or vapors in areas where odors or vapors may contaminate food.
- (19) Fans and other air-blowing equipment shall be located and operated in a manner that minimizes the potential for contaminating food, food-packaging materials, and food-contact surfaces.
- (20) Protection against pests shall be provided.

Section 6. Water Supply. (1) The water supply shall be:

- (a) Potable;
- (b) Of sufficient quantity to meet plant needs; and
- (c) From an approved public water system, if available.
- (2) If a public water system is not available, the supply for the plant shall be approved pursuant to 401 KAR Chapters 8 and 11.
- (3) If a community public water system later becomes available and has the capacity to serve the facility, connections may be made to it. The non-community water supply shall then be discontinued and inactivated.

(4) Hot and cold running water under pressure shall be provided in all areas where it is needed for:

- (a) Processing food;
- (b) Cleaning equipment, utensils, and food-packaging materials; and
- (c) Employee sanitary facilities.
- (5) Bottled water plants shall have their water supply system designed, approved, and operated in accordance with 401 KAR 8:700.

Section 7. Plumbing. (1) All plumbing shall comply with the minimum fixture requirements, and be sized, installed, and maintained in accordance with the State Plumbing Code.

(2) All utensils used in food processing that are not a part of a clean-in-place operation shall be washed, rinsed, and sanitized in:

- (a) A permanently plumbed three (3) compartment sink; or
- (b) A commercial dishwasher installed and operated in compliance with the State Plumbing Code and the manufacturer's instructions.

(3) If a three (3) compartment sink is utilized, the sink compartments shall be large enough to permit the accommodation of the equipment and utensils and each compartment of the sink shall be supplied with hot and cold potable running water under pressure.

(4) Clean-in-place equipment shall be cleaned or sanitized according to manufacturer instructions and industry best practices for the commodity being processed.

(5) Written sanitation procedures shall be maintained for each type of clean-in-place equipment.

(6) A service sink or curbed cleaning facility with a drain that allows for disposal of mop and cleaning solution water shall be provided.

(7) A person, firm, or corporation shall not construct, install, or alter any plumbing without having procured a plumbing construction permit from the Department of Housing, Buildings and Construction, under KRS Chapter 318.

Section 8. Sewage Disposal. (1) All sewage shall be disposed of into a public sewerage system, if available.

(2) If a public sewerage system is not available, disposal shall be made into a private system designed, constructed, and operated pursuant to the requirements of 401 KAR Chapter 5 or 902 KAR 10:085.

(3) If a public sewerage system becomes available, connection shall be made and the private sewerage system shall be discontinued.

Section 9. Toilet Facilities. Toilet facilities shall meet the fixture and construction requirements of KRS Chapter 318 and the State Plumbing Code.

Section 10. Hand Washing Facilities. (1) Hand-washing facilities shall be installed in accordance with KRS Chapter 318 and the State Plumbing Code where:

- (a) Food is prepared;
- (b) Utensils are washed; and
- (c) Sanitary practices require employees to wash and sanitize their hands.
- (2) All hand washing facilities shall be provided with:
  - (a) Soap;
  - (b) Disposable hand drying towels or mechanical hand drying devices; and
  - (c) Non-absorbent waste receptacles.
- (3) Hand sanitizer shall not be used in lieu of hand washing.
- (4) Lavatories used for hand washing shall not be used for food preparation or for washing equipment or utensils.
- (5) Lavatories, soap dispensers, and hand drying devices shall be kept clean and maintained.

Section 11. Food Transportation. (1) Vehicles used for the transportation of food shall be maintained and loaded in a manner to prevent cross-contamination of food.

(2) Vehicles that transport refrigerated food shall be capable of

maintaining frozen food frozen and refrigerated foods at forty-five (45) degrees Fahrenheit or below.

Section 12. Inspection Frequencies. (1) The cabinet shall assign an inspection frequency to each food manufacturing plant based upon the degree of risk associated with the commodity processed, packaged, stored, or distributed by the plant.

(2) The cabinet shall assign the inspection frequencies as follows:

(a) High risk plants shall be inspected no less than once every 360 days;

(b) Medium risk plants shall be inspected no less than once every 720 days; and

(c) Low risk plants shall be inspected no less than once every 1,080 days.

(3) The cabinet shall conduct additional inspections as necessary for enforcement pursuant to this administrative regulation.

Section 13. Violations. (1) If a plant has committed a violation of this administrative regulation, an opportunity to correct the violation shall be provided in accordance with the following classifications:

(a) NAI - No changes in the inspection frequency are warranted under this classification;

(b) VAI - A follow-up inspection is warranted within a period of time not to exceed ninety (90) days to determine if the violation causing this classification has been corrected; or

(c) OAI - A follow-up inspection shall be conducted within a period of time not to exceed forty-five (45) days to determine if the violation causing the classification has been corrected. A plant may also be classified as OAI if it continually fails to correct a violation previously classified under a VAI designation or if an imminent health hazard is noted during an inspection.

(2) Upon completion of the inspection, a recommended classification of NAI, VAI, or OAI and the timeframe for correction of the violation shall be specified on DFS-220, Food Plant Inspection Report.

(3) If, during a follow-up inspection, the violation noted on the previous inspection has not been corrected within the timeframe specified by the cabinet, the cabinet shall:

(a) Extend the timeframe for corrective action if the cabinet determines that progress towards compliance has been made; or

(b) Initiate enforcement provisions pursuant to Section 17 of this administrative regulation.

Section 14. Food Plant Environmental Sampling. The cabinet shall collect an environmental sample in an area of the plant as necessary for the enforcement of this administrative regulation.

Section 15. Examination and Detention of Foods. (1) The cabinet shall examine and collect samples of food as often as necessary for the enforcement of this administrative regulation.

(2) When food is deemed to be adulterated or misbranded, DFS-265, Food Plant Quarantine/Final Disposition Report, shall be issued to the permit holder or person in charge pursuant to KRS 217.115.

Section 16. Imminent Health Hazard and Notification Requirements. (1) The permit holder shall take immediate steps to correct conditions which have caused an imminent health hazard.

(2)(a) The permit holder shall notify the cabinet within twenty-four (24) hours of the knowledge of an imminent health hazard that cannot be controlled by immediate corrective action or[and] if food, food contact equipment, or food packaging has become contaminated because of an imminent health hazard.

(b) Written notification to the cabinet shall be made by:

1. Email to CHFSDPHENV@KY.gov; or

2. Fax to 502-696-1882.

(3) If the cabinet has evidence that a plant has failed to act to correct an imminent health hazard, enforcement provisions shall be initiated pursuant to Section 17 of this administrative regulation.

Section 17. Enforcement Provisions. (1) If the cabinet has substantial reason to believe that a permit holder has failed to act to correct an imminent health hazard or if the permit holder or an authorized agent has interfered with the cabinet in the performance of its duties after its agents have duly and officially identified themselves, the cabinet shall immediately, upon notice to the permit holder using the DFS-263, Food Plant Enforcement Notice:

(a) Suspend the permit without a conference; or

(b) Suspend that portion of the plant operation affected by the imminent health hazard without a conference.

(2) In the instance of a permit suspension due to an imminent health hazard, the permit holder may request a conference on a DFS-267, Request for Conference. A conference shall be granted as soon as practical, not to exceed seven (7) days from the receipt of the Request for Conference.

(3) In all other instances of violation of this administrative regulation, the cabinet shall serve the permit holder with a written notice specifying the violation and afford the holder an opportunity to correct.

(4) If a permit holder or operator has failed to comply with an OAI inspection notice within the timeframe granted, the cabinet shall issue a Notice of Intent to Suspend Permit on a DFS-263, Food Plant Enforcement Notice.

(5) When a Notice of Intent to Suspend Permit is issued, the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of the notice, unless a written request for a conference is filed with the cabinet by the permit holder within the ten (10) day period.

(6) Any person whose permit has been suspended may make application on Form DFS-269, Application for Reinstatement, for a re-inspection for the purpose of reinstatement of the permit. Within seven (7) days following receipt of a written request, including a statement signed by the applicant that in his opinion the condition causing suspension of the permit has been corrected, the cabinet shall make an inspection, and if the inspection reveals that the condition causing suspension of the permit has been corrected, the permit shall be reinstated.

(7) For a plant that has had a suspended permit two (2) or more times within a five (5) year period, the cabinet shall initiate permit revocation proceedings. Prior to this action, the cabinet shall notify the permit holder in writing on a DFS-263, Food Plant Enforcement Notice, stating the reasons for which the permit revocation is being sought and advising that the permit shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for an administrative hearing is filed with the cabinet pursuant to KRS Chapter 13B by the permit holder within the ten (10) day period.

(8) Notice provided for under this administrative regulation shall be deemed to have been properly served if:

(a) A copy of the inspection report or other notice has been delivered personally to the permit holder; or

(b) The notice has been sent by registered or certified mail, return receipt.

Section 18. Administrative Conferences. An administrative conference shall be conducted pursuant to 902 KAR 1:400.

Section 19. Administrative Hearings. An administrative hearing shall be conducted pursuant to KRS Chapter 13B.

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DFS-220, Food Plant Inspection Report", 09/2014;

(b) ~~["DFS-221, Food Plant Inspection Continuation Sheet", 09/2014;~~

~~(c)]~~ "DFS-260, Application for Permit to Operate a Food Plant", 09/2014;

~~(d)]~~ "DFS-263, Food Plant Enforcement Notice," 09/2014;

~~(e)]~~ "DFS-264, Quarantine Tag", 09/2014;

~~(f)]~~ "DFS-265, Food Plant Quarantine/Final Disposition Report", 09/2014;

~~(g)]~~ "DFS-266, Notice to Apply for Food Plant Permit", 09/2014;

~~(h)~~ "DFS-267, Request for Conference", 09/2014; ~~and~~  
~~(i)~~ ~~(i)~~ "DFS-268, Notice of Conference", 09/2014; and  
~~(j)~~ "DFS-269, Application for Reinstatement", 09/2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Cabinet for Health and Family Services, Department for Public Health, Division of Public Health Protection and Safety, Food Safety Branch, 275 East Main Street, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHANIE MAYFIELD GIBSON, MD, FCAP COMMISSIONER  
 AUDREY TAYSE HAYES,

APPROVED BY AGENCY: April 9, 2015

FILED WITH LRC: April 10, 2015 at 1 p.m.

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.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Policy and Operations**  
**(As Amended at ARRS, July 14, 2015)**

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

RELATES TO: KRS 13B.140, 142.303, 205.510(16), 205.565, 205.637, 205.638, 205.639, 205.640, 205.641, 216.380, 42 C.F.R. Parts 412, 413, 440.10, 440.140, 447.250-447.280, 42 U.S.C. 1395f(l), 1395ww(d)(5)(F), 1395x(mm), 1396a, 1396b, 1396d, 1396r-4, Pub.L. 111-148

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), 205.637(3), 205.640(1), 205.641(2), 216.380(12), 42 C.F.R. 447.200, 447.250, 447.252, 447.253, 447.271, 447.272, 42 U.S.C. 1396a, 1396r-4

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the Department for Medicaid Services' reimbursement provisions and requirements for acute care inpatient hospital services provided to a Medicaid recipient who is not enrolled with a managed care organization.

Section 1. Definitions. (1) "Acute care hospital" is defined by KRS 205.639(1).

(2) "Appalachian Regional Hospital System" means a private, not-for-profit hospital chain operating in a Kentucky county that receives coal severance tax proceeds.

(3) "Capital cost" means capital related expenses including insurance, taxes, interest, and depreciation related to plant and equipment.

(4) "CMS" means the Centers for Medicare and Medicaid Services.

(5) "CMS IPPS Pricer Program" means the software program published on the CMS website of <http://www.cms.hhs.gov> which shows the Medicare rate components and payment rates under the Medicare inpatient prospective payment system for a discharge within a given federal fiscal year.

(6) "Cost outlier" means a claim for which estimated cost exceeds the outlier threshold.

(7) "Critical access hospital" or "CAH" means a hospital:

(a) Meeting the licensure requirements established in 906 KAR 1:110; and

(b) Designated as a critical access hospital by the department.

(8) "Department" means the Department for Medicaid Services or its designated agent.

(9) "Diagnosis code" means a code:

(a) Maintained by the Centers for Medicare and Medicaid

Services (CMS) to group and identify a disease, disorder, symptom, or medical sign; and

(b) Used to measure morbidity and mortality.

(10) "Diagnosis related group" or "DRG" means a clinically similar grouping of services that can be expected to consume similar amounts of hospital resources.

(11) "Distinct part unit" means a separate unit within an acute care hospital that meets the qualifications established in 42 C.F.R. 412.25 and is designated as a distinct part unit by the department.

(12) "DRG base payment" means the sum of the operating base payment and capital base payment, calculated as described in Section 2(4)(b) and (c) of this administrative regulation.

(13) "DRG geometric mean length-of-stay" means an average hospital length-of-stay, expressed in days, for each DRG, ~~with~~ the geometric mean ~~is~~ calculated by taking the nth (number of values in the set) root of the product of all length-of-stay values within a given DRG.

(14) "Enrollee" means a recipient who is enrolled with a managed care organization.

(15) "Enrollee day" means a day of an inpatient hospital stay of a Medicaid recipient who is enrolled with a managed care organization.

(16) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(17) "Fixed loss cost threshold" means an amount, established annually by CMS, which is combined with the full DRG payment or transfer payment for each DRG to determine the outlier threshold.

(18) "Government entity" means an entity that qualifies as a unit of government for the purposes of 42 U.S.C. 1396b(w)(6)(A).

(19) "Hospital-acquired condition" means a condition:

(a)1. Associated with a diagnosis code selected by the Secretary of the U.S. Department of Health and Human Services pursuant to 42 U.S.C. 1395ww(d)(4)(D); and

2. Not present upon the recipient's admission to the hospital; and

(b) Which is recognized by the Centers for Medicare and Medicaid Services as a hospital acquired condition.

(20) "Indirect medical education costs" means additional costs of serving Medicaid recipients, incurred by teaching hospitals, to provide training and education to interns and residents, which are not reimbursed through direct graduate medical education payments.

(21) "Long-term acute care hospital" means a long term care hospital that meets the requirements established in 42 C.F.R. 412.23(e).

(22) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(23) "Medicaid fee-for-service" means a service associated with a Medicaid recipient who is not enrolled with a managed care organization.

(24) "Medicaid fee-for-service covered day" means an inpatient hospital day associated with a Medicaid recipient who is not enrolled with a managed care organization.

(25) "Medicaid shortfall" means the difference between a provider's allowable cost of providing services to Medicaid recipients and the amount received in accordance with the payment provisions established in Section 2 of this administrative regulation.

(26) "Medical education costs" means direct and allowable costs that are:

(a) Associated with an approved intern and resident program; and

(b) Subject to limits established by Medicare.

(27) "Medically necessary" or "medical necessity" means that a covered benefit shall be provided in accordance with 907 KAR 3:130.

(28) "Medicare-dependent hospital" means a hospital designated as a Medicare dependent hospital by the Centers for Medicare and Medicaid Services.

(29) **"Medicare IPPS Final Rule Data Files and Tables" means information related to Medicare hospital reimbursement that is:**

**(a) Published annually by the Centers for Medicare and Medicaid Services; and**

**(b) Located online at the Centers for Medicare and Medicaid Services acute inpatient PPS Web site located at: <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/index.html>.**

**(30)** "Medicare operating and capital cost-to-charge ratios" means two **(2)** hospital-specific calculations;

**(a)** Completed by Medicare using CMS 2552 cost report information;

**(b) In which:**

**1.** Medicare operating costs are divided by total applicable charges to determine a Medicare operating cost-to-charge ratio; **and**

**2.** Medicare capital costs are divided by total applicable charges to determine a Medicare capital cost-to-charge ratio; **and**

**(c) That[- These ratios]** are published annually by CMS in an impact file released with the Medicare IPPS Final Rule **Data Files and Tables** for a given federal fiscal year.

**(31)[(30)]** "Never event" means:

(a) A procedure, service, or hospitalization not reimbursable by Medicare pursuant to CMS Manual System Pub 100-03 Medicare National Coverage Determinations Transmittal 101; or

(b) A hospital-acquired condition.

**(32)[(31)]** "Outlier threshold" means the sum of the DRG base payment or transfer payment and the fixed loss cost threshold.

**(33)[(32)]** "Pediatric teaching hospital" is defined in KRS 205.565(1).

**(34)[(33)]** "Per diem rate" means the per diem rate paid by the department for:

(a) Inpatient care in an in-state psychiatric or rehabilitation hospital;

(b) Inpatient care in a long-term acute care hospital;

(c) Inpatient care in a critical access hospital,

(d) Psychiatric, substance use disorder, or rehabilitation services in an in-state acute care hospital which has a distinct part unit; or

(e) A psychiatric or rehabilitation service in an in-state acute care hospital.

**(35)[(34)]** "Psychiatric hospital" means a hospital which meets the licensure requirements as established in 902 KAR 20:180.

**(36)[(35)]** "Quality improvement organization" or "QIO" means an organization that complies with 42 C.F.R. 475.101.

**(37)[(36)]** "Rehabilitation hospital" means a hospital meeting the licensure requirements as established in 902 KAR 20:240.

**(38)[(37)]** "Relative weight" means the factor assigned to each Medicare DRG classification that represents the average resources required for a Medicare DRG classification paid under the DRG methodology relative to the average resources required for all DRG discharges paid under the DRG methodology for the same period.

**(39)[(38)]** "Resident" means an individual living in Kentucky who is not receiving public assistance in another state.

**(40)[(39)]** "Rural hospital" means a hospital located in a rural area pursuant to 42 C.F.R. 412.64(b)(1)(ii)(C).

**(41)[(40)]** "Sole community hospital" means a hospital that is currently designated as a sole community hospital by the Centers for Medicare and Medicaid Services.

**(42)[(41)]** "State university teaching hospital" means:

(a) A hospital that is owned or operated by a Kentucky state-supported university with a medical school; or

(b) A hospital:

1. In which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and which are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; and

2. That does not possess only a residency program or rotation agreement.

**(43)[(42)]** "Transfer payment" means a payment made for a recipient who is transferred to or from another hospital for a service reimbursed on a prospective discharge basis.

**(44)[(43)]** "Type III hospital" means an in-state disproportionate

share state university teaching hospital, owned or operated by either the University of Kentucky or the University of Louisville Medical School.

**(45)[(44)]** "Universal rate year" means the twelve (12) month period under the prospective payment system, beginning October 1 of each year, for which a payment rate is established for a hospital regardless of the hospital's fiscal year end.

**(46)[(45)]** "Urban hospital" means a hospital located in an urban area pursuant to 42 C.F.R. 412.64(b)(1)(ii).

**(47)[(46)]** "Urban trauma center hospital" means an acute care hospital that:

(a) Is designated as a Level I Trauma Center by the American College of Surgeons;

(b) Has a Medicaid utilization rate greater than twenty-five (25) percent; and

(c) Has at least fifty (50) percent of its Medicaid population as residents of the county in which the hospital is located.

Section 2. Payment for an Inpatient Acute Care Service in an In-state Acute Care Hospital. (1)(a) The department shall reimburse an in-state acute care hospital for an inpatient acute care service, except for a service not covered pursuant to 907 KAR 10:012, on a fully-prospective per discharge basis.

(b) The department's reimbursement pursuant to this administrative regulation shall approximate ninety-five (95) percent of a hospital's Medicare reimbursement excluding the following Medicare reimbursement components:

1. A Medicare low-volume hospital payment;
2. A Medicare end stage renal disease payment;
3. A Medicare new technology add-on payment;
4. A Medicare routine pass-through payment;
5. A Medicare ancillary pass-through payment;
6. A Medicare value-based purchasing payment or penalty;
7. A Medicare readmission penalty in accordance with

paragraph (c) of this subsection;

8. A Medicare hospital-acquired condition penalty in accordance with paragraph (c) of this subsection;

9. Any type of Medicare payment implemented by Medicare after October 1, 2015; or

10. Any type of Medicare payment not described in this administrative regulation.

(c) The department's:

1. Never event and hospital-acquired condition provisions established in Section 3 of this administrative regulation shall apply to acute care inpatient hospital reimbursement under this administrative regulation; and

2. Readmission provisions established in Section 12 of this administrative regulation shall apply to acute care inpatient hospital reimbursement under this administrative regulation.

(2)(a) For an inpatient acute care service, except for a service not covered pursuant to 907 KAR 10:012, in an in-state acute care hospital, the total hospital-specific per discharge payment shall be the sum of:

1. A DRG base payment; and
2. If applicable, a cost outlier payment.

(b) The resulting payment shall be limited to ninety-five (95) percent of the calculated value.

(c) If applicable, a transplant acquisition fee payment shall be added pursuant to subsection (11)(b) of this section.

(3)(a) The department shall assign a DRG classification to each unique discharge billed by an acute care hospital.

(b)1. The DRG assignment shall be based on the most recent Medicare Severity DRG (MS-DRG) grouping software released by the Centers for Medicare and Medicaid Services beginning with version 32 **on October 1, 2015 unless CMS releases version 33 on October 1, 2015.**

**2. If CMS releases version 33 on October 1, 2015, the department shall make interim payments for dates of service beginning October 1, 2015 based on version 32 and then retroactively adjust claims for dates of service beginning October 1, 2015 using version 33.**

**3.[upon adoption of this administrative regulation.**

**2.]** The grouper version shall be updated in accordance with

Section 8 of this administrative regulation.

(c) In assigning a DRG for a claim, the department shall exclude from consideration any secondary diagnosis code associated with a never event.

(4)(a) A DRG base payment shall be the sum of the operating base payment and the capital base payment calculated as described in paragraphs (c) and (d) of this subsection.

(b) All calculations in this subsection shall be subject to special rate-setting provisions for sole community hospitals and Medicare dependent hospitals as described in Sections 5 and 6 of this administrative regulation.

(c)1. The operating base payment shall be determined by multiplying the hospital-specific operating rate by the DRG relative weight.

2. If applicable, the resulting product of subparagraph 1. of this paragraph shall be multiplied by the sum of one (1) and a hospital-specific operating indirect medical education (IME) factor determined in accordance with subparagraph 7 of this paragraph.

3. ~~Beginning October 1, 2015[Upon adoption of this administrative regulation]~~, the hospital-specific operating rate referenced in subparagraph 1 of this paragraph shall be calculated using inputs from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables published by CMS as described in subparagraphs 4 through 6 of this paragraph.

4. The Medicare IPPS standard amount established for operating labor costs shall be multiplied by the wage index associated with the final Core Based Statistical Area (CBSA) assigned to the hospital by Medicare, inclusive of any Section 505 adjustments applied by Medicare.

5. The resulting product of subparagraph 4 of this paragraph shall be added to the Medicare IPPS standard amount for non-labor operating costs.

6. The operating rate shall be updated in accordance with Section 8 of this administrative regulation.

7.a. ~~Beginning October 1, 2015[Upon adoption of this administrative regulation]~~, the hospital-specific operating IME factor shall be taken from the Federal Fiscal Year 2016 Medicare Inpatient Prospective Payment System (IPPS) Final Rule Data Files and Tables[impact file] published by CMS.

b. The operating IME factor shall be updated in accordance with Section 8 of this administrative regulation.

(d)1. The capital base payment shall be determined by multiplying the hospital-specific capital rate by the DRG relative weight.

2. If applicable, the resulting product of subparagraph 1. of this paragraph shall be multiplied by the sum of one (1) and a hospital-specific capital indirect medical education factor determined in accordance with subparagraph 6 of this paragraph.

3. ~~Beginning October 1, 2015[Upon adoption of this administrative regulation]~~, the hospital-specific capital rate referenced in subparagraph 1 of this paragraph shall be calculated using inputs from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables published by CMS as described in subparagraphs 4 and 5 of this paragraph.

4. The Medicare IPPS standard amount established for capital costs shall be multiplied by the geographic adjustment factor (GAF) associated with the final CBSA assigned to the hospital by Medicare.

5. The capital rate shall be updated in accordance with Section 8 of this administrative regulation.

6.a. ~~Beginning October 1, 2015[Upon adoption of this administrative regulation]~~, the hospital-specific capital IME factor shall be taken from the Medicare Inpatient Prospective Payment System (IPPS) Final Rule Data Files and Tables[impact file] published by CMS.

b. The capital IME factor shall be updated in accordance with Section 8 of this administrative regulation.

(5)(a) The department shall make a cost outlier payment for an approved discharge meeting the Medicaid criteria for a cost outlier for each DRG as established in paragraphs (b) to (e) of this subsection.

(b) A cost outlier shall be subject to QIO review and approval.

(c) A discharge shall qualify for a cost outlier payment if its

estimated cost exceeds the DRG's outlier threshold.

(d)1. The department shall calculate the estimated cost of a discharge:

a. For purposes of comparing the discharge cost to the outlier threshold; and

b. By multiplying the sum of the hospital-specific Medicare operating and capital-related cost-to-charge ratios by the Medicaid allowed charges.

2.a. ~~[Effective October 1, 2015,]~~ A Medicare operating and capital-related cost-to-charge ratio shall be extracted from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables[impact file] published by CMS.

b. The Medicare operating and capital cost-to-charge ratios shall be updated in accordance with Section 8 of this administrative regulation.

(e)1. The department shall calculate an outlier threshold as the sum of a hospital's DRG base payment or transfer payment and the fixed loss cost threshold.

2.a. ~~Beginning October 1, 2015[Upon adoption of this administrative regulation]~~, the fixed loss cost threshold shall equal the Medicare fixed loss cost threshold established for Federal Fiscal Year 2016.

b. The fixed loss cost threshold shall be updated in accordance with Section 8 of this administrative regulation.

(f)1. For specialized burn DRGs as established by Medicare, a cost outlier payment shall equal ninety (90) percent of the amount by which estimated costs exceed a discharge's outlier threshold.

2. For all other DRGs, a cost outlier payment shall equal eighty (80) percent of the amount by which estimated costs exceed a discharge's outlier threshold.

(6)(a) ~~[Effective October 1, 2015,]~~ The department shall establish DRG relative weights obtained from the Medicare IPPS Final Rule Data Files and Tables corresponding to the grouper version in effect under subsection (3) of this section.

(b) Relative weights shall be revised to match the grouping software version for updates in accordance with Section 8 of this administrative regulation.

(7) The department shall separately reimburse for a mother's stay and a newborn's stay based on the DRGs assigned to the mother's stay and the newborn's stay.

(8)(a) If a patient is transferred to or from another hospital, the department shall make a transfer payment to the transferring hospital if the initial admission and the transfer are determined to be medically necessary.

(b) For a service reimbursed on a prospective discharge basis, the department shall calculate the transfer payment amount based on the average daily rate of the transferring hospital's payment for each covered day the patient remains in that hospital, plus one (1) day, up to 100 percent of the allowable per discharge reimbursement amount.

(c)1. The department shall calculate an average daily discharge rate by dividing the DRG base payment by the Medicare geometric mean length-of-stay for a patient's DRG classification.

2. The Medicare geometric length-of-stay shall be obtained from the Medicare IPPS Final Rule Data Files and Tables corresponding to the grouper version in effect under subsection (3) of this section.

3. The geometric length-of-stay values shall be revised to match the grouping software version for updates in accordance with Section 8 of this administrative regulation.

(d) Total reimbursement to the transferring hospital shall be the transfer payment amount and, if applicable, a cost outlier payment amount, limited to ninety-five (95) percent of the amount calculated for each.

(e) For a hospital receiving a transferred patient, the department shall reimburse the standard[full] DRG[base] payment established in subsection (2) of this section[and, if applicable, a cost outlier payment amount, limited to ninety-five (95) percent of the amount calculated for each].

(9)(a) The department shall reimburse a transferring hospital for a transfer from an acute care hospital to a qualifying post-acute care facility for selected DRGs in accordance with paragraphs (b) through (d) of this subsection as a post-acute care transfer.

(b) The following shall qualify as a post-acute care setting:

1. A skilled nursing facility;
2. A cancer or children's hospital;
3. A home health agency;
4. A rehabilitation hospital or rehabilitation distinct part unit located within an acute care hospital;
5. A long-term acute care hospital; or
6. A psychiatric hospital or psychiatric distinct part unit located within an acute care hospital.

(c) A DRG eligible for a post-acute care transfer payment shall be in accordance with 42 U.S.C. 1395ww(d)(4)(J)[1395ww(d)(4)(C)(i)].

(d)1. The department shall pay each transferring hospital an average daily rate for each day of a stay.

2. A transfer-related payment shall not exceed the full DRG payment that would have been made if the patient had been discharged without being transferred.

3. A DRG identified by CMS as being eligible for special payment shall receive fifty (50) percent of the full DRG payment plus the average daily rate for the first day of the stay and fifty (50) percent of the average daily rate for the remaining days of the stay up to the full DRG base payment.

4. A DRG that is referenced in paragraph (b) of this subsection and not referenced in subparagraph 2 of this paragraph shall receive twice the average daily rate for the first day of the stay and the average daily rate for each following day of the stay prior to the transfer.

5. Total reimbursement to the transferring hospital shall be the transfer payment amount and, if applicable, a cost outlier payment amount, limited to ninety-five (95) percent of the amount calculated for each.

(e)1. The average daily rate shall be the base DRG payment allowed divided by the Medicare geometric mean length-of-stay for a patient's DRG classification.

2. The Medicare geometric mean length-of-stay shall be determined and updated in accordance with subsection (8)(c) [1.] of this section.

(10) The department shall reimburse a receiving hospital for a transfer to a rehabilitation or psychiatric distinct part unit the facility-specific distinct part unit per diem rate, in accordance with 907 KAR 10:815, for each day the patient remains in the distinct part unit.

(11)(a) The department shall reimburse for an organ transplant on a prospective per discharge method according to the recipient's DRG classification.

(b)1. The department's organ transplant reimbursement shall include an interim reimbursement followed by a final reimbursement.

2. The final reimbursement shall:

a. Include a cost settlement process based on the Medicare 2552 cost report form; and

b. Be designed to reimburse hospitals for ninety-five (95) percent of organ acquisition costs.

3.a. An interim organ acquisition payment shall be made using a fixed-rate add-on to the standard DRG payment using the rates established in subclauses (i), (ii), (iii), (iv), and (v) of this clause:

- (i) Kidney Acquisition - \$65,000;
- (ii) Liver Acquisition - \$55,000;
- (iii) Heart Acquisition - \$70,000;
- (iv) Lung Acquisition - \$65,000; or
- (v) Pancreas Acquisition - \$40,000.

b. Upon receipt of a hospital's as-filed Medicare cost report, the department shall calculate a tentative settlement at ninety-five (95) percent of costs for organ acquisition costs utilizing worksheet D-4 of the CMS 2552 cost report for each organ specified in clause a. of this subparagraph.

c. Upon receipt of a hospital's finalized Medicare cost report, the department shall calculate a final reimbursement which shall be a cost settlement at ninety-five (95) percent of costs for organ acquisition costs utilizing worksheet D-4 of the CMS 2552 cost report for each organ specified in clause a. of this subparagraph.

d. The final cost settlement shall reflect any cost report adjustments made by CMS.

Section 3. Never Events. (1) For each diagnosis on a claim, a hospital shall specify on the claim whether the diagnosis was present upon the individual's admission to the hospital.

(2) In assigning a DRG for a claim, the department shall exclude from the DRG assignment consideration of any secondary diagnosis code associated with a hospital-acquired condition.

(3) A hospital shall not seek payment for treatment for or related to a never event through:

- (a) A recipient;
- (b) The Cabinet for Health and Family Services for a child in the custody of the cabinet; or
- (c) The Department for Juvenile Justice for a child in the custody of the Department for Juvenile Justice.

(4) A recipient, the Cabinet for Health and Family Services, or the Department for Juvenile Justice shall not be liable for treatment for or related to a never event.

Section 4. Preadmission Services for an Inpatient Acute Care Service. A preadmission service provided within three (3) calendar days immediately preceding an inpatient admission reimbursable under the prospective per discharge reimbursement methodology shall:

(1) Be included with the related inpatient billing and shall not be billed separately as an outpatient service; and

(2) Exclude a service furnished by a home health agency, a skilled nursing facility, or hospice, unless it is a diagnostic service related to an inpatient admission or an outpatient maintenance dialysis service.

Section 5. Reimbursement for Sole Community Hospitals. An operating rate for sole community hospitals shall be calculated as described in subsections (1) and (2) of this section.

(1)(a) For each sole community hospital, the department shall utilize the hospital's hospital-specific (HSP) rate calculated by Medicare.

(b) [On October 1, 2015,] The HSP rate shall be extracted from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables[impact file].

(c) Effective October 1, 2016 and for subsequent years on October 1, the HSP rate shall be updated in accordance with Section 8 of this administrative regulation.

(2)(a) The department shall compare the rate referenced in subsection (1) of this section with the operating rate calculated in Section 2(4)(c) of this administrative regulation.

(b) The higher of the two (2) rates compared in paragraph (a) of this subsection shall be utilized as the operating rate for sole community hospitals.

Section 6. Reimbursement for Medicare Dependent Hospitals.

(1)(a) For a Medicare-dependent hospital, the department shall utilize the hospital's hospital-specific (HSP) rate calculated by Medicare.

(b) [On October 1, 2015,] The HSP rate shall be extracted from the Federal Fiscal Year 2016 Medicare IPPS Final Rule Data Files and Tables[impact file].

(c) Effective October 1, 2016 and for subsequent years on October 1, the HSP rate shall be updated in accordance with Section 8 of this administrative regulation.

(2)(a) The department shall compare the rate referenced in subsection (1) of this section with the operating rate calculated in Section 2(4)(c) of this administrative regulation.

(b) If the Section 2(4)(c) rate is higher, it shall be utilized as the hospital's operating rate for the period.

(c)1. If the rate referenced in [paragraph (a) of this subsection (1) of this section] is higher, the department shall calculate the arithmetic difference between the two (2) rates.

2. The difference shall be multiplied by seventy-five (75) percent.

3. The resulting product shall be added to the Section 2(4)(c) rate to determine the hospital's operating rate for the period.

(d) If CMS terminates the Medicare-dependent hospital program, a hospital that is a Medicare-dependent hospital at the



time that CMS terminates the program shall receive operating rates as calculated in Section 2(4)(c) of this administrative regulation.

Section 7. Direct Graduate Medical Education Costs at In-state Hospitals with Medicare-approved Graduate Medical Education Programs. (1) If federal financial participation for direct graduate medical education costs is not provided to the department, ~~[pursuant to federal regulation or law,]~~ the department shall not reimburse for direct graduate medical education costs.

(2) If federal financial participation for direct graduate medical education costs is provided to the department, the department shall reimburse for the direct costs of a graduate medical education program approved by Medicare as established in this subsection.

(a) A payment shall be made:

1. Separately from the per discharge and per diem payment methodologies; and

2. On an annual basis corresponding to the hospital's fiscal year.

(b) The department shall determine an annual payment amount for a hospital as established in subparagraphs 1 through 4 of this paragraph.

1. Total direct graduate medical education costs shall be obtained from a facility's as-filed CMS 2552 cost report, worksheet E-4, line 25.

2.a. The facility's Medicaid utilization shall be calculated by dividing Medicaid fee-for-service covered days during the cost report period, as reported by the Medicaid Management Information System, by total inpatient hospital days, as reported on worksheet E-4, line 27 of the CMS 2552 cost report.

b. The resulting Medicaid utilization factor shall be rounded to six (6) decimals.

3. The total graduate medical education costs referenced in subparagraph 1 of this paragraph shall be multiplied by the Medicaid utilization factor calculated in subparagraph 2 of this paragraph to determine the total graduate medical education costs related to the fee-for-service Medicaid program.

4. Medicaid program graduate medical education costs shall then be multiplied by ninety-five (95) percent to determine the annual payment amount.

Section 8. Reimbursement Updating Procedures. (1)(a) The department shall annually ~~[effective October 1,]~~ update the Medicare grouper software to the most current version used by the Medicare program. **The annual update shall be effective October 1 of each year, except as provided in paragraph (b) of this subsection.**

(b) If Medicare does not release a new grouper version effective October 1 **of a given year:**

**1.[.] The current grouper effective prior to October 1 shall remain in effect until a new grouper is released; and**

**2. When the new grouper is released by Medicare, the department shall update the Medicare grouper software to the most current version used by the Medicare program.**

**(c) The department shall not update the Medicare grouper software more than once per federal fiscal year which shall be October 1 through September 30 of the following year.**

(2) At the time of the grouper update referenced in subsection (1) of this section, all DRG relative weights and geometric length-of-stay values shall be updated to match the most recent relative weights and geometric length-of-stay values effective for the Medicare program.

(3)(a) Annually, on October 1, all values obtained from the Medicare IPPS Final Rule Data **Files and Tables[and impact file]** shall be updated to reflect the most current Medicare IPPS final rule in effect.

**(b)1. Within thirty (30) days after the Centers for Medicare and Medicaid Services publishes the Medicare IPPS Final Rule Data Files and Tables for a given year, the department shall send a notice to each hospital containing the hospital's data from the Medicare IPPS Final Rule Data Files and Tables to be used by the department to establish diagnosis related group rates on October 1.**

**2. The notice referenced in subparagraph 1 of this paragraph shall request that the hospital:**

**a. Review the information; and**

**b. If the hospital discovers that the data in the notice sent by the department does not match the data published by the Centers for Medicare and Medicaid Services, notify the department of the discrepancy prior to October 1.**

(4) All Medicare IPPS final rule values utilized in this administrative regulation shall be updated to reflect any correction notices issued by CMS, if applicable.

(5) Except for an appeal in accordance with Section 22 of this administrative regulation, the department shall make no other adjustment.

Section 9. Universal Rate Year. (1) A universal rate year shall be established as October 1 of one (1) year through September 30 of the following year.

(2) A hospital shall not be required to change its fiscal year to conform with a universal rate year.

Section 10. Cost Reporting Requirements. (1)(a) An in-state hospital participating in the Medicaid Program shall submit to the department, in accordance with the requirements in this section:

1. A copy of each Medicare cost report it submits to CMS;
2. An electronic cost report file (ECR);
3. The Supplemental Medicaid Schedule KMAP-1;
4. The Supplemental Medicaid Schedule KMAP-4; and
5. The Supplemental Medicaid Schedule KMAP-6.

(b) A document listed in paragraph (a) of this subsection shall be submitted:

1. For the fiscal year used by the hospital; and
2. Within five (5) months after the close of the hospital's fiscal year.

(c) Except as provided in subparagraph 1 or 2 of this paragraph, the department shall not grant a cost report submittal extension.

1. If an extension has been granted by Medicare, the cost report shall be submitted simultaneously with the submittal of the Medicare cost report; or

2. If a catastrophic circumstance exists, for example flood, fire, or other equivalent occurrence, the department shall grant a thirty (30) day extension.

(2) If a cost report submittal date lapses and no extension has been granted, the department shall immediately suspend all **payments[payment]** to the hospital until a complete cost report is received.

(3) A cost report submitted by a hospital to the department shall be subject to audit and review.

(4) An in-state hospital shall submit to the department a final Medicare-audited cost report upon completion by the Medicare intermediary along with an electronic cost report file (ECR).

Section 11. Unallowable Costs. (1) The following shall not be allowable **costs[cost]** for Medicaid reimbursement:

(a) A cost associated with a political contribution;

(b) A cost associated with a legal fee for an unsuccessful lawsuit against the Cabinet for Health and Family Services. A legal fee relating to a lawsuit against the Cabinet for Health and Family Services shall only be included as a reimbursable cost in the period in which the suit is settled after a final decision has been made that the lawsuit is successful or if otherwise agreed to by the parties involved or ordered by the court; and

(c) A cost for travel and associated expenses outside the Commonwealth of Kentucky for the purpose of a convention, meeting, assembly, conference, or a related activity, subject to the limitations of subparagraphs 1 and 2 of this paragraph.

1. A cost for a training or educational purpose outside the Commonwealth of Kentucky shall be allowable.

2. If a meeting is not solely educational, the cost, excluding transportation, shall be allowable if an educational or training component is included.

(2) A hospital shall identify an unallowable cost on a Supplemental Medicaid Schedule KMAP-1.

(3) A Supplemental Medicaid Schedule KMAP-1 shall be completed and submitted to the department with an annual cost report.

Section 12. Readmissions. (1) An unplanned inpatient admission within fourteen (14) calendar days of discharge for the same diagnosis shall be considered a readmission and reviewed by the QIO.

(2) Reimbursement for an unplanned readmission with the same diagnosis shall be included in an initial admission payment and shall not be billed separately.

Section 13. Reimbursement for Out-of-State Hospitals. (1) The department shall reimburse an acute care out-of-state hospital for inpatient care on a fully prospective per discharge basis except for the following hospitals:

(a) A children's hospital located in a Metropolitan Statistical Area as defined by the United States Office of Management and Budget whose boundaries overlap Kentucky and a bordering state; and

(b) Vanderbilt Medical Center.

(2) For an inpatient acute care service, except for a service not covered pursuant to 907 KAR 10:012, in an out-of-state acute care hospital the total hospital-specific per discharge payment shall be calculated in the same manner as an in-state hospital as described in Section 2(2) of this administrative regulation with modifications to rates used as described in subsections (3) through (7) of this section.

(3) The DRG payment parameters listed in this subsection shall be modified for out-of-state hospitals not specifically excluded in subsection (1) of this section.

(a) The operating rate used in the calculation of the operating base payment described in Section 2(4)(c)1. of this administrative regulation shall equal the average of all in-state acute care hospital operating rates calculated in accordance with Section 2(4)(c) of this administrative regulation multiplied by eighty (80) percent, excluding any adjustments made for:

1. Sole community hospitals pursuant to Section 5 of this administrative regulation; or
2. Medicare-dependent hospitals pursuant to Section 6 of this administrative regulation.

(b) The capital rate used in the calculation of the capital base payment described in Section 2(4)(c)1. of this administrative regulation shall equal the average of all in-state acute care hospital capital rates calculated in accordance with Section 2(4)(c) of this administrative regulation multiplied by eighty (80) percent.

(c) The DRG relative weights used in the calculation of the operating base payment described in Section 2(4)(c)1. of this administrative regulation and the calculation of the capital base payment described in Section 2(4)(c)1. of this administrative regulation shall be reduced by twenty (20) percent.

(d) The following provisions shall not be applied:

1. Medicare indirect medical education cost or reimbursement;
2. Organ acquisition cost settlements;
3. Disproportionate share hospital distributions; and
4. Any adjustment mandated for in-state hospitals pursuant to KRS 205.638.

(e) The Medicare operating and capital cost-to-charge ratios used to estimate the cost of each discharge, for purposes of comparing the estimated cost of each discharge to the outlier threshold, shall be determined by calculating the arithmetic mean of all in-state cost-to-charge ratios established in accordance with Section 2(5)(d) of this administrative regulation.

(4) The department shall reimburse for inpatient acute care provided by an out-of-state children's hospital located in a Metropolitan Statistical Area as defined by the United States Office of Management and Budget and whose boundaries overlap Kentucky and a bordering state, and except for Vanderbilt Medical Center, the average operating rate and average capital rate paid to in-state children's hospitals.

(5) The department shall reimburse for inpatient care provided by Vanderbilt Medical Center using the hospital-specific Medicare base rate extracted from the CMS IPPS Pricer Program in effect at

the time that the care was provided multiplied by eighty-five (85) percent.

(6) The out-of-state hospitals referenced in subsections (4) and (5) of this section shall not be eligible to receive indirect medical education reimbursement, organ acquisition cost settlements, or disproportionate share hospital payments.

(7)(a) The department shall reimburse a hospital referenced in subsection (4) or (5) of this section a cost outlier payment for an approved discharge meeting Medicaid criteria for a cost outlier for each Medicare DRG.

(b) A cost outlier shall be subject to quality improvement organization review and approval.

(c) The department shall determine the cost outlier threshold for an out-of-state claim regarding a hospital referenced in subsection (4) or (5) of this section using the same method used to determine the cost outlier threshold for an in-state claim.

Section 14. Supplemental Payments. (1) Payment of a supplemental payment established in this section shall be contingent upon the department's receipt of corresponding federal financial participation.

(2) If federal financial participation is not provided to the department for a supplemental payment, the department shall not make the supplemental payment.

(3) In accordance with subsections (1) and (2) of this section, the department shall:

(a) In addition to a payment based on a rate developed under Section 2 of this administrative regulation, make quarterly supplemental payments to:

1. A hospital that qualifies as an in-state non-state owned pediatric teaching hospital in an amount:

a. Equal to the sum of the hospital's Medicaid shortfall for Medicaid fee-for-service recipients under the age of eighteen (18) plus an additional \$250,000 (\$1,000,000 annually); and

b. Prospectively determined by the department with an end of the year settlement based on actual patient days of Medicaid fee-for-service recipients under the age of eighteen (18);

2. A hospital that qualifies as a pediatric teaching hospital and additionally meets the criteria of a Type III hospital in an amount:

a. Equal to the difference between payments made in accordance with Sections 2 and 7 of this administrative regulation and the amount allowable under 42 C.F.R. 447.272, not to exceed the payment limit as specified in 42 C.F.R. 447.271;

b. That is prospectively determined subject to a year-end reconciliation; and

c. Based on the state matching contribution made available for this purpose by a facility that qualifies under this paragraph; and

3. A hospital that qualifies as an urban trauma center hospital in an amount:

a. Based on the state matching contribution made available for this purpose by a government entity on behalf of a facility that qualifies under this paragraph;

b. Based upon a hospital's proportion of Medicaid patient days to total Medicaid patient days for all hospitals that qualify under this paragraph;

c. That is prospectively determined with an end of the year settlement; and

d. That is consistent with the requirements of 42 C.F.R. 447.271;

(b) Make quarterly supplemental payments to the Appalachian Regional Hospital system:

1. In an amount that is equal to the lesser of:

a. The difference between what the department pays for inpatient services pursuant to Sections 2 and 7 of this administrative regulation and what Medicare would pay for inpatient services to Medicaid eligible individuals; or

b. \$7.5 million per year in aggregate;

2. For a service provided on or after July 1, 2005; and

3. Subject to the availability of coal severance funds, in addition to being subject to the availability of federal financial participation, which supply the state's share to be matched with federal funds; and

(c) Base a quarterly payment to a hospital in the Appalachian

Regional Hospital System on its Medicaid claim volume in comparison to the Medicaid claim volume of each hospital within the Appalachian Regional Hospital System.

(4) An overpayment made to a hospital under this section shall be recovered by subtracting the overpayment amount from a succeeding year's payment to be made to the hospital.

(5) For the purpose of this section, Medicaid patient days shall not include enrollee days.

(6) A payment made under this section shall not duplicate a payment made via 907 KAR 10:820.

(7) A payment made in accordance with this section shall be in compliance with the limitations established in 42 C.F.R. 447.272.

Section 15. Certified Public Expenditures. (1)(a) The department shall reimburse an in-state public government-owned or operated hospital the full cost of a Medicaid fee-for-service inpatient service provided during a given state fiscal year via a certified public expenditure (CPE) contingent upon approval by the Centers for Medicare and Medicaid Services (CMS).

(b) A payment referenced in paragraph (a) of this subsection shall be limited to the federal match portion of the hospital's uncompensated care cost for inpatient Medicaid fee-for-service recipients.

(2) To determine the amount of costs eligible for a CPE, a hospital's allowed charges shall be multiplied by cost-center specific cost-to-charge ratios from the hospital's 2552 cost report.

(3) The department shall verify whether or not a given CPE is allowable as a Medicaid cost.

(4)(a) Subsequent to a cost report being submitted to the department and finalized, a CPE shall be reconciled with the actual costs reported to determine the actual CPE for the period.

(b) If any difference between actual cost and submitted costs remains, the department shall reconcile any difference with the provider.

Section 16. Access to Subcontractor's Records. If a hospital has a contract with a subcontractor for services costing or valued at \$10,000 or more over a twelve (12) month period:

(1) The contract shall contain a provision granting the department access:

(a) To the subcontractor's financial information; and

(b) In accordance with 907 KAR 1:672; and

(2) Access shall be granted to the department for a subcontract between the subcontractor and an organization related to the subcontractor.

Section 17. New Provider, Change of Ownership, or Merged Facility. (1)(a) The department shall reimburse a new acute care hospital based on the Medicare IPPS Final Rule **Data Files and Tables** inputs described in this administrative regulation in effect at the time of the hospital's enrollment with the Medicaid program.

**(b) If applicable rate information does not exist in the Medicare IPPS Final Rule Data Files and Tables for a given period for an in-state acute care hospital, the department shall use, for the in-state acute care hospital, the average of all in-state acute care hospitals for the operating rate, capital rate, and outlier cost-to-charge ratio, excluding any adjustments made for sole community hospitals or Medicare dependent hospitals.**

(2) If a hospital undergoes a change of ownership, the new owner shall continue to be reimbursed at the rate in effect at the time of the change of ownership.**(3) If two (2) or more separate entities merge into one (1) organization, the department shall:**

**(a) Merge the latest available data used for rate setting;**

**(b) Combine bed utilization statistics, creating a new occupancy ratio;**

**(c) Combine costs using the trending and indexing figures applicable to each entity in order to arrive at correctly trended and indexed costs;**

**(d) If one (1) of the facilities merging has disproportionate share hospital status and the other does not, retain for the merged facility the status of the facility which reported the highest number of Medicaid days paid; and**

~~(e) Require each provider to submit a cost report for the period:~~

~~1. Ended as of the day before the merger within five (5) months of the end of the hospital's fiscal year end; and~~

~~2. Starting with the day of the merger and ending on the fiscal year end of the merged entity in accordance with Section 10 of this administrative regulation.]~~

Section 18. Department reimbursement for inpatient hospital care shall not exceed the upper payment limit established in 42 C.F.R. 447.271 or 447.272.

Section 19. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

(1) 907 KAR 10:012; and

(2) This administrative regulation.

Section 20. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

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

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

Section 21. Matters Subject to an Appeal. A hospital may appeal whether the Medicare data specific to the hospital that was extracted by the department in establishing the hospital's reimbursement was the correct data.

Section 22. Appeal Process. (1) An appeal shall comply with the requirements and provisions established in this section~~[of this administrative regulation].~~

(2)(a) A request for a review of an appealable issue shall be received by the department within sixty (60) calendar days of the date of receipt by the provider of the department's notice of rates set under this administrative regulation.

(b) The request referenced in paragraph (a) of this subsection shall:

1. Be sent to the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health and Family Services, 275 East Main Street, 6th Floor, Frankfort, Kentucky 40621-0002; and

2. Contain the specific issues to be reviewed with all supporting documentation necessary for the departmental review.

(3)(a) The department shall review the material referenced in subsection (2) of this section and notify the provider of the review results within thirty (30) days of its receipt except as established in paragraph (b) of this subsection.

(b) If the provider requests a review of a non-appealable issue under this administrative regulation, the department shall:

1. Not review the request; and

2. Notify the provider that the review is outside of the scope of this section.

(4)(a) A provider may appeal the result of the department's review, except for a notification that the review is outside the scope of this section, by sending a request for an administrative hearing to the Division for Administrative Hearings (DAH) within thirty (30) days of receipt of the department's notification of its review decision.

(b) A provider shall not appeal a notification that a review is outside of the scope of this section.

(5)(a) An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

(b) Pursuant to KRS 13B.030, the secretary of the Cabinet for Health and Family Services delegates to the Cabinet for Health and Family Services, Division for Administrative Hearings (DAH) the authority to conduct administrative hearings under this administrative regulation.

(c) A notice of the administrative hearing shall comply with KRS 13B.050.

(d) The administrative hearing shall be held in Frankfort,

Kentucky no later than ninety (90) calendar days from the date the request for the administrative hearing is received by the DAH.

(e) The administrative hearing date may be extended beyond the ninety (90) calendar days by:

1. A mutual agreement by the provider and the department; or
2. A continuance granted by the hearing officer.

(f) 1. If the prehearing conference is requested, it shall be held at least thirty (30) calendar days in advance of the hearing date.

2. Conduct of the prehearing conference shall comply with KRS 13B.070.

(g) If a provider does not appear at the hearing on the scheduled date ~~and the hearing has not been previously rescheduled~~, the hearing officer may find the provider in default pursuant to KRS 13B.050(3)(h).

(h) A hearing request shall be withdrawn only under the following circumstances:

1. The hearing officer receives a written statement from a provider stating that the request is withdrawn; or
2. A provider makes a statement on the record at the hearing that the provider is withdrawing the request for the hearing.

(i) Documentary evidence to be used at the hearing shall be made available in accordance with KRS 13B.090.

(j) The hearing officer shall:

1. Preside over the hearing; and
2. Conduct the hearing in accordance with KRS 13B.080 and 13B.090.

(k) The provider shall have the burden of proof concerning the appealable issues under this administrative regulation.

(l) 1. The hearing officer shall issue a recommended order in accordance with KRS 13B.110.

2. An extension of time for completing the recommended order shall comply with the requirements of KRS 13B.110(2) and (3).

(m) 1. A final order shall be entered in accordance with KRS 13B.120.

2. The cabinet shall maintain an official record of the hearing in compliance with KRS 13B.130.

3. In the correspondence transmitting the final order, clear reference shall be made to the availability of judicial review pursuant to KRS 13B.140, ~~and~~ 13B.150, ~~and~~ 13B.160.

Section 23. Effective Date. This administrative regulation shall become effective on October 1, 2015.

Section 24. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Supplemental Medicaid Schedule KMAP-1"; 2013;
- (b) "Supplemental Medicaid Schedule KMAP-4"; 2013;
- (c) "Supplemental Medicaid Schedule KMAP-6"; 2013; and
- (d) "CMS Manual System Pub 100-03 Medicare National Coverage Determinations Transmittal 101", June 12, 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law ~~it~~.

(a) ~~At~~ the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 11, 2015 at 4 p.m.

CONTACT PERSON: Tricia Orme, [tricia.orme@ky.gov](mailto: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 Aging and Independent Living**  
**Division of Quality Living**

(As Amended at IJC on Health & Welfare, July 15, 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.

(14)] 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)[(e)] 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 coordinate[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



## VOLUME 42, NUMBER 2 – AUGUST 1, 2015

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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

GENERAL GOVERNMENT CABINET  
Board of Medical Imaging and Radiation Therapy  
(Amended After Comments)

201 KAR 46:010. Definitions for 201 KAR Chapter 46.

RELATES TO: KRS 311B.020[241.890, 241.993]

STATUTORY AUTHORITY: KRS 311B.010, 311B.050  
[194A.050, 241.090, 241.870]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.010 and 311B.050 authorize the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to regulate medical imaging, radiation therapy, and related occupations. The Board of Medical Imaging and Radiation Therapy is authorized by KRS 311B.010 to 311B.190 to regulate an operator of a source of radiation other than a licensed practitioner of the healing arts, including but not limited to: the classification and licensure of operators; examinations; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation; issuance, renewal, and revocation of licenses; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, licenses and renewal licenses; and to set other standards as may be appropriate for the protection of health and safety. This administrative regulation establishes definitions for [defines] terms used in 201 KAR Chapter 46.

Section 1. Definitions. (1) "Accredited educational program" means an educational program accredited by the Joint Review Committee on Education in Radiologic Technology (JRCERT) or the Joint Review Committee on Educational Program in Nuclear Medicine Technology (JRCNMT).

(2) "Advanced imaging professional" means an individual who holds credentialing as a radiologist assistant (R.R.A.) or nuclear medicine advanced associate (NMAA).

(3) "Alternate course of study" means an independent course of study that qualifies an individual to take an examination approved by the board.

(4)[(2)] "Authorized user" is defined by KRS 311B.020(4)[means a physician, dentist, or podiatrist identified on a radioactive materials license issued by the board, by the U.S. Nuclear Regulatory Commission, or by another U.S. Nuclear Regulatory Commission agreement state, that authorizes the medical use of radioactive materials].

(5)[(3)] "Board" is defined by KRS 311B.020(5).

(6)[(4)] "Clinical education" means the component of the educational program that provides for supervised, competency-based, clinical education and experience.

(7) "Computed[Computerized] tomography technologist" or "CT technologist" means an individual who has obtained a post-primary certification in computerized tomography from the American Registry of Radiologic Technologists (ARRT).

(8)[(5)] "Continuing education" means a learning activity that is planned, organized, and administered to enhance the professional knowledge and skills that a licensee uses to provide services for patients, the public, or the medical profession. In order to qualify as continuing education an approval request form or proof of approval by a Recognized Continuing Education Evaluation Mechanism (RCEEM) shall be submitted to the board along with form Kentucky CEU-001, Continuing Education Approval Request Radiation Operator Certification Program.

(9) "Continuing education unit" or "CEU" means fifty (50) contact minutes of participation in a continuing education experience completed by:

(a) Attendance at a professional meeting;

(b) Documenting completed, approved independent study; or

(c) Documenting completed academic courses applicable to health care, medical imaging, radiation therapy, or related courses.

(10)[(6)] "Contrast procedure" means a diagnostic or therapeutic [radiation] procedure performed while administering

contrast[radiopaque] media into the human body to visualize anatomy not otherwise demonstrated on an image receptor.

(11)[(7)] "Course of study" means a [basic] curriculum in radiologic technology, nuclear medicine technology, advanced imaging profession, limited x-ray machine operation, or radiation therapy approved by the board.

(12)[(8)] "Didactic education" means the component of the educational program that provides formal instruction with specific objectives and methods for assessing the student's [cognitive] progress for entry-level competency.

(13) "Direct supervision" means supervised by, and in the physical presence of, a licensed practitioner of the healing arts or a licensee.

(14) "Educational program" means a board-approved, accredited educational program or limited x-ray machine operator program.

(15) "Facility" means a hospital, outpatient department, clinic, radiology practice, mobile unit, or office of a physician or portion thereof, in which medical imaging or radiation therapy are performed.

(16) "Independent study course" means a form of education offered by the board in partnership with an employer to provide limited scope radiography, podiatry, or bone densitometry education to fulfill the requirements established in 201 KAR 46:081, Section 7.

(17) "Indirect supervision" means supervised by a licensed practitioner of the healing arts or licensee who is immediately available in the individual's place of employment or sponsoring institution.

(18) "License" means the document issued to a licensee to work as a medical imaging technologist, radiation therapist, advanced imaging professional, or limited x-ray machine operator in Kentucky.

(19)[(9)] "General license" means a license issued by the board authorizing an individual to perform diagnostic radiographic, nuclear medicine, or radiation therapy procedures.

(10) "General radiation licensee" means a radiographer, a nuclear medicine technologist, a radiation therapist, or a radiologist assistant who has completed an accredited educational program and administers ionizing radiation.

(a) Only an individual license as a general radiation licensee shall be employed as an operator of a source of radiation at a facility where contrast studies, fluoroscopic, nuclear medicine, or radiation therapy procedures are performed.

(b) Categories for a general radiation licensee practice shall include:

1. Radiographer who shall be authorized to:

a. Perform a comprehensive scope of diagnostic radiologic procedures using external ionizing radiation equipment;

b. Exercise responsibility for the operation of radiation-generating equipment, shielding the patient and staff from unnecessary radiation and the appropriate exposure of radiographs or other procedures which contribute to the site or dosage of ionizing radiation to which a patient is exposed; and

c. Provide patient care resulting in radiographic or digital images.

2. Nuclear medicine technologist who compounds, calibrates, dispenses, and administers radiopharmaceuticals, pharmaceuticals, and radionuclides under the direction of an authorized user for benefit of performing a comprehensive scope of nuclear medicine procedures for diagnostic and therapeutic purposes.

3. Radiation therapist who shall be authorized to utilize ionizing radiation-generating equipment and sources of radiation for the planning and delivery of therapeutic procedures on human beings.

4. Radiologist assistant is an individual certified by the American Registry of Radiologic Technologists (ARRT) as a Registered Radiologist Assistant (R.R.A.) who works under the supervision of a radiologist, in accordance with supervision guidelines jointly established by the American College of Radiology

(ACR), the American Society of Radiologic Technologists (ASRT), and the ARRT to enhance patient care by assisting the radiologist in the medical imaging environment.(11)] "Licensee" means an individual [who shall be]licensed [pursuant to the provisions of this administrative regulation]to perform the duties of a radiographer, nuclear medicine technologist, advanced imaging professional, limited x-ray machine operator, or radiation therapist.

(20)[(12)] "Licensed practitioner" or "licensed practitioner of the healing arts" is defined by KRS 311B.020 (8)[means a physician licensed in Kentucky to practice medicine, osteopathy, dentistry, chiropractic, podiatry, or veterinary medicine].

(21)[(13)] "Licensure" means the process by which a license is issued by the board pursuant to 201 KAR Chapter 46 and in accordance with KRS Chapter 311B[335B.020].

(22)[(14)] "Limited license" means a license issued by the board authorizing an individual to perform limited radiographic procedures in his specific field of practice or operation.

(45)] "Limited x-ray machine operator" is defined by KRS 311B.020(9)[means an individual who:

(a) Has completed an educational program approved by the board;

(b) Is certified by the board as a:

1. Limited x-ray machine operator;
2. Limited podiatry x-ray machine operator; or
3. Limited bone densitometry x-ray machine operator; and

(c) Performs limited radiographic procedures].

(23)[(16)] "Limited radiographic procedures" means the following procedures:

- (a) Routine chest and thorax;
- (b) Cranium;
- (c) Extremity;
- (d) Podiatric;
- (e) Vertebral column radiography; and
- (f) Bone densitometry procedures.

(24) "Medical imaging technologist" is defined by KRS 311B.020 (10). Limited x-ray machine operators are defined separately and are not permitted to work as medical imaging technologists.

(25)[(17)] "National organization" is defined by KRS 311B.020 (11)[means:

(a) The American Society of Radiologic Technologists;

(b) The American Registry of Radiologic Technologists;

(c) the Joint Review Committee on Education in Radiologic Technology; or

(d) The American College of Radiology].

(26) "Nuclear medicine advanced associate" means an individual certified by the Nuclear Medicine Technologist Certification Board (NMTCB) as a nuclear medicine advanced associate (NMAA) who works under the supervision of a radiologist or nuclear medicine physician, in accordance with professional standards.

(27) "Nuclear medicine technologist" is defined by KRS 311B.020(12).

(28)[(18)] "Nuclear medicine technology" means technology applied by a nuclear medicine technologist utilizing radioactive material and with the nuclear medicine technologist being under the supervision of an authorized user.

(29) "PET" means the positron emission tomography.

(30) "Positron emission tomography" means the utilization of positron-emitting radioactive material for medical imaging under the supervision of an authorized user.

(31) "Practice standards" means the standards established by board-approved professional organizations that define the practice expectations of individuals within the professions.

(32) "Primary discipline" means radiography, nuclear medicine, and radiation therapy.

(33)[in compliance with 201 KAR Chapter 46 which pertains to the:

(a) Utilization of radiopharmaceuticals or radioactive materials in the diagnosis and treatment of disease in humans;

(b) Preparation of radiopharmaceutical agents;

(c) Administration of diagnostic or therapeutic radiopharmaceuticals to patients or human research subjects; and

(d) Calibration and use of radiation detecting equipment to obtain clinical information.

(19) "Operator" or "operator of sources of radiation" means an individual, other than a licensed practitioner of the healing arts, who is licensed by the board to:

(a) Technically manipulate or administer a source of radiation; and

(b) Accurately position the patient to receive the radiation or manipulate the patient within the imaging or active radiation field.

(20)] "Professional educational guidelines" means curriculum and educational standards established by national organizations and approved by the board.

(34)[(21)] "Program director" means an individual designated by a sponsoring institution to assure that the educational programs[training program] for medical imaging, limited x-ray machine operator, radiation therapy, and advanced imaging professionals are[operators of sources of radiation shall be] properly conducted.

(35)[(22)] "Provisional nuclear medicine technology license" means a license issued by the board to an individual participating in the alternate nuclear medicine course of study approved by the board.

(36) "Provisional training license" means a license issued to a nuclear medicine technologist or a radiation therapist pursuing post-primary certification in computed tomography or a license issued to a radiographer or radiation therapist pursuing post-primary certification in PET.

(37)[(23)] "Radiation safety officer" means an individual [in the field of radiation protection or a licensed practitioner of the healing arts] who has the training, knowledge, and responsibility to apply appropriate radiation safety practices.

(38) "Radiation therapist" is defined by KRS 311B.020(15).

(39)[(24)] "Radiation therapy" means the therapeutic administration of ionizing radiation by a radiation therapist[to destroy lesions while sparing normal surrounding tissue].

(40)[(25)] "Radioactive materials" means a solid, liquid, or gas that emits ionizing radiation spontaneously.

(41)[(26)] "Radionuclide" means a radioactive element or a radioactive isotope.

(42)[(27)] "Radiopharmaceuticals" means radioactive drugs used for the diagnosis and treatment of disease.

(43) "Radiographer" is defined by KRS 311B.020(16).

(44)[(28)] "Radiography" means the utilization and administration of [external]ionizing radiation to produce medically relevant images for the diagnosis of injury or disease and shall include a comprehensive scope of diagnostic-radiologic procedures.

(45)[(29)] "Radiologist assistant" means an individual certified by the American Registry of Radiologic Technologists (ARRT) as a registered radiologist assistant (R.R.A.) who works under the supervision of a radiologist, in accordance with supervision guidelines jointly established by the American College of Radiology (ACR), the American Society of Radiologic Technologists (ASRT), and the ARRT, ACR ASRT Joint Policy Statement-Radiologist Assistant: Roles and Responsibilities and the American College of Radiology (ACR) and the American Association of Physicists in Medicine (AAPM) titled ACR-AAPM Technical Standard For Management Of The Use Of Radiation In Fluoroscopic Procedures and incorporated by reference.

(46)[(30)] "Scope of practice" means the parameter of the specific practice[standards established by the American Society of Radiologic Technologists that delineate what the profession does and confines the breadth of functions persons within a profession may perform].

(47)[(31)] "Source of radiation" means a radioactive material, device, or equipment emitting or capable of producing ionizing radiation.

(48)[(32)] "Sponsoring institution" means an institution recognized[approved] by the board to provide a post-secondary educational program in medical imaging, limited x-ray machine operation, radiation therapy, or advanced imaging professions[the radiological sciences].

~~(49)[(33)] "Student" means an individual enrolled in a board-recognized educational program [an approved course of study for operators of sources of radiation].~~

~~(50)[(34)] "Supervision of students" means supervised by a licensed practitioner of the healing arts or a licensee in the appropriate field of practice who directs the activity of students.~~

~~(51)[(a)] "Direct supervision" means supervised by, and in the physical presence of, a licensed practitioner of the healing arts or a licensee.~~

~~(b) "Indirect supervision" means supervised by a licensed practitioner of the healing arts or licensee who is immediately available in the individual's place of employment or sponsoring institution.~~

~~(35)] "Temporary license" means a nonrenewable license [written authorization] issued by the board as established in 201 KAR Chapter 46 [cabinet] permitting an individual to practice for a specified period of time [who has completed an appropriate course of study to perform diagnostic or therapeutic radiation procedures while awaiting the results of his examination].~~

Section 2. Incorporation by Reference. (1) **The following material is incorporated by reference:**

**(a) "ACR ASRT Joint Policy Statement-Radiologist Assistant: Roles and Responsibilities", dated May 2003; and**

**(b) "ACR-AAPM Technical Standard For Management Of The Use Of Radiation In Fluoroscopic Procedures", revised 2013 (Resolution 44)[Form "KY CEU-001, Continuing Education Approval Request-Radiation Operator Certification Program", edition 3/07, is incorporated by reference].**

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place[Cabinet for Health and Family Services, 275 East Main Street], Frankfort, Kentucky 40601[40624], Monday through Friday, 8 a.m. to 4:30 p.m.

SHERYL L. ABERCROMBIE, Chair

APPROVED BY AGENCY: July 13, 2015

FILED WITH LRC: July 15, 2015 at 9 a.m.

CONTACT PERSON: Vanessa Breeding, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (859) 782-5687, fax (859) 782-6495.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Vanessa Breeding

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines essential terms applicable to the Medical Imaging profession and regulatory process.

(b) The necessity of this administrative regulation: The Board of Medical Imaging and Radiation Therapy is authorized by KRS 311B.010 to 311B.190 to regulate licensees other than licensed practitioners of the healing arts, including but not limited to: the classification and licensure of medical imaging technologists, radiation therapists, radiologist assistants and limited x-ray machine operators; examinations; standards of education and experience; curricula standards for institutions teaching persons to perform medical imaging and radiation therapy procedures; issuance, renewal, and revocation of licenses; the establishment of a reasonable schedule of fees and charges to be paid by individuals for examinations, licenses and renewal licenses; and to set other standards as may be appropriate for the protection of health and safety. This administrative regulation defines terms used in 201 KAR Chapter 46.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes definitions used in the requirements for practice of

medical imaging, radiation therapy and related occupations.

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

(a) How the amendment will change this existing administrative regulation: The amendment revises 201 KAR 46:010, amends definitions and establishes new definitions applicable for the practice of medical imaging, radiation therapy and related occupations. The incorporated by reference items will further delineate supervision of technologists.

(b) The necessity of the amendment to this administrative regulation: This amendment ensures continuity with national standards of practice.

(c) How the amendment conforms to the content of the authorizing statutes: See (1) (c)

(d) How the amendment will assist in the effective administration of the statutes: No Change.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 state health care organizations and approximately 8,100 licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required. The amendment merely defines the terms for 201 KAR Chapter 46.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and licensees benefit by having the definitions of terms used within the regulations to clarify the regulations and put the licensee on clear notice.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional Cost will be incurred as a result of amending this administrative regulation.

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: NONE

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: NONE

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all licensees and applicants.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Medical Imaging and Radiation Therapy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311B.010 to 311B.190

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

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

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? This regulation merely defines terms used throughout the 201 KAR Chapter 46. There is no cost associated with administering this regulation.

(d) How much will it cost to administer this program for subsequent years? This regulation merely defines terms used throughout the 201 KAR Chapter 46. There is no cost associated with administering this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET  
Board of Medical Imaging and Radiation Therapy  
(Amended After Comments)**

**201 KAR 46:030. Education for medical imaging technologists, advanced imaging professionals and radiation therapists[and training].**

RELATES TO: KRS 311B.100[241.890, 241.993]

STATUTORY AUTHORITY: KRS 311B.050, 331B.080, 311B.100, 311B.110[194A.050, 241.090, 241.870]

NECESSITY, FUNCTION, AND CONFORMITY: The Board of Medical Imaging and Radiation Therapy is authorized by KRS Chapter 311B[241.870 and 241.890] to regulate licensees[operators of sources of radiation] other than licensed practitioners of the healing arts, including but not limited to: the classification and licensure of individuals[operators]; examinations; standards of training and experience; curricula standards for institutions teaching persons to utilize[operate] sources of radiation; issuance, renewal, and revocation of licenses; the fixing of a reasonable schedule of fees and charges to be paid by applicants for examinations, licenses, and renewal licenses; and to set other standards as may be appropriate for the protection of health and safety. This administrative regulation establishes uniform curricula standards for postsecondary educational institutions[teaching persons to operate sources of radiation].

Section 1. Curricular Standards for Medical Imaging, Radiation Therapy and Advanced Imaging Professionals. Educational programs shall ensure:

(1) Radiography and radiation therapy meet the curricular standards established by the American Society of Radiologic Technologists (ASRT);

(2) Nuclear medicine programs meet the curricular standards established by the Society of Nuclear Medicine and Molecular Imaging Technologists Section (SNMMITS); and

(3) Programs maintain[continuous] accreditation by the Joint Review Committee on Education in Radiologic Technology, the Joint Review Committee on Educational Programs in Nuclear Medicine Technology, or another agency that specifically evaluates the imaging or radiation therapy program based upon equivalent standards[-; and

(4) The programs permit site inspections by a representative of the board][Applicability. (1) This administrative regulation shall apply to institutions offering a postsecondary course of study for operators of sources of radiation.

(2) An institution that offers a program of study for operators of sources of radiation shall ensure:

(a) Its program meets the standards established by the American Society of Radiologic Technologists (ASRT); and

(b) Its program is accredited by the Joint Review Committee on Education in Radiologic Technology.

(3) Educational programs may be established in:

(a) Community and junior colleges;

(b) Senior colleges and universities;

(c) Hospitals;

(d) Medical schools;

(e) ~~Postsecondary vocational/technical schools and institutions;~~

(f) Military/governmental facilities;

(g) Proprietary schools; and

(h) Consortia.

(4) ~~Consortia shall be structured to recognize and perform the responsibilities and functions of a sponsoring institution.~~

Section 2. ~~Curricula Standards. Sponsoring institutions offering a course of study for operators of sources of radiation shall:~~

(1) ~~Apply to the Joint Review Committee on Education in Radiologic Technology;~~

(2) ~~Supply data requested for a complete evaluation of its administration, organization, faculty, physical facilities, student policies, and curriculum;~~

(3) ~~Provide a structured curriculum with clearly written course descriptions, lesson plans, and objectives;~~

(4) ~~Provide an adequate faculty, which shall be qualified through academic preparation or experience to teach the subjects assigned;~~

(5) ~~Have a program director appropriate for the certification offered as follows:~~

(a) ~~General licensure- a general licensee who shall meet the requirement of the professional educational guidelines and standards in the appropriate field of practice; or~~

(b) ~~Limited licensure- a general licensee who shall have a minimum of three (3) years of clinical or teaching experience or a combination of clinical and teaching experience in the appropriate field of practice;~~

(6) ~~Provide a licensee-to-student ratio consistent with professional educational guidelines in the appropriate field of practice;~~

(7) ~~Provide appropriate facilities, sufficient volume, and a variety of diagnostic or therapeutic procedures to properly conduct the course of study;~~

(8) ~~Prohibit students from applying radiation to human beings for diagnostic or therapeutic purposes until they have obtained practical experience and have had their performance evaluated as satisfactory by the program faculty;~~

(9) ~~Provide supervision by a licensed practitioner of the healing arts or a licensee in the appropriate field of practice;~~

(10) ~~Prohibit students from being placed in a situation where they would be required to apply radiation or radiopharmaceuticals to a human being while not under supervision consistent with professional educational guidelines in the appropriate field of practice;~~

(11) ~~Maintain records of each student's attendance, grades, clinical competency, and subjects completed;~~

(12) ~~Designate a radiation safety officer;~~

(13) ~~Maintain accreditation by the Joint Review Committee on Education in Radiologic Technology (JRCERT) an approved programmatic accrediting body for educational programs leading to general licensure and permit site inspections by the board's representative; and~~

(14) ~~Permit site inspections by the cabinet's representative for educational programs leading to limited licensure].~~

Section 2.[3.] Student Employment Outside the Academic Clinical Setting. A student shall not engage or attempt to engage in the operation of radiation-producing equipment or the administration of ionizing radiation for the purpose of medical imaging or radiation therapy in Kentucky unless licensed by the board.

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

(a) Radiography revised June 16, 2013;

(b) Nuclear Medicine Technologist Scope of Practice and Performance Standards revised June 7, 2013;

(c) Positron Emission Tomography (PET) Technologist Scope of Practice and Performance Standards revised January 26, 2013;

~~(d) Scope of Practice for the Nuclear Medicine Advanced Associate created 2009; and~~

~~(e) Radiation Therapy revised June 19, 2011.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:~~

~~(a) American Society of Radiologic Technologists, 15000 Central Ave. SE Albuquerque, NM 87123-3909, <http://www.asrt.org/main/standards-regulations/practice-standards>; or~~

~~(b) Society for Nuclear Medicine and Molecular Imaging, 1850 Samuel Morse Drive Reston, Virginia 20190, or <http://www.snm.org>~~(1) Educational programs shall develop a policy governing employment of students to perform diagnostic radiologic procedures outside the academic setting.

~~(2) Educational programs that elect to permit student employment shall develop criteria and guidelines for students employed to perform diagnostic radiologic procedures outside the academic setting.~~

~~(3) At a minimum, students must have completed fifty (50) percent of their course of study and have had their didactic and clinical performance evaluated and recorded as satisfactory by the program director.~~

~~(4) Students shall be under the indirect supervision of a licensed practitioner of the healing arts or a licensee.~~

~~(5) The program director shall submit documentation to the employer and to the board verifying the student has permission to work as a student radiographer.~~

~~Section 4. An Institution's Curriculum and Requirements. (1) Radiography course of study. The radiography curriculum offered by an approved institution shall consist of a minimum of two (2) academic years of full-time study or its equivalent that includes the following subjects:~~

- ~~(a) Human structure and function;~~
- ~~(b) Principles of radiation protection;~~
- ~~(c) Radiation biology;~~
- ~~(d) Pathology;~~
- ~~(e) Medical terminology;~~
- ~~(f) Medical ethics and law;~~
- ~~(g) Equipment operation and maintenance;~~
- ~~(h) Image production and evaluation;~~
- ~~(i) Radiographic procedures;~~
- ~~(j) Computers in radiologic sciences;~~
- ~~(k) Radiologic physics;~~
- ~~(l) Pharmacology and drug administration;~~
- ~~(m) Patient positioning;~~
- ~~(n) Patient assessment, management, and education; and~~
- ~~(o) Clinical education.~~

~~(2) Nuclear medicine course of study. The nuclear medicine technology curriculum offered by an approved institution shall consist of a minimum of twelve (12) months of full-time study for graduates of an accredited radiography program or a minimum of two (2) academic years of full-time study or its equivalent for other individuals, which includes the following subjects:~~

- ~~(a) Human structure and function;~~
- ~~(b) Radionuclide chemistry;~~
- ~~(c) Radiopharmacology;~~
- ~~(d) Nuclear instrumentation;~~
- ~~(e) Diagnostic and therapeutic procedures;~~
- ~~(f) Radiation biology;~~
- ~~(g) Nuclear medicine in vivo and in vitro procedures;~~
- ~~(h) Nuclear medicine physics;~~
- ~~(i) Applied math and statistics;~~
- ~~(j) Radiation safety and protection;~~
- ~~(k) Patient positioning;~~
- ~~(l) Patient assessment, management, and education;~~
- ~~(m) Computer applications for nuclear medicine;~~
- ~~(n) Records and administrative procedures;~~
- ~~(o) Medical ethics and law; and~~
- ~~(p) Clinical correlation of nuclear medicine procedures.~~

~~(3) Alternate course of study in nuclear medicine. The approved alternate course of study in nuclear medicine shall consist of:~~

~~(a) Completion of a minimum of fifteen (15) hours of course work approved by the board in each of the following areas:~~

- ~~1. Radiopharmacy;~~
- ~~2. Nuclear medicine instrumentation; and~~
- ~~3. Radiation safety.~~

~~(b) A minimum of four (4) years or 8,000 hours of clinical education in nuclear medicine technology under the supervision of an authorized user as named on a radioactive materials license issued by the cabinet, by another U.S. Nuclear Regulatory Commission agreement state, or by the U.S. Nuclear Regulatory Commission.~~

~~1. The employer shall be responsible for providing or arranging for the required clinical education and providing appropriate supervision of the student by an authorized user.~~

~~2. Clinical education shall be documented annually by the authorized user with the renewal of the provisional nuclear medicine technology license.~~

~~(c) A maximum of six (6) years shall be permitted to complete the alternate course of study.~~

~~(4) Radiation therapy course of study. The radiation therapy curriculum offered by an approved institution shall consist of a minimum of twelve (12) months of full-time study for graduates of an accredited radiography program or a minimum of two (2) academic years of full-time study or its equivalent for other individuals that includes the following subjects:~~

- ~~(a) Human structure and function;~~
- ~~(b) Oncologic pathology;~~
- ~~(c) Radiation protection and quality assurance;~~
- ~~(d) Equipment operation;~~
- ~~(e) Clinical and technical oncology;~~
- ~~(f) Medical terminology;~~
- ~~(g) Radiation biology;~~
- ~~(h) Mathematics;~~
- ~~(i) Radiation therapy physics;~~
- ~~(j) Radiation protection;~~
- ~~(k) Patient assessment, management, and education;~~
- ~~(l) Medical imaging and processing;~~
- ~~(m) Clinical dosimetry;~~
- ~~(n) Medical ethics and law; and~~
- ~~(o) Clinical education.~~

~~(5) Radiologist assistant course of study.~~

~~(a) The educational program for the radiologist assistant shall culminate in the award of a baccalaureate degree, master's degree, or postbaccalaureate certificate from an institution that:~~

- ~~1. Is recognized by the American Registry of Radiologic Technologists;~~
- ~~2. Incorporates a radiologist-directed clinical preceptorship; and~~
- ~~3. Meets the eligibility requirements for certification by the American Registry of Radiologic Technologists.~~

~~(b) The radiologist assistant curriculum offered by an approved institution shall include the following subjects:~~

- ~~1. Patient assessment, education, and management;~~
- ~~2. Medical terminology;~~
- ~~3. Anesthetics;~~
- ~~4. General medications;~~
- ~~5. Contrast media;~~
- ~~6. Anatomy, physiology, and pathophysiology;~~
- ~~7. Radiologic procedures;~~
- ~~8. Radiation safety;~~
- ~~9. Radiation biology;~~
- ~~10. Fluoroscopic operation;~~
- ~~11. Medical legal, professional, and governmental standards;~~

~~and~~

~~12. A radiologist-directed clinical preceptorship.~~

~~(6) Limited x-ray machine operator course of study. The limited x-ray machine operator curriculum offered by an approved institution shall consist of:~~

~~(a) A minimum of 240 hours of classroom work in the following subjects:~~

- ~~1. Human structure and function;~~
- ~~2. Medical terminology;~~
- ~~3. Radiation protection;~~

4. Radiation biology;
5. Medical ethics and law;
6. Equipment operation and maintenance;
7. Image production and evaluation;
8. Radiographic processing technique;
9. Radiographic procedures;
10. Patient positioning; and
11. Patient care; and
- (b) A minimum of 360 hours of clinical education consisting of:
  1. Demonstrations;
  2. Discussions; and
  3. Supervised practice.
- ~~(7) Limited x-ray machine operator independent course of study. The limited x-ray machine operator independent course of study shall:~~
  - ~~(a) Be completed within twelve (12) months;~~
  - ~~(b) Include the following subjects:~~
    1. Human structure and function;
    2. Medical terminology;
    3. Radiation protection;
    4. Radiation biology;
    5. Medical ethics and law;
    6. Equipment operation and maintenance;
    7. Image production and evaluation;
    8. Radiographic processing technique;
    9. Radiographic procedures;
    10. Patient positioning; and
    11. Patient care; and
  - ~~(c) Include clinical education consisting of a minimum of fifty~~
- ~~(50) radiographic procedures in each of the following areas:~~
  1. Chest;
  2. Extremities; and
  3. Musculoskeletal.
- ~~(8) The limited podiatry x-ray machine operator independent course of study shall:~~
  - ~~(a) Be completed within twelve (12) months;~~
  - ~~(b) Include the following subjects:~~
    1. Human structure and function;
    2. Medical terminology;
    3. Radiation safety and protection;
    4. Radiation biology;
    5. Medical ethics and law;
    6. Equipment operation and maintenance;
    7. Image production and evaluation;
    8. Radiographic processing technique;
    9. Radiographic procedures;
    10. Patient positioning; and
    11. Patient care; and
  - ~~(c) Include clinical education consisting of a minimum of fifty~~
- ~~(50) radiographic procedures of the feet and ankles.~~
- ~~(9) The limited bone densitometry x-ray machine operator independent course of study shall:~~
  - ~~(a) Be completed within twelve (12) months;~~
  - ~~(b) Include the following subjects:~~
    1. Human structure and function;
    2. Medical terminology;
    3. Radiation safety and protection;
    4. Radiation biology;
    5. Medical ethics and law;
    6. Equipment operation and maintenance;
    7. Image production and evaluation;
    8. Radiographic processing technique;
    9. Radiographic procedures;
    10. Patient positioning;
    11. Patient care; and
    12. Manufacturer's training in accordance with 201 KAR 46:081; and
  - ~~(c) Include clinical education consisting of a minimum of fifty~~
- ~~(50) bone densitometry procedures].~~

SHERYL L. ABERCROMBIE, Chair  
 APPROVED BY AGENCY: July 13, 2015  
 FILED WITH LRC: July 15, 2015 at 9 a.m.

CONTACT PERSON: Vanessa Breeding, Executive Director,  
 Board of Medical Imaging and Radiation Therapy, 42 Fountain  
 Place, Frankfort, Kentucky 40601, phone (859) 782-5687, fax (859)  
 782-6495.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Vanessa Breeding

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes essential requirements for Teaching institution's curricula and practice of persons other than practitioners who operate sources of radiation in the Healing Arts.

(b) The necessity of this administrative regulation: The Board of Medical Imaging and Radiation Therapy is authorized by KRS 311B.010 to 311B.190 to regulate licensees other than licensed practitioners of the healing arts, including but not limited to: the classification and licensure of medical imaging technologists, radiation therapists, radiologist assistants and limited x-ray machine operators; examinations; standards of education and experience; curricula standards for institutions teaching persons to perform medical imaging and radiation therapy procedures; issuance, renewal, and revocation of licenses; the establishment of a reasonable schedule of fees and charges to be paid by individuals for examinations, licenses and renewal licenses; and to set other standards as may be appropriate for the protection of health and safety. This administrative regulation defines terms used in 201 KAR Chapter 46.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes guidelines used in the requirements for teaching institutions for the education and training of medical imaging, radiation therapy and related occupations professionals.

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

(a) How the amendment will change this existing administrative regulation: The amendment revises 201 KAR 46:030, regulations and removes the continuous accreditation requirement. It also removes the requirement that the programs permit site inspections by a representation of the board.

(b) The necessity of the amendment to this administrative regulation: This amendment was necessary since the board does not regulate or accredit educational programs.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c)

(d) How the amendment will assist in the effective administration of the statutes: No Change.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 state health care organizations and approximately 8,100 licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The state health care organization, licensees and applicants will have to demonstrate compliance with the requirements set forth in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Prospective license applicants and licensees will benefit by having the educational requirements set out in the regulation and put the licensee on clear notice.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional Cost will be incurred as

a result of amending this administrative regulation.

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: NONE

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: NONE

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all licensees and applicants.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Medical Imaging and Radiation Therapy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 311B.010 to 311B.190

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment revises 201 KAR 46:030, regulations and establishes new regulations used in the requirements for teaching institutions for the education and training of medical imaging, radiation therapy and related occupations professionals. There is no cost associated with administering this regulation.

(d) How much will it cost to administer this program for subsequent years? This regulation merely amends and establishes new regulations used in the requirements for teaching institutions for the education and training of medical imaging, radiation therapy and related occupations professionals. There is no cost associated with administering this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET

##### Board of Medical Imaging and Radiation Therapy (Amended After Comments)

**201 KAR 46:040. Medical imaging technologist, advanced imaging professional and radiation therapist licenses[General radiation operator requirements].**

RELATES TO: KRS 311B.050, 311B.100(2), 311B.120, 311B.180, 311B.190[211.890, 211.993]

STATUTORY AUTHORITY: KRS 311B.010, 311B.050, 311B.100(2), 311B.120, 311B.180, 311B.190[194.050, 211.090, 211.870]

NECESSITY, FUNCTION, AND CONFORMITY: The Board of

Medical Imaging and Radiation Therapy is authorized by KRS 311B[211.870 and 211.890] to regulate individuals[an operator of a source of radiation] other than a licensed practitioner of the healing arts, including but not limited to: the[~~classification and~~] licensure of medical imaging technologists, advanced imaging professionals and radiation therapists; approval of accredited educational programs of medical imaging or radiation therapy and the monitoring of compliance with the educational standards established by the individual disciplines, as recognized by the board[operators; examinations; standards of training and experience; curricula standards for institutions teaching persons to operate sources of radiation]; issuance, renewal, suspension, and revocation of licenses; the fixing of a reasonable schedule of fees and charges to be paid by applicants for [examinations;] licenses[;] and renewal licenses; and to set other standards as may be appropriate for the protection of health and safety. This administrative regulation establishes uniform standards for the licensure of individuals who perform medical imaging and radiation therapy[operate sources of radiation] for[human] diagnostic and therapeutic purposes while under the supervision of a[medical, osteopathic, or chiropractic] licensed practitioner of the healing arts.

Section 1. Applicability. This administrative regulation shall apply to individuals who perform medical imaging or radiation therapy[operate sources of radiation] for[human] diagnostic medical imaging[radiologic] or therapeutic purposes while under the supervision of a[medical, osteopathic, or chiropractic] licensed practitioner of the healing arts as specified in the ACR-AAPM Technical Standard For The Management Of The Use Of Radiation In Fluoroscopic Procedures, revised 2013 (Resolution 44) and incorporated by reference.

Section 2.[~~General License Required to Perform Contrast Procedures. Only individuals holding a general license shall operate sources of radiation at facilities where contrast studies, fluoroscopic, nuclear medicine or radiation therapy procedures are performed.~~

Section 3.[~~Eligibility for a Medical Imaging Technologist, Radiation Therapist or Advanced Imaging Professional~~]General License. No person shall be eligible for a[general] license pursuant to this administrative regulation[as an operator of a source of radiation] for[human] diagnostic imaging[radiologic] or therapeutic purposes unless the person has:

(1) Satisfactorily passed the national examination administered by the American Registry of Radiologic Technologists and/or the Nuclear Medicine Technologist Certification Board examination[completed a course of study in radiography, nuclear medicine technology, radiation therapy, or radiologist assistant approved by the board as described in 201 KAR 46:030]; and

(2) Satisfactorily completed a program in radiography, nuclear medicine technology, radiation therapy, or advanced imaging practice that has achieved and maintained programmatic accreditation recognized by the board as described in 201 KAR 46:030[Satisfactorily passed an examination approved by the cabinet as prescribed in 201 KAR 46:020, Section 3].

Section 3. Application for Initial License. An applicant shall submit:

(1) Completed and signed application KBMIRT Form 1;

(2) Non-refundable initial application and license fee as established by 201 KAR 46:020;

(3) Results of criminal background check completed within the past six (6) months in state of residence and employment and any other state of residence and employment within the past five (5) years;

(4) Copy of a government issued photo ID;

(5) Documentation of active registration or certification with the ARRT or NMTCB; and

(6) Verification of graduation from a program accredited by the Joint Review Committee on Education in Radiologic Technology or the Joint Review Committee on Educational Programs in Nuclear



Medicine Technology.

Section 4. The issued license shall identify the licensee as a medical imaging technologist, radiation therapist, or advanced imaging professional. The medical imaging technologist license shall also identify any ARRT or NMTCB disciplines awarded to the licensee.

Section 5. The license shall expire annually on the last day of the licensee's birth month.

Section 6. Renewal of License. To renew a license, the licensee shall submit:

- (1) KBMIRT Form 2;
- (2) Verification of current active status of ARRT or NMTCB;
- and
- (3) Renewal license fee.

Section 7. Reinstatement of Lapsed License. (1) A licensee who has allowed the license to lapse greater than one (1) month but less than twelve (12) months is eligible to be reinstated upon submission of the renewal application, documentation of twenty-four (24) hours of approved continuing education biennially, and reinstatement and renewal fees.

(2) A licensee whose license has lapsed for more than twelve (12) months shall submit:

- (a) Verification of current active status of ARRT or NMTCB;
- (b) KBMIRT Form 1;
- (c) Continuing education KBMIRT Form 8 that documents twenty-four (24) hours of approved continuing education;
- (d) Non-refundable initial application and license fee as established by 201 KAR 46:020, Section 1;
- (e) Results of criminal background check completed within the past six (6) months in state of residence and employment and any other state of residence and employment within the past five (5) years; and
- (f) Copy of a government issued photo ID.

Section 8.[4.] Temporary License. The board may, upon proper application and payment of the appropriate fee, issue a temporary license to an applicant who has successfully completed an approved course of study in radiography, nuclear medicine technology,[or] radiation therapy, or an advanced imaging profession and meets the other requirements of these administrative regulations other than having taken the required examination. Temporary licenses shall be effective for one (1) year only and are not renewable.

Section 9. Continuing Education Audit Process. (1) The board shall select a sample of licenses to audit for CE compliance.

(2) The board shall send each licensee selected for audit a notification of audit.

(3) Each licensee shall maintain their personal files such as certificates or records of credit from approved continuing education programs from the current biennium and immediate prior biennium.

(4) A licensee selected for audit shall provide the board with a copy of their certificate or records of completion.

(5) Failure to comply with an audit may result in non-renewal, suspension, or revocation of license.

Section 10. Contrast Procedures. Only individuals holding a license pursuant to this administrative regulation shall perform diagnostic imaging or radiation therapy procedures regulated by KRS 311B at facilities where contrast studies are performed.

Section 11.[5.] Practice Standards[for General Licensee]. Individuals licensed pursuant to this administrative regulation[General licensees] shall perform according to practice standards of the discipline for which they hold credentials, as established by the American Society of Radiologic Technologists (ASRT), and the Society of Nuclear Medicine and Molecular Imaging (SNMMI) and incorporated by reference.

Section 12. CT Training for Nuclear Medicine Technologists and Radiation Therapists. Individuals who are licensed in the primary discipline of nuclear medicine or radiation therapy, are certified by the ARRT or NMTCB, and are seeking post-primary certification in computed tomography (CT) may work under the direct supervision of a licensed and certified CT technologist to gain clinical competency. An individual who wishes to complete clinical training in CT shall submit an application for a provisional license which shall expire twenty-four (24) months from the date of issuance.

Section 13. PET Training for Radiographers and Radiation Therapists. Individuals who are licensed in the primary discipline of radiography or radiation therapy, are certified by the ARRT, and are seeking post-primary certification in positron emission tomography (PET) may work under the direct supervision of a licensed and certified PET technologist with the permission of an authorized user to gain clinical competency. An individual who wishes to complete clinical training in PET shall submit an application for a provisional license which shall expire twenty-four (24) months from the date of issuance.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Radiography", revised June 16, 2013;
- (b) "Nuclear Medicine Technologist Scope of Practice and Performance Standards", revised June 7, 2013;
- (c) "Positron Emission Tomography (PET) Technologist Scope of Practice and Performance Standards", revised January 26, 2013;
- (d) "Scope of Practice for the Nuclear Medicine Advanced Associate", created 2009;~~and~~
- (e) "Radiation Therapy", revised June 19, 2011; and
- (f) "ACR-AAPM Technical Standard For Management Of The Use Of Radiation In Fluoroscopic Procedures", revised 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) American Society of Radiologic Technologists, 15000 Central Ave. SE Albuquerque, NM 87123-3909, <http://www.asrt.org/main/standards-regulations/practice-standards>;

or  
(b) Society for Nuclear Medicine and Molecular Imaging, 1850 Samuel Morse Drive Reston, Virginia 20190, <http://www.snmmi.org>

[including the following:  
(1) Radiography standards. The radiographer shall:

(a) Apply knowledge of the principles of radiation protection for the patient, self, and others;

(b) Apply knowledge of anatomy, positioning, and radiographic techniques to accurately demonstrate anatomical structures in medical imaging;

(c) Determine exposure factors to achieve optimum radiographic technique with a minimum of radiation exposures to the patient;

(d) Examine radiographs for the purpose of evaluating technique, positioning, and other pertinent technical qualities;

(e) Exercises discretion and judgment in the performance of medical imaging procedures;

(f) Provide patient care essential to radiologic procedures; and

(g) Recognize emergency patient conditions and initiate lifesaving first aid.

(2) Nuclear medicine technology standards. The nuclear medicine technologist shall:

(a) Apply knowledge of the principles of radiation protection for the patient, self, and others;

(b) Apply knowledge of radio-pharmacy, instrumentation, patient examination protocols to produce accurate metabolic and image data;

(c) Provide patient care essential to nuclear medicine procedures;

(d) Maintain patient records;

(e) Participate in the quality assurance program;

(f) Prepare, calculate, identify, administer, and dispose of

radiopharmaceuticals;

(g) Exercise discretion and judgment in the performance of medical imaging and therapeutic procedures; and

(h) Recognize emergency patient conditions and initiate lifesaving first aid.

(3) Radiation therapist standards. The radiation therapist shall:

(a) Apply knowledge of the principles of radiation protection for the patient, self, and others;

(b) Demonstrate knowledge of human structure, function, and pathology;

(c) Maintain the records of treatment administration;

(d) Deliver a planned course of radiation therapy;

(e) Produce and utilize immobilization and beam directional devices;

(f) Prepare commonly used brach therapy sources;

(g) Demonstrate knowledge of methods of calibration of equipment, and quality assurance;

(h) Prepare isodose summations;

(i) Detect malfunctioning equipment;

(j) Apply wedge and compensating filters;

(k) Exercise discretion and judgment in the performance of therapy procedures; and

(l) Recognize emergency patient conditions and initiate lifesaving first aid.

(4) Radiologist assistant standards. The radiologist assistant, if ordered to do so by the supervising radiologist, shall:

(a) Perform selected procedures including static and dynamic fluoroscopic procedures;

(b) Assess and evaluate the physiologic and psychological responsiveness of patients undergoing radiologic procedures;

(c) Participate in patient management including acquisition of additional imaging for completion of the examination and record documentation in medical records;

(d) Evaluate image quality, make initial image observations, and communicate observations to the supervising radiologist;

(e) Administer intravenous contrast media or other prescribed medications; and

(f) Follow the established standards listed in subsections (1)(a) through (g) of this section.

Section 6. Requirements for the Nuclear Medicine Technologist. (1) An individual holding a license as a nuclear medicine technologist may:

(a) Conduct in-vivo and in-vitro measurements of radioactivity and administer radiopharmaceuticals to human beings for diagnostic and therapeutic purposes; and

(b) Administer x-radiation from a combination nuclear medicine-computed tomography device if:

1. The radiation is administered as an integral part of a nuclear medicine procedure that uses an automated computed tomography protocol for the purposes of attenuation correction and anatomical localization; and

2. The technologist has received device-specific training on the combination device.

Section 7. Requirements for the Radiologist Assistant. In addition to the requirements of Section 5(1)(a) through (g) and through (e) of this administrative regulation, an individual holding a license as a radiologist assistant shall comply with the following requirements:

(1) The individual is a general licensed radiographer in this state;

(2) The individual has satisfactorily completed an advanced academic program encompassing a nationally recognized radiologist assistant curriculum culminating in a baccalaureate degree, post baccalaureate certificate, or master's degree that incorporates a radiologist-directed clinical preceptorship and meets the eligibility requirements for certification by the American Registry of Radiologic Technologists;

(3) The individual is certified in advanced cardiac life support (ACLS);

(4) The radiologist assistant shall not interpret images, make diagnoses, or prescribe medications or therapies; and

(5) The radiologist assistant shall comply with the Standards of

Ethics of the American Registry of Radiologic Technologists as well as the standards, policies, and procedures regarding the standard of care of patients, established by the American Society of Radiologic Technologists (ASRT), and the institution employing the radiologist assistant.

Section 8. Licensure in Nuclear Medicine Technology or Radiation Therapy. The board may issue a license pursuant to the following conditions:

(1) The applicant shall be currently employed full-time as a nuclear medicine technologist or radiation therapist and have held the position for twenty-four (24) months prior to May 31, 2006; and

(2) The applicant shall satisfactorily demonstrate through employer documentation that he or she has clinical experience in nuclear medicine technology or radiation therapy. The employer and the licensed practitioner shall be responsible for documentation of the required clinical experience and supervision].

Section 15.[9.] Applications for licensure[in nuclear medicine technology and radiation therapy] shall be filed with the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601[275 East Main Street, Mailstop HS 1G-A, Frankfort, Kentucky 40624].

SHERYL L. ABERCROMBIE, Chair

APPROVED BY AGENCY: July 13, 2015

FILED WITH LRC: July 15, 2015 at 9 a.m.

CONTACT PERSON: Vanessa Breeding, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (859) 782-5687, fax (859) 782-6495.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Vanessa Breeding

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the initial and renewal application process.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the standards and process for application and renewal of license issued by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 311B.050(3) authorizes the board to issue and renew the licenses of duly qualified applicants, following procedures established by the board through the promulgation of administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures for the board to issue and renew the licenses of duly qualified applicants.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds the ACR-AAPM Technical Standard For Management Of The Use Of Radiation In Fluoroscopic Procedures.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify the standards practice for fluoroscopic procedures.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the board's duty to promulgate regulations concerning procedures that may be performed by a medical imaging technologist, advanced imaging professional and radiation therapist.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify the standard of practice for fluoroscopy procedures that a medical imaging technologist, advanced imaging professional and radiation therapist must follow.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 state health care organizations and approximately 8,100 licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals who seek to be licensed or have an issued license to be renewed must submit an application setting forth the individual's qualifications.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs for complying with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Qualified individuals will be able to be licensed and maintain previously issued licenses.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional cost will be incurred as a result of amending this administrative regulation.

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

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

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

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

(9) TIERING: Is tiering applied?: Tiering is not applied to this regulation. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Medical Imaging and Radiation Therapy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 311B.100 to 311B.110.

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

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

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

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this regulation.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Medical Imaging and Radiation Therapy (Amended After Comments)

#### 201 KAR 46:045. Temporary license application for medical imaging technologists, advanced imaging professionals, and radiation therapists.

RELATES TO: KRS 311B.050, 311B.100(2), 311B.120, 311B.180, 311B.190

STATUTORY AUTHORITY: KRS 311B.010, 311B.050, 311B.100(2), 311B.120, 311B.180, 311B.190

NECESSITY, FUNCTION, AND CONFORMITY: The Board of Medical Imaging and Radiation Therapy is authorized by KRS Chapter 311B to regulate the licensure of medical imaging technologists, advanced imaging professionals, and radiation therapists other than a licensed practitioner of the healing arts. This administrative regulation establishes procedures for the temporary licensure of medical imaging technologists, advanced imaging professionals, and radiation therapists who are eligible to apply for the appropriate national board exam.

Section 1. Application for Temporary License. An applicant shall submit:

(1) Completed and signed application Form KBMIRT 3;

(2) Non-refundable temporary application and license fee as established by 201 KAR 46:020, Section 3;

(3) Results of criminal background check completed within the past six (6) months in state of residence and employment and any other state of residence and employment within the past five (5) years;

(4) Copy of a government issued photo ID; and

(5) Verification of successful completion of a program in radiography, nuclear medicine technology, or radiation therapy, that has achieved and maintained programmatic accreditation recognized by the board as described in 201 KAR 46:030[appropriate educational program].

Section 2. Upon certification by ARRT or NMTCB, a temporary license shall be converted to a regular license upon submission of:

(1) Completed and signed updated application Form KBMIRT 3; and

(2) Documentation of ARRT or NMTCB certification.

Section 3. If a temporary licensee has not submitted documentation of ARRT or NMTCB certification during the twelve (12) month period, the license shall not be renewed; and individuals shall follow the procedure for initial license application and pay the initial application and license fee mandated in 201 KAR 46:020.

Section 4. Incorporation by Reference. (1) Form KBMIRT 3, Temporary License Application, Medical Imaging or Radiation Therapy, is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

SHERYL L. ABERCROMBIE, Chair

APPROVED BY AGENCY: July 13, 2105

FILED WITH LRC: July 15, 2015 at 9 a.m.

CONTACT PERSON: Vanessa Breeding, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502) 782-6495.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Vanessa Breeding

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process and requirements

for a temporary license.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to allow those who have completed an accredited course of study but are waiting to complete an accepted accreditation process to be employed under the process is complete.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding temporary license application to be a medical imaging technologist, advanced imaging professionals, and radiation therapists.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes guidelines used in the requirements for teaching institutions for the education and training of medical imaging, radiation therapy and related occupations professionals.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies the specific programs that must be successfully completed and remove the general description of "appropriate educational program".

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify any possibly ambiguity and to specify the programs that must be successfully.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding temporary license application to be a medical imaging technologist, advanced imaging professionals, and radiation therapists.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment will remove questions that may be raised by a prospective applicant concerning what programs must be successfully completed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 300 state health care organizations and approximately 8,100 licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals who seek to be licensed or have an issued license to be renewed must submit an application setting forth the individual's qualifications.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An individual will be charged a \$100 fee for issuance of a license.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Qualified individuals will be able to obtain a temporary license pending certification by ARRT or NMTCB and be able to work.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: No additional cost will be incurred as a result of amending this administrative regulation.

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

No.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Medical Imaging and Radiation Therapy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.: KRS 311B.010 to 311B.190

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment revises 201 KAR 46:030, regulations and establishes new regulations used in the requirements for teaching institutions for the education and training of medical imaging, radiation therapy and related occupations professionals. There is no cost associated with administering this regulation.

(d) How much will it cost to administer this program for subsequent years? This regulation merely amends and establishes new regulations used in the requirements for teaching institutions for the education and training of medical imaging, radiation therapy and related occupations professionals.. There is no cost associated with administering this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### TRANSPORTATION CABINET Department of Highways Division of Maintenance (Amended After Comments)

#### 603 KAR 5:155. Removal and pruning of vegetation.

RELATES TO: KRS 176.050(1), 177.106, 177.830(5), 177.990(2)

STATUTORY AUTHORITY: KRS 176.050(1)(i)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 176.050(1)(i) requires the department to promulgate administrative regulations concerning the care and maintenance of roads in the Commonwealth. This administrative regulation establishes a permitting process by which a noncommercial or a commercial entity may apply to the department for the removal of vegetation near state roads and highways.

Section 1. Definitions. (1) "Advertising device" is defined by KRS 177.830(5).

(2) "Certified arborist" means an arborist prequalified within the landscaping classification of the Transportation Cabinet's Prequalification Committee and certified by the International Society of Arboriculture.

(3) "Commercial entity" means a business or company, including the owner of an outdoor advertising device, whose

activities generate or are intended to generate revenue.

(4) "Illegal outdoor advertising device" means an outdoor advertising device that was erected or is maintained in violation of federal, state, or local law or ordinance.

(5) "Noncommercial entity" means a private landowner including a farm or single family residence.

(6) "REDA" means a roadside environmental district administrator located in each of the district offices of the Transportation Cabinet.

Section 2. Vegetation Removal Permit Eligibility. (1) A permit to remove or prune vegetation in order to remove vegetative obstructions to the visibility of a noncommercial or commercial entity, including an outdoor advertising device, that are located in a public right-of-way under the jurisdiction of the Kentucky Transportation Cabinet, shall be obtained from the department, in accordance with the terms of this administrative regulation, prior to entry or disturbance of the right-of-way.

(2) A permit to remove or prune vegetation by a noncommercial entity or a commercial entity shall be approved by the department:

- (a) In order to improve the safety of the traveling public;
- (b) If necessary to eliminate hazards to personal property;
- (c) To enhance visibility for the travelling public;
- (d) To eliminate an unsightly condition and improve roadway aesthetics

if recommended by the department's arborist or REDA as established in Sections 4 and 5 of this administrative regulation[as determined by the department during application review]; or

(e) To remove the undesirable vegetation listed on the department's Web site at [www.transportation.ky.gov/permits/](http://www.transportation.ky.gov/permits/).

(3) A permit to prune or remove vegetation shall not be issued:

(a) For an illegal outdoor advertising device or if the legal status of an outdoor advertising device is in dispute;~~[or]~~

(b) If an applicant is required to enter through state right-of-way in order to access property for vegetation pruning or removal unless authorized by the department as part of the permit to remove vegetation;~~or~~

(c) To remove specimen trees as listed on the department's Web site at [www.transportation.ky.gov/permits/](http://www.transportation.ky.gov/permits/) unless recommended by the department's arborist or REDA.

(4) A noncommercial entity or a commercial entity shall apply to the department for a permit to remove or prune vegetation by using Application for Encroachment, TC 99-1(A). The form shall be submitted to the Transportation Cabinet district office that is responsible for the area of the proposed vegetation management plan.

Section 3. General Requirements for Vegetation Removal. (1) An applicant~~[A noncommercial entity and a commercial entity]~~ shall:

(a) Submit a mitigation plan to replant an area if specimen trees are removed pursuant to Section 2(3)(c) of this administrative regulation unless the department's arborist or REDA indicates that replanting is not feasible;

(b) Plant a designated area with noninvasive plant species that favor the bee and butterfly population if recommended by the department's arborist or REDA;

(c)[the area where trees were removed if requested by the department;

(b)] Remove tree stumps and roots on a slope of 3:1 or less flush with the ground surface;

(d)[(c)] Remove tree stumps and roots on a slope greater than 3:1 to a height of three (3) inches or less above the surrounding ground surface. The height shall be measured from the top of the stump or root to its base on the lowest side of the slope;

(e)[(d)] Remove and dispose of cut material and debris from the state right-of-way as specified in the permit issued by the department;[(e) If necessary, treat a tree stump with an herbicide specific to the type of work and vegetation proposed for removal;]

(f) Fill, grade, and compact a hole or void created by the performed work with top soil;

(g) Use a seeding and erosion control plan;

(h) Not remove or prune a redbud tree, dogwood tree, or designated state tree without approval of the department based on the health and condition of the trees at the time of permitting;

(i) Not remove more than twenty-five (25) percent of the crown of each tree approved for pruning by the department's arborist or REDA;

(j) Remove or prune vegetation with the supervision of a certified arborist or district REDA; and

(k)[(j)] Perform work within 180 consecutive calendar days of the work start date.

(2) A permit to remove vegetation shall be granted by the department in areas designated as a beautification project if the areas have become so unsightly and overgrown that they no longer meet the criteria for a beautification project.

(3) Work shall not be performed until a completed permit application is received and approved by the department pursuant to Sections 4 or 5 of this administrative regulation.

Section 4. Noncommercial Assistance of a REDA. (1) A detailed explanation of the proposed vegetation management plan shall be included by the noncommercial entity with the submission of a TC Form 99-1(A) to the department.

(2) A non-commercial entity may use either a certified arborist or a department REDA to submit a vegetation management plan to the department. A certified arborist used by a noncommercial entity shall comply with Section 5 of this administrative regulation.

(3) The REDA shall review the submitted application to remove or prune vegetation and coordinate the process of removal with the permittee.

Section 5. Commercial Use of Arborist. (1) A commercial entity shall be required to use a certified arborist for vegetation management.

(2) A commercial applicant with three (3) active permits for vegetation removal shall not be eligible for another permit until the work on at least one (1) active permit is completed.

(3) The completed application for a permit to remove or prune vegetation shall include:

(a) A general description of work to be performed;

(b) The address and telephone number of the party applying for a permit;

(c) A photograph, location map, and a detailed and scaled drawing showing the location of the vegetation proposed to be trimmed or removed;

(d) A vegetation management plan submitted by a certified arborist that shall include:

1. A general description of vegetation proposed to be removed and the work to be performed;

2. An inventory of trees larger than four (4)[six (6)] inches in diameter as measured twelve (12) inches from ground level within the area proposed for vegetation removal or pruning; and

3. Documentation that the applicant consulted with the United States Fish and Wildlife Service regarding a potential for the proposed work to affect federally listed, threatened, or endangered species;

(e) Proof that the applicant has obtained local, state, or federal approval as required;

(f) The name and address of the contractor that will be performing the work;

(g) A signed release from property owners whose property lines front the right-of-way where vegetation management is proposed;

(h) A signed consent from a private property owner that gives the permittee access from the private property to the work site;

(i) A seeding and erosion control plan pursuant to the department's manual, Standard Specifications for Road and Bridge Construction;

(j) The proposed work schedule including the beginning and ending date of work;

(k) A payment bond and a performance bond until the project is released by the department;

(l) Proof of liability insurance equal to or in excess of \$3 million.

The department shall be listed as the "Certificate Holder."

(4) No permit shall be granted if the vegetation removal will adversely affect federally listed, threatened, or endangered species unless the United States Department of Fish and Wildlife Service approves the permittee's proposal to minimize the impact.

(5) The certified arborist shall notify the department that the work is complete and certify that the work has been performed according to the permit.

(6) Two (2) years after the date the work is completed, a permittee shall submit to the department a report completed by a certified arborist that includes current color photographs of the area where the work was performed.

(7) If there are expenses related to the use of a certified arborist, or a review by the department, the applicant shall submit a completed Agreement for Services to be Performed, TC 99-22, to the department and reimburse the department for administrative expenses incurred as a result of the vegetation management plan.

Section 6. Notice of Violation; Appeals. (1) The department shall notify the permittee by certified letter if a violation of this administrative regulation has occurred.

(2) If the permittee fails to respond to the certified notice or fails to remedy the violations within thirty (30) days, the department shall proceed to take legal action against the permittee.

(3)(a) A vegetative permit holder aggrieved by the findings of the department may request an administrative hearing pursuant to KRS Chapter 13B. The request shall be in writing and within twenty (20) days of the notice.

(b) A request for a hearing shall thoroughly describe the grounds on which the hearing is requested.

(c) The hearing request shall be addressed to the Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622.

Section 7. Penalties. (1) A vegetative permit holder who violates this administrative regulation shall be fined a civil penalty of \$500 as established in KRS 177.990(2). A corrective plan by a certified arborist or REDA shall be submitted within thirty (30) days of the notice of violation.

(2) The department shall deny a permit that contains intentionally false or misleading information.

(3) If a tree dies within two (2) years of being pruned or planted, the permittee shall remove the dead tree and:

(a) Repay the department for the loss of the state-owned tree; or

(b) Replant the area.

(4) If damage occurs to vegetation not included in the vegetation permit, the permit holder shall be fined in accordance with subsection (1) of this section and shall be required to replant the area.

(5) The permittee shall be solely responsible for damage or destruction to private property that occurs in the course of executing the vegetation management plan.

(6) The permittee shall indemnify the department and the cabinet pursuant to the Application for Encroachment, TC Form 99-1(A) in the event that claims are brought against the department or cabinet by third parties for damages sustained in the course of executing a vegetation management plan.

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

(a) "Agreement for Services to be Performed," TC 99-22, December, 2014;

(b) "Application for Encroachment", TC 99-1(A), December, 2014; and

(c) "Standard Specifications for Road and Bridge Construction", June 15, 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the cabinet's Web site at [http://transportation.ky.gov/Construction/Pages/Kentucky-](http://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx)

[Standard-Specifications.aspx](http://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx)

NANCY ALBRIGHT, Deputy State Highway Engineer

MICHAEL W. HANCOCK, P.E., Secretary

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: July 13, 2015

FILED WITH LRC: July 15, 2015 at 8 a.m.

CONTACT PERSON: D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes a permitting process by which a noncommercial or a commercial entity may apply to the department for a permit to prune or remove vegetation near state roads and highways.

(b) The necessity of this administrative regulation: This regulation is necessary to control the removal of vegetation in and around Kentucky's interstates, parkways, NHS and FAP highways.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 176.050(1)(i) requires the Department of Highways to promulgate administrative regulations concerning the care and maintenance of roads in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will specify the requirements for obtaining a permit to remove or prune vegetation beside Commonwealth highways.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects commercial businesses and private landowners wishing to prune or remove existing vegetation in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Commercial or noncommercial entities will be required to obtain a permit from the cabinet in order to prune or remove vegetation. A commercial entity will be required to use a certified arborist and present a vegetation pruning or removal plan to the cabinet. A noncommercial entity may either use a certified arborist or a cabinet REDA to formulate a plan to remove or prune vegetation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no fees involved with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The requirements of this administrative regulation will allow commercial or noncommercial entities to prune or remove vegetation.

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

(a) Initially: No additional costs are expected to implement this administrative regulation.

(b) On a continuing basis: No additional costs are expected.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established by this regulation either directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not applied. Both businesses and private landowners who wish to remove or prune vegetation will be required to obtain a permit from the cabinet.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet's Department of Highways, Division of Maintenance.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 176.050(1).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will not be any effect on the expenditures of a state or local agency.

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

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

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

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

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

Revenues (+-)

Expenditures (+-)

Other Explanation:

#### TRANSPORTATION CABINET Department of Highways Division of Maintenance (Amended After Comments)

#### 603 KAR 10:002. Definitions for 603 KAR Chapter 10.

RELATES TO: KRS 177.572-177.576, 177.830-177.890, 23 C.F.R. Part 750, 23 U.S.C. 103, 131

STATUTORY AUTHORITY: KRS 177.860, 23 U.S.C. 131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.860 requires the Commissioner of the Department of Highways to promulgate administrative regulations establishing standards for advertising devices. KRS 177.890 authorizes the Commissioner of the Department of Highways to enter into agreements with the United States Secretary of Transportation in order to carry out national policy relating to interstate, defense, and federal-aid

primary highways within the state. 23 U.S.C. 131, the Highway Beautification Act, authorizes retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices. This administrative regulation defines the terms used in 603 KAR Chapter 10.

Section 1. Definitions. (1) "Abandoned" or "discontinued" means that for a period of one (1) year or more an advertising device has:

(a) Not displayed advertising matter;

(b) Displayed obsolete advertising matter;

(c) Needed substantial repairs due to lack of maintenance; or

(d) Only advertised for the sale, rent, or lease of the advertising device.

(2) "Activity boundary line" means the delineation on a property of those regularly used buildings, parking lots, storage, and process areas that are integral and essential to the primary business activity that takes place on the property.

(3) "Advertising device" is defined by KRS 177.830(5).

(4) "Centerline of the highway" means a line:

(a) Equidistant from the edges of the median separating the main-traveled ways of a divided:

1. Interstate;

2. Parkway;

3. National highway system; or

4. Federal-aid primary highway; or

(b) That is the centerline of the main-traveled way of a nondivided:

1. Interstate;

2. Parkway;

3. National highway system; or

4. Federal-aid primary highway.

(5) "Commercial or industrial activities" in an unzoned area is defined by KRS 177.830(9).

(6) "Commercial or industrial land use" means an activity in a zoned area within 660 feet of the interstate or parkway right of way carried on for financial gain but not including:

(a) The leasing of property for residential purposes;

(b) An activity conducted in a building principally used as a residence;

(c) An agricultural, forestry, ranching, grazing, farming, or related enterprise, including a wayside fresh produce stand;

(d) Operation, maintenance, or storage of an advertising device;

(e) A railroad track or minor siding; or

(f) A facility generally recognized as a utility such as a cell tower.

(7) "Commercial or industrial zone" means an area adjacent to a highway zoned to permit business, commerce, or trade as established in local ordinance or regulation.

(8) "Conditional permit" means a permit issued by the department that requires the removal of one (1) or more existing advertising devices prior to construction activity at the permitted location.

(9) "Department" means the Department of Highways within the Kentucky Transportation Cabinet.

(10) "Destroyed" means an advertising device requiring repair due to weather related events, vandalism, or other criminal or tortious acts.

(11) "Electronic advertising device":

(a) Means an advertising device with a message that is changed by an electronic or mechanical process or remote control, including rotating cubes, rotating vertical triangular slats, turning lights on and off, glow cubes, light emitting diodes, cathode ray tubes, and florescent discharge or other similar technology; and

(b) Does not mean a numerical display changed by an electronic or mechanical process not exceeding one-half of the message face.

(12) "Enlargement" means an addition to the permitted area of the facing of an advertising device.

(13) "Erect":

(a) Means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or bring into being or establish; and

(b) Does not mean the change of a message or routine maintenance.

(14) "Extension" means an addition to an advertising device that is temporary, subject to specific size requirements, and removed with the message.

(15) "Face" means the part of the advertising device including trim and background that contains the message and informative content.

(16) "Facing" means the faces displayed on the same advertising device and oriented in the same direction of travel.

(17) "Federal-aid primary highway" is defined by KRS 177.830(3) and pursuant to 23 U.S.C. 131 refers to the existence of the highway on June 1, 1991.

(18) "Highway" means:

(a) An interstate, parkway, national highway system, or federal-aid primary highway depicted by the Transportation Cabinet on <http://maps.kytc.ky.gov/PAFOA/>; and

(b) A public road maintained by the department.

(19) "Interstate" is defined by KRS 177.830(2).

(20) "Main traveled way":

(a) Means the traveled way of a highway on which through traffic is carried; and

(b) Does not mean frontage roads, turning roadways, or parking areas.

(21) "Nit" means a unit of measurement of luminance used to specify the brightness or the intensity of visible light in an electronic advertising device[billboard display].

(22) "Non-billboard" means an off-premise advertising device located on a federal-aid primary highway or a national highway system highway that is not located on the property it is advertising and is limited to advertising for a city, church, or civic club located within the community in which the advertising device is erected.

(23) "Nonconforming advertising device" means an off-premise advertising device that at one (1) time was lawfully erected but does not comply with a:

(a) Current state law or administrative regulation; or

(b) Changed condition shall:

1. A change in zoning;

2. The relocation or reclassification of a highway;

3. A change in restriction on size, space, or distance; or

4. The abandonment of required business or businesses.

(24) "Official sign" means a sign located within the highway right-of-way that has been installed by or on behalf of the department or another public agency having jurisdiction.

(25) "Off-premise advertising device" means an advertising device that contains a message relating to an activity or product that is foreign to the site on which the advertising device and message are located or an advertising device erected by a company or individual for the purpose of selling advertising messages for rental income.

(26) "On-premise advertising device":

(a) Means an advertising device that consists solely of the name of the establishment or that identifies the establishment's principal or accessory products or services offered on the property; and

(b) Does not mean an advertising device that brings rental income to the property owner.

(27) "Protected area" means an area:

(a) Within 660 feet of the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway both in and outside of an urban area; and

(b) Outside of an urban area and beyond 660 feet of the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway.

(28) "Scenic byway" is defined by KRS 177.572.

(29) "Scenic highway" is defined by KRS 177.572.

(30) "Static advertising device" means an advertising device that does not use electric or mechanical technology to change the message but can include a numerical display changed by an electronic or mechanical process that does not exceed one-half of the message face.

(31) "Turning roadway" means a connecting roadway for traffic turning between two (2) intersecting lanes of an interchange.

(32) "Unzoned commercial or industrial area" is defined by KRS 177.830(8).

(33) "Urban area" is defined by KRS 177.830(10).

(34) "Urbanized protected area" means an area within 660 feet of the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway with a population of 50,000 or more as demonstrated by the United States Department of Commerce, United States Census Bureau.

(35) "Visible" means a message:

(a) Or a part of the static advertising device structure capable of being seen, whether or not legible, without visual aid by a person of normal visual acuity on a scenic highway; or

(b) Capable of being seen, whether or not legible, without visual aid by a person of normal visual acuity in a protected area not on a scenic highway.

NANCY ALBRIGHT, Deputy State Highway Engineer

MICHAEL W. HANCOCK, P.E., Secretary

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: July 13, 2015

FILED WITH LRC: July 15, 2015 at 8 a.m.

CONTACT PERSON: D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation contains the definitions for 603 KAR Chapter 10 relating to advertising devices in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to explain and define the terms used in the billboard regulations of 603 KAR Chapter 10.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 177.860 requires the cabinet to promulgate administrative regulations prescribing standards for the erection, maintenance and operation of advertising devices and 23 U.S.C. 131 conditions retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will clarify and provide the definitions related to billboard permitting in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects persons and corporations wishing to erect, operate, and maintain billboards.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This new regulation contains definitions applicable to the permitting, erection, operation, and maintenance of advertising devices 603 KAR Chapter 10.

(b) In complying with this administrative regulation or



amendment, how much will it cost each of the entities identified in question (3): This new regulation contains definitions applicable to the permitting, erection, operation, and maintenance of advertising devices 603 KAR Chapter 10.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation contains definitions applicable to the erection, operation, and maintenance of advertising devices.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: There are no known costs associated with this administrative regulation.

(a) Initially: None

(b) On a continuing basis: None

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established by this regulation either directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation addresses only definitions.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet's Department of Highways and Division of Maintenance.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 176.860, 23 U.S.C. 131.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will not be any effect on the expenditures of a state or local agency.

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

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

(c) How much will it cost to administer this program for the first year? No administrative costs are required or expected.

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

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

#### TRANSPORTATION CABINET Department of Highways Division of Maintenance (Amended After Comments)

#### 603 KAR 10:010. Static advertising devices.

RELATES TO: KRS 177.572-177.576, 177.830-177.890, 177.990(2), 23 U.S.C. 131, 23 C.F.R. Part 750

STATUTORY AUTHORITY: KRS 177.860, 23 U.S.C. 131[23 C.F.R. Part 750]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.860 requires the Commissioner of the Department of Highways to promulgate administrative regulations establishing standards for advertising devices. KRS 177.890 authorizes the Commissioner of the Department of Highways to enter into agreements with the United States Secretary of Transportation in order to carry out national policy relating to interstate, defense, and federal-aid primary highways within the state. 23 U.S.C. 131, the Highway Beautification Act, authorizes retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices. This administrative regulation establishes the standards for on-premise and off-premise static advertising devices[KRS 177.860 authorizes the Department of Highways to establish reasonable standards for advertising devices on or visible from interstate, parkway, and federal-aid primary highways. KRS 177.867 requires the Department of Highways to pay just compensation for the removal of legally erected advertising devices that are no longer in compliance with state law or administrative regulation. KRS 177.890 authorizes the Commissioner of Highways to enter into agreements with the United States Secretary of Transportation in order to carry out national policy relating to interstate, defense, and federal-aid primary highways within the state. Compliance with the "Highway Beautification Act", 23 U.S.C. Section 131 is required to receive federal highway funds. Control of outdoor advertising devices adjacent to the national highway system is required by 23 U.S.C. Section 131. 23 U.S.C. Section 131(d) conditions retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices which are more stringent than required by the general federal mandate. Commonwealth v. G.L.G., Inc., Ky., 937 S.W.2d 709 (1997) ruled that the exemption to the billboard advertising prohibition established by KRS 177.860(4) did not require a commercially or industrially developed area in which the billboard was located be zoned commercial or industrial if the billboard otherwise complied with applicable local zoning ordinances].

Section 1. General Conditions Relating to Off-Premise Static Advertising Devices. (1) A static advertising device shall not be converted to an electronic advertising device prior to receiving a permit pursuant to 603 KAR 10:020.

(2) A static advertising device within 660 feet of the right-of-way shall be prohibited unless the device:

(a) Is not visible from the main travelled way of an interstate, parkway, national highway system, or federal-aid primary highway; or

(b) Complies with applicable zoning ordinances and regulations of a county or city.

(3) A static advertising device that is visible from more than one (1) interstate, parkway, national highway system, or federal-aid primary highway shall meet the requirements for each highway independently.

(4) The erection or existence of a static advertising device shall be prohibited in a protected area if the device:

(a) Advertises an activity that is prohibited by law;

(b) Is abandoned or discontinued;

(c) Is not clean and in good repair;

(d) Is not securely affixed to a substantial structure permanently attached to the ground;

(e) Directs the movement of traffic;

(f) Interferes with, imitates, or resembles an official traffic sign, signal, or traffic control device;

(g) Prevents the driver of a vehicle from having a clear and unobstructed view of an official sign or approaching or merging traffic;

(h) Includes or is illuminated by flashing, intermittent, or moving lights;

(i) Uses lighting, unless the lighting is:

1. Effectively shielded to prevent a beam of light from being directed at the main traveled way of the interstate, parkway, national highway system, or federal-aid primary highway;

2. Of low intensity that shall not cause glare or impair the vision of a driver or interfere with the operation of a motor vehicle; or

3. Of a luminance less than 300 nits;

(j) Is erected or maintained upon a tree;

(k) Is painted or drawn on rocks or another natural feature;

(l) Is erected upon or overhanging the right-of-way; or

(m) Is mobile, temporary, or vehicular.

(5)(a) A static advertising device shall not exceed the maximum size established in KRS 177.863(3)(a) and may contain up to two (2) advertisements per facing pursuant to KRS 177.863(3)(b).

(b) A static advertising device that has more than two (2) faces shall not have an interior angle between two (2) facings larger than forty-five (45) degrees.

(c) A static advertising device may contain extensions up to fifteen (15) percent of the face of the advertising device but shall not exceed the maximum size of the facing of the device established in KRS 177.863(3)(a).

(6) An on-premise advertising device shall not affect spacing requirements for an off-premise static advertising device.

(7) Static advertising devices that are no more than fifteen (15) feet apart at the nearest point between the devices and have the same ownership shall be counted as a single device.

(8) A static advertising device that utilizes lighting to illuminate the advertising device shall use white lights.

(9) The name of the owner of a static advertising device shall:

(a) Be legible from the main traveled way;

(b) Not be larger than twenty (20) square feet;

(c) Be shown without other owner information; and

(d) Not be considered an advertisement.

(10) To establish a protected area, the distance from the edge of a state-owned right-of-way shall be measured horizontally and at a right angle to the centerline of the interstate, parkway, national highway system, or federal-aid primary highway for a distance of 660 feet.

**Section 2. Off-Premise Static Advertising Devices on Interstates and Parkways.** (1) If it is visible from the main traveled way of an interstate or parkway and meets the permitting criteria established in this administrative regulation, a static advertising device located in a protected area of an interstate or parkway shall be permitted by the department.

(2) A permit shall not be issued unless a static advertising device:

(a) Complies with KRS 177.830 through 177.890, this administrative regulation, and county or city zoning ordinances and regulations; and

(b) Is erected or maintained in:

1. A protected area of an interstate or parkway that is zoned industrial or commercial and was an incorporated municipality on September 21, 1959; or

2. Was zoned commercial or industrial and included a commercial or industrial land use on September 21, 1959.

(3) A static advertising device shall not be closer than fifty (50) feet to the edge of the main traveled way or turning roadway of the interstate or parkway.

(4) An off-premise static advertising device visible from an interstate or parkway shall not be erected within 500 feet of another off-premise static advertising device on the same side of the interstate or parkway.

(5) An off-premise static advertising device visible from an interstate or parkway shall not be erected within 500 feet of an off-premise electronic advertising device visible in the same direction of travel.

**Section 3. Off-Premise Static Advertising Devices on National Highway System and Federal-Aid Primary Highways.** (1) A static advertising device visible from the main traveled way of a national highway system or federal-aid primary highway shall be permitted by the department if the device:

(a) Complies with KRS 177.830 through 177.890, this administrative regulation, and county or city zoning ordinances;

(b) Is erected and maintained in a protected area of a national highway system or federal-aid primary highway:

1. In a commercial or industrial zone; or

2. In an unzoned commercial or industrial area with a commercial or industrial activity that is located on the same side of the highway and within 700 feet of the activity boundary line measured along or parallel to the pavement of the highway.

(2) (a) A non-billboard off-premise static advertising device shall be prohibited on or over a state-owned right-of-way.

(b) A non-billboard off-premise static advertising device shall not affect the spacing requirements for off-premise static advertising devices on national highway system and federal-aid primary highways.

(c) A non-billboard off-premise static advertising device with multiple messages shall be limited to an overall facing size of no more than 150 square feet, and each individual message shall be limited to eight (8) square feet.

(d) Non-billboard off premise static advertising devices shall be separated by at least 200 feet.

(e) A permit shall not be required for a non-billboard advertising device.

**Section 4. Nonconforming Static Advertising Devices.** (1) A nonconforming static advertising device in a protected area shall not require a permit and shall continue to exist if the device is:

(a) Not abandoned or discontinued;

(b) Subjected to only routine maintenance;

(c) In compliance with state law and administrative regulations as well as local zoning, sign, or building restrictions at the time of the erection; and

(d) Substantially the same as it was on the effective date of the state law or administrative regulation that made the device nonconforming.

(2) The owner of a nonconforming advertising device shall submit biennial updates on a completed Advertising Device Biennial Certification Form, TC Form 99-206.

(3) An incomplete or inaccurate submission shall not be considered an update submittal.

(4) The update submittal for a nonconforming advertising device shall be submitted electronically to the department pursuant to the following table:

Dept. of Highways' District #	Submittal Year	Submittal Period*
1 & 7	Odd	January 1- April 30th
2 & 4	Even	January 1- April 30th
3 & 9	Odd	May 1st- August 31st
6 & 8	Even	May 1st- August 31st
5 & 11	Odd	September 1st – December 31st
10 & 12	Even	September 1st – December 31st

\*A submittal shall be received during the submittal period to be considered.

(5) Failure to submit an update within thirty (30) days of the deadline established in subsection (4) of this section shall subject the owner of the nonconforming static advertising device to a fine of \$250 per permit pursuant to KRS 177.990(2).

(6)(a) A nonconforming advertising device may be sold, leased, or transferred without affecting its status, but its location shall not be changed.

(b) A transfer of ownership for a nonconforming advertising device shall be submitted on a completed Advertising Device Ownership Transfer, TC Form 99-205.

(7) An owner may conduct routine maintenance of a nonconforming advertising device. The following shall be

considered routine maintenance:

(a) In kind replacement of material components with a like material component;

(b) Painting of supports and frames;

(c) Changing an advertising message;

(d) The change of existing nonstructural external light fixtures for energy efficiency;

(e) Replacement of nuts, bolts, or nails;

(f) A safety related addition such as a catwalk that does not prolong the life of the advertising device but provides protection for workers; and

(g) Rebuilding a destroyed advertising device.

(8) The following shall **not** be considered ~~non~~ routine maintenance **and shall be prohibited**:

(a) Enlargement of the device;

(b) A change in the structural support including material diameters, dimensions, or type ~~that result in increased economic life~~ such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;

(c) The addition of lights, either attached or unattached, to help illuminate the nonconforming static advertising device structure that previously had no lighting for illumination;

(d) The addition of a variable or changeable message capability including a numerical display that is changed by an electronic or mechanical process;

(e) The addition of bracing, guy wires, or other reinforcement;

(f) A change in the location of the structure; or

(g) A change in the direction of the face.

(9) Non-routine maintenance on a nonconforming advertising device shall constitute a violation of this administrative regulation, and action shall be taken pursuant to Section 9 of this administrative regulation.

**Section 5. On-premise Static Advertising Devices.** (1) An on-premise static advertising device shall only advertise or promote the activities or products offered on the property where the advertising device is located.

(2) An on-premise static advertising device shall be erected:

(a) On the property where the business is located and inside the activity boundary line; or

(b) On the property where the business is located and no further than 400 feet from the activity boundary line.

(3) An on-premise static advertising device placed within fifty (50) feet of the activity boundary line shall not exceed the maximum size established in KRS 177.863(3)(a). An entrance or exit shall be considered within the activity boundary line.

(4) An on-premise static advertising device that complies with this administrative regulation shall only be erected:

(a) 1. Within 660 feet of the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway both in and outside of an urban area; or

2. Outside of an urban area and beyond 660 feet of the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway; and

(b) If the device complies with this administrative regulation, and county or city zoning ordinances as established in KRS 177.860(4).

(5) If further than fifty (50) feet outside the activity boundary line, an on-premise static advertising device shall not exceed:

(a) Twenty (20) feet in length, width, or height; and

(b) 150 square feet in area, including border and trim and excluding supports.

(6) No more than one (1) on-premise static advertising device or one (1) on-premise electronic advertising device shall be located at a distance greater than fifty (50) feet outside the activity boundary line.

(7) If taking measurements for the placement of an on-premise static advertising device for an industrial park, the service road shall be considered within the activity boundary line for the industrial park.

(8) An on-premise static advertising device erected to advertise one (1) of the businesses in a shopping center, mall, or other combined business location shall not be located more than fifty

(50) feet outside the activity boundary line of the business being advertised.

(9) If taking measurements for the placement of an on-premise static advertising device for a shopping center, mall, or other combined business location, the combined parking area shall be considered within the activity boundary line.

(10) An on-premise static advertising device erected for a shopping center, mall, or other combined business location shall either:

(a) Identify a business or businesses conducted at the location; or

(b) Include a display area used to advertise on-premise activities.

(11) An on-premise advertising device shall not:

(a) Be of such intensity as to cause glare or impair the vision of a driver;

(b) Move or have moving or animated parts;

(c) Be erected or maintained on a tree;

(d) Be painted or drawn on rocks or another natural feature; or

(e) Be erected upon or overhanging the right-of-way.

(12) An on-premise advertising device shall not affect the spacing requirements of an off-premise device as established in KRS 177.863(2)(d).

(13) Extensions of a facing up to fifteen (15) percent shall be allowed:

(a) Within fifty (50) feet of the activity boundary line but shall not exceed the maximum size of the facing of the device as established in KRS 177.863(3)(a); or

(b) Outside of fifty (50) feet of the activity boundary line but shall not exceed the maximum size of an advertising device as established in subsection (4)(b) of this section.

(14) An on-premise advertising device shall be in compliance with the provisions of this administrative regulation but shall not require a permit.

**Section 6. Scenic Highways and Byways.** (1) After the designation of a scenic highway by the Transportation Cabinet, additional off-premise static advertising devices shall not be erected, allowed, or permitted that are visible from the scenic highway.

(2) The sponsor of a scenic byway application may petition the Transportation Cabinet to impose the same administrative regulations for static advertising devices located on scenic byways as those located on scenic highways.

(3) Only routine maintenance shall be performed on an off-premise static advertising device legally in existence on the date of the scenic highway designation.

**Section 7. Permits, Renewals, and Transfers.** (1) The requirements of this section shall apply to an off-premise static advertising device on an interstate, parkway, national highway system, or federal-aid primary highway.

(2) With the exception of a nonconforming static advertising device, a permit shall be required from the department for a static advertising device located in a protected area.

(3) The initial permit shall be valid until the expiration of the applicable renewal period. If the renewal period falls within six (6) months of the initial permit issuance, the initial permit shall be good until the next renewal period.

(4) An application for a static advertising device permit shall be made on a completed Application for Off-Premise Advertising Device, TC Form 99-31.

(5) The issuance of an advertising device permit shall be determined based on the order in which a completed application is made to the department.

(6) A permittee shall submit biennial renewals. A renewal shall be made on a completed Advertising Device Biennial Certification Form, TC Form 99-206. An incomplete or inaccurate submission shall not be considered.

(7)(a) If submitting a biennial renewal, the permittee shall certify that the off-premise static advertising device meets the permit requirements of this administrative regulation.

(b) If the static advertising device no longer meets the permit

requirements of this administrative regulation, the permittee may request a conditional renewal to allow the permittee to become compliant with the permit requirements.

(c) If the permittee fails to become compliant within thirty (30) days, the permit shall not be renewed.

(8) A renewal submittal for a static advertising device shall be submitted electronically to the department pursuant to the following schedule:

Dept. of Highways/ District #	Submittal Year	Submittal Period*
1 & 7	Odd	January 1- April 30th
2 & 4	Even	January 1- April 30th
3 & 9	Odd	May 1st- August 31st
6 & 8	Even	May 1st- August 31st
5 & 11	Odd	September 1st – December 31st
10 & 12	Even	September 1st – December 31st

\*A submittal shall be received during the submittal period to be considered.

(9) Failure to submit an update within thirty (30) days of the deadline established in subsection (8) of this section shall subject the owner of the nonconforming static advertising device to a fine of \$250 per permit pursuant to KRS 177.990(2).

(10) A static advertising device may be sold, leased, or otherwise transferred without affecting its status, but its location shall not be changed. A transfer of ownership for a static advertising device shall be submitted on a completed Advertising Device Ownership Transfer, TC Form 99-205.

(11) An application amendment for substantial change to an approved static advertising device permit shall be submitted and approved by the department prior to work being performed. Substantial change to an advertising device shall include:

(a) Enlargement of the device;

(b) Replacement, rebuilding, or re-erection of a device that has not been destroyed;

(c) A change in the structural support including material diameters, dimensions, or type that would result in increased economic life such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;

(d) The addition of lights, either attached or unattached, to help illuminate the static advertising device structure that previously had no lighting for illumination. The addition of lights may include a numerical display that is changed by an electronic or mechanical process that was not included in the original permit;

(e) The addition of bracing, guy wires, or other reinforcement;

(f) A change in the location of the structure; or

(g) A change in the direction of the face.

(12) The permit for an off-premise static advertising device that has not been constructed prior to the renewal date shall be cancelled.

Section 8. Notice of Violations; Appeals. (1) The department shall notify the owner of the static advertising device by certified letter that the static advertising device is in violation of KRS Chapter 177 or this administrative regulation.

(2)(a) An owner aggrieved by the findings of the department may request an administrative hearing pursuant to KRS Chapter 13B. The request shall be in writing and within twenty (20) days of the certified letter.

(b) A request for a hearing shall thoroughly detail the grounds upon which the hearing is requested.

(c) The hearing request shall be addressed to the Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622.

(3) If the owner fails to request an administrative hearing or fails to remedy the violations within thirty (30) days, the department shall proceed to take legal action pursuant to Section 9 of this administrative regulation.

Section 9. Penalties. (1) A static advertising device owner who violates a provision of this administrative regulation shall be assessed a penalty of \$500 per violation pursuant to KRS

177.990(2).

(2) The department shall deny or revoke a permit if the permit application contains false or materially misleading information.

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

(a) "Application for Off-Premise Advertising Device", TC Form 99-31, May 2013;

(b) "Advertising Device Ownership Transfer", TC Form 99-205, December 2013;

(c) "Advertising Device Biennial Certification Form", TC Form 99-206, December 2013; and

(d) "Agreement for Carrying Out National Policy Relative to Control of Outdoor Advertising in Areas Adjacent to the National System of Interstate and Defense Highways and the Federal-Aid Primary System", December 23, 1971.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the cabinet's Web site at <http://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx>. [Definitions.—(1) "Abandoned" or "discontinued" means that for a period of one (1) year or more that the device has:

(a) Not displayed any advertising matter;

(b) Displayed obsolete advertising matter; or

(c) Needed substantial repairs.

A notice that the device is for sale, rent, or lease shall not be considered advertising matter.

(2) "Activity boundary line" means the delineation on a property of those regularly used buildings, parking lots, storage and process areas which are an integral part of and essential to the primary business activity which takes place on the property. In an industrial park, the service road shall be considered within the activity boundary line for the industrial park as a separate entity.

(3) "Advertising device" or "device" means as defined in KRS 177.830(5).

(4) "Allowed" means legal to exist without a permit from the Department of Highways.

(5) "Billboard" or "off-premise advertising device" means a device that contains a message relating to an activity or product that is foreign to the site on which the device and message are located or an advertising device erected by a company or individual for the purpose of selling advertising messages for profit.

(6) "Centerline of the highway" means a line equidistant from the edges of the median separating the main traveled ways of a divided highway, or the centerline of the main traveled way of a nondivided highway.

(7) "Commercial or industrial activities" means as defined in KRS 177.830(9).

(8) "Commercial or industrial enterprise" means any activity carried on for financial gain except that it shall not include:

(a) Leasing of property for residential purposes;

(b) Agricultural activity or animal husbandry; or

(c) Operation or maintenance of an advertising device.

(9) "Commercially or industrially developed area" means:

(a) Any area within 100 feet (thirty and five-tenths (30.5) meters) of, and including any area where there are located within the protected area at least ten (10) separate commercial or industrial enterprises, not one of the structures from which one (1) of the enterprises is being conducted is located at a distance greater than 1620 feet (493.8 meters) from any other structure from which one (1) of the other enterprises is being conducted; and

(b) 1. Within the area there was a commercial or industrial enterprise in existence on September 21, 1959; or

2. The land use for the area was within an incorporated municipality as the boundaries existed on September 21, 1959.

(10) "Commercial or industrial zone" means as defined in KRS 177.830(7).

(11) "Comprehensively zoned" means, as it is applied to FAP highways only, that each parcel of land under the jurisdiction of the zoning authority has been placed in some zoning classification.

(12) "Department" means the Department of Highways within the Kentucky Transportation Cabinet.

(13) "Destroyed" means damage to an advertising device in excess of fifty (50) percent of the device:

(a) Including:

1. Supports;
2. Poles;
3. Guys;
4. Struts;
5. Panels;
6. Facing; and
7. Bracing; and

(b) That to be structurally and visually acceptable, requires adding:

1. A guy or strut;
2. New supports or poles by splicing or attaching to an existing support;
3. Separate new auxiliary supports or poles;
4. New or replacement peripheral or integral structural bracing or framing; or
5. New or replacement panels or facing.

(14) "Electronic sign" means an on-premise advertising device whose message may be changed by electrical or electronic process, and includes the device known as the electronically changeable message center for advertising on-premise activities.

(15) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any way bring into being or establish, but it shall not include any of the foregoing activities if performed as an incident to:

- (a) The change of an advertising message; or;
- (b) Customary maintenance; or
- (c) Repair of an advertising device.

(16) "Federal aid primary highway" or "FAP highway" means as defined in KRS 177.830(3) and 23 U.S.C. 103(b) and as it existed on June 1, 1991.

(17) "Identifiable" means capable of being related to a particular product, service, business or other activity even though there is no written message to aid in establishing the relationship.

(18) "Interstate highway" means as defined in KRS 177.830(2) and 23 U.S.C. 131(t).

(19) "Legible" means capable of:

- (a) Being read without visual aid by a person of normal visual acuity; or
- (b) Conveying an advertising message to a person of normal visual acuity.

(20) "Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, each direction has its own main traveled way. It does not include such facilities as frontage roads, turning roadways, access ramps, or parking areas.

(21) "National highway system" or "NHS" means the Kentucky highways defined in 23 U.S.C. 103 which for the purpose of outdoor advertising shall exclude the highways which are part of the interstate, parkway, or FAP system of highways.

(22) "Nonbillboard off-premise advertising device" means, as it is applicable to FAP and NHS highways only, an advertising device not located on the property which it is advertising and limited to advertising for a city, church, or civic club which includes any nationally, regionally or locally known religious or nonprofit organization.

(23) "Nonconforming advertising device" means an off-premise advertising device that was lawfully erected but:

- (a) Does not comply with the provisions of a subsequent:
  1. State law; or
  2. Administrative regulation; or
- (b) Later fails to comply with state law or administrative regulation due to changed conditions similar to the following:

1. Zoning change;
2. Highway relocation;
3. Highway reclassification; or
4. Change in a restriction on size, spacing or distance.

(24) "Official sign" means a sign:

- (a) Located within the highway right-of-way; and

(b) Installed by or on behalf of:

1. The Department of Highways; or
2. Another public agency having jurisdiction; and

(c) Which meets one (1) of the following purposes:

1. Denotes the location of underground utilities;
2. Is required by a federal, state, or local government to delineate the boundaries of a:

- a. Reservation;
- b. Park; or
- c. District;
3. Identifies the street or highway;
4. Controls traffic; or
5. Is required by state law.

(25) "On-premise advertising device" means an advertising device that contains a message relating to an activity conducted or the sale of goods and services within the boundaries of the property on which the device is located. It does not mean a sign which generates rental income.

(26) "Parkway" means any highway in Kentucky originally constructed as a toll road whether or not a toll for the use of the highway is currently being collected. As it relates to an advertising device, a parkway shall be considered the equivalent of an interstate highway.

(27) "Permitted" means legal to exist only if a permit is issued from the Department of Highways.

(28) "Primary business or activity" means that the sale of one product or a business activity which takes precedence over other product sales or business activities.

(29) "Protected area" means all areas within the boundaries of this Commonwealth which are adjacent to and within 660 feet (210.17 meters) of the state-owned highway right-of-way of the interstate, parkway, NHS, and FAP highways and those areas which are outside urban area boundary lines and beyond 660 feet (210.17 meters) from the right-of-way of an interstate, parkway, NHS, or FAP highway within the Commonwealth. If this highway terminate at a state boundary which is not perpendicular or normal to the center line of the highway, "protected area" also means all of these areas inside the boundaries of the Commonwealth which are adjacent to the edge of the right-of-way of an interstate highway in an adjoining state.

(30) "Public service message" means a message pertaining to an activity or service which is performed for the benefit of the public and not for profit or gain of a particular person, firm or corporation or information such as time or temperature.

(31) "Routine change of message" means, as it relates to a nonconforming advertising device, the message change on an advertising device from one (1) advertised product or activity to another. This includes the lamination or preparation of the existing panels or facings at a plant or factory for the changing of messages when this is the normal operating procedure of a company.

(32) "Routine maintenance" means, as it relates to a nonconforming advertising device:

(a) The maintenance of an advertising device which is limited to replacement of nuts and bolts, nailing, riveting or welding, cleaning and painting, or manipulating to level or plumb the device;

(b) The routine change of message; and

(c) The lamination or preparation of existing panels or facings at a location other than that of the advertising device.

(d) Routine maintenance shall not mean:

1. Adding guys or struts for the stabilization of the device or substantially changing the device; or

2. Replacement or repair of panels, poles, or facings or the addition of new panels, poles, or facings;

(33) "Traveled way" means the portion of a roadway dedicated to the movement of vehicles, exclusive of shoulders.

(34) "Turning roadway" means a connecting roadway for traffic, turning between two (2) intersecting legs of an interchange.

(35) "Unzoned commercial or industrial area" means as defined in KRS 177.830(8).

(36) "Urban area" means as defined in KRS 177.830(10).

(37) "Visible" means capable of being seen, whether or not legible or identifiable without visual aid by a person of normal

visual acuity and erected for the purpose of being seen from the traveled way.

Section 2. Signs on Highway Right-of-way. (1) Official signs allowed. An advertising device shall not be erected or maintained within or over the state-owned highway right-of-way except a directional or other official sign or signal erected by or on behalf of the state or other public agency having jurisdiction.

(2) Types of official signs. The following official signs (with size limitations) may be allowed on state-owned highway right-of-way:

(a) Directional and other official device including a sign or device placed by the Department of Highways;

(b) A sign or device, limited in size to two (2) square feet (0.186 square meters), denoting the location of underground utilities; or

(c) A sign, limited in size to 150 square feet (thirteen and nine-tenths (13.9) square meters), erected by a federal, state, or local government to delineate boundaries of a reservation, park, or district.

Section 3. General Conditions Relating to Advertising Devices. The requirements of this section shall apply to an advertising device on an interstate, parkway, NHS, and FAP highway.

(1) FHWA/Kentucky agreement for the control of outdoor advertising.

(a) An advertising device which is visible from an interstate highway, parkway, NHS, or FAP highway shall be governed by the provisions of the agreement between the Kentucky Department of Highways and the Federal Highway Administration which was executed on December 23, 1971.

(b) This agreement is authorized by KRS 177.890 and 23 C.F.R. Part 1.35 and required by 23 C.F.R. Parts 190 and 750.

(2) Advertising device allowed if not visible. An advertising device which is not visible from the main traveled way of the interstate, parkway, NHS, or FAP highway shall be allowed in protected areas.

(3) Visible from more than one (1) highway. If an advertising device is visible from more than one (1) interstate, parkway, NHS, or FAP highway on which control is exercised, the appropriate provisions of this administrative regulation or KRS 177.830 through 177.890 shall apply to each of these highways.

(4) Nonconforming advertising device may exist. An off-premise nonconforming, but otherwise legal, advertising device may continue to exist until just compensation has been paid to the owner, if it is:

(a) Not destroyed, abandoned or discontinued;

(b) Subjected to only routine maintenance;

(c) In conformance with local zoning or sign or building restrictions at the time of the erection; and

(d) In compliance with the provisions of Section 4(3) of this administrative regulation and KRS 177.863.

(5) Nonroutine maintenance on a nonconforming device. Performance of other than routine maintenance on a nonconforming, but otherwise legal, advertising device shall cause it to lose its legal status and to be classified as illegal.

(6) Vandalized nonconforming device.

(a) The owner of a nonconforming, but otherwise legal, advertising device destroyed by vandalism or other criminal or tortious act may apply to the Department of Highways to reerect the advertising device in kind.

(b) The application for the reerection of the advertising device shall:

1. Be on Transportation Cabinet Form TC-99-31; and

2. Contain the following:

a. Plans and pictures showing the proposed new structure to be as exact a duplicate of the destroyed nonconforming advertising device as possible, including the same number of poles, type of stanchion, supports, material of poles or stanchion, and material of facing;

b. Sufficient proof that the destruction was the result of vandalism or other criminal or tortious act;

c. Ownership of the advertising device;

d. Dimensions of the destroyed advertising device;

e. Material used in erection of the destroyed advertising device;

f. Durability of the new device;

g. Stanchion type; and

h. Current lease from land owner.

(c) The Department of Highways shall not issue a notice to reconstruct until all of these conditions have been met.

(d) The owner of the vandalized nonconforming advertising device shall not reerect the advertising device until a notice to reconstruct has been issued by the Department of Highways.

(7) Required measuring methods.

(a) To establish a protected area, the distance from the edge of a state-owned highway right-of-way shall be measured horizontally along a line at the same elevation and at a right angle to the centerline of the highway for a distance of 660 feet (210.17 meters) inside urban area boundaries and to the horizon outside urban area boundary lines.

(b)1. A V-shaped or back-to-back type billboard advertising device shall not be more than fifteen (15) feet apart at the nearest point between the two (2) sign facings and shall be connected by bracing or a maintenance walkway.

2. The angle formed by the two (2) sign facings shall not be greater than forty-five (45) degrees.

(c) The spacing between advertising devices shall be measured as described in KRS 177.863(2)(c).

(8) Criteria for off-premise advertising devices. The following criteria are applicable to any off-premise advertising device located in a protected area:

(a) An off-premise advertising device shall not exceed the maximum size stated in KRS 177.863(3)(a);

(b) A V-shaped, double-faced, or back-to-back billboard advertising device shall be considered as specified in KRS 177.863(2)(b);

(c)1. A billboard advertising device may contain two (2) messages per direction of travel if the device does not exceed the maximum size stated in KRS 177.863(3)(a);

2. If a billboard advertising device contains two (2) messages on a single facing or panel, each one (1) shall occupy approximately fifty (50) percent of the device;

3. If a billboard advertising device contains two (2) messages in one (1) direction of travel, each on a separate panel or facing where one (1) panel or facing is placed above or beside the other but where the two (2) separate panels or facings are not touching:

a. There may be a size differential in the panels if dictated by the terrain of the site of the billboard advertising device and if the differential is approved by the Transportation Cabinet prior to the erection of the device; and

b. The combined size of the two (2) faces or panels of the advertising device shall not exceed the maximum size stated in KRS 177.863(3)(a).

(d) An on-premise advertising device shall not affect spacing requirements for billboard advertising.

(e) If lit, a billboard advertising device shall be illuminated by white lights.

(9) Criteria for on-premise advertising devices. The following criteria shall be applicable to an on-premise advertising device located in a protected area:

(a) An on-premise advertising device shall not exceed the maximum size specified in KRS 177.863(3)(a) if it is placed within fifty (50) feet (fifteen and two-tenths (15.2) meters) of the advertised activity boundary line.

(b)1. There shall not be more than one (1) on-premise device located at a distance greater than fifty (50) feet (fifteen and two-tenths (15.2) meters) from the activity boundary line.

2. An individual on-premise business sign erected to advertise one (1) of the businesses in a shopping center, mall, or other combined businesses location shall not be located more than fifty (50) feet (fifteen and two-tenths (15.2) meters) from the activity boundary line of the individual business.

(c) If further than fifty (50) feet from the activity boundary line, an on-premise advertising device shall not exceed:

1. Twenty (20) feet (6.09 meters) in:

a. Length;

- b. Width; or
- c. Height; or
- 2. 150 square feet (thirteen and eight-tenths (13.8) square meters) in area:
  - a. Including border and trim; and
  - b. Excluding supports.
- (d) 1. An on-premise advertising device shall not be located more than 400 feet (121.9 meters), measured within the property boundary, from the advertised activity boundary line.
- 2. If using a corridor to reach the location of the device, the corridor shall be not less than 100 feet (thirty and five-tenths (30.5) meters) in width and shall be contiguous to an integral part of and of the same entitlement as the property on which the advertised activity is located.
- 3. Any other business activity which is in any manner foreign to the advertised activity shall not be located on or have use of the corridor between the advertised activity and the location of the device.
- 4. An activity incidental to the primary activity advertised shall not be considered in taking measurements.
- 5. If taking measurements for the placement of an on-premise industrial park sign as described in paragraph (j) of this subsection, the access road into the industrial park shall be considered an integral part of the property on which the activity is taking place.
- 6. If taking measurements for the placement of a single on-premise sign advertising a shopping center, mall, or other combined businesses location, the combined parking area shall be considered as within the activity boundary line.
- (e) There shall not be requirements for spacing between on-premise advertising devices.
- (f) An advertising device other than one (1) listed here shall not be located as to be visible from the main traveled way of an interstate, parkway, NHS, or FAP highway:
  - 1. One (1) indicating the name and address of the owner, lessee or occupant of the property on which the advertising device is located;
  - 2. One (1) showing the name or type of business or profession conducted on the property on which the advertising device is located;
  - 3. Information required or authorized by law to be posted or displayed on the property;
  - 4. One (1) advertising the sale or leasing of the property upon which the advertising device is located;
  - 5. One (1) setting forth the advertisement of an activity conducted on or the sale of a product or service on the property where the advertising device is located; or
  - 6. A sign with a maximum area of eight (8) square feet (0.743 square meters) noting credit card acceptance or trading stamps.
- (g) An on-premise advertising device shall not advertise an activity, service, or business other than that conducted upon the property on which it is located.
- (h) An on-premise electronic sign which contains, includes, or is illuminated by a flashing, intermittent, or moving lights shall not be used except to advertise an activity, service, business, or product available on the property on which the sign is located or to present a public service message.
  - 1. The advertising message may contain words, phrases, sentences, symbols, trade-marks, or logos.
  - 2. A single message or segment of a message shall have a display time of at least two (2) seconds including the time needed to move the message onto the sign board, with all segments of the total message to be displayed within ten (10) seconds.
  - 3. A message consisting of one (1) segment may remain on the sign board any amount of time in excess of two (2) seconds.
  - 4. An electronic sign requiring more than four (4) seconds to change from one (1) single message to another shall be turned off during the change interval.
  - 5. A display traveling horizontally across the sign board shall move between sixteen (16) and thirty-two (32) light columns per second.
  - 6. A display may scroll onto the sign board but shall hold for two (2) seconds including the scrolling time.
  - 7. A display shall not include an art animation or graphic that

- portrays motion, except for movement of a graphic onto or off of the sign board.
- (i) A brand or trade name shall not be advertised on an on-premise advertising device if the sale of a product or service with the brand or trade name is incidental to the primary activity, service, or business.
- (j) An industrial park type on-premise advertising device which shall be limited in area to 150 square feet (thirteen and eight-tenths (13.8) square meters) may contain the:
  - 1. Name of the industrial park;
  - 2. City or county associated with the industrial park; or
  - 3. Name of the individual business or industry located in the industrial park.
- (k) A single on-premise sign erected for a shopping center, mall, or other combined businesses location may:
  - 1. Identify each of the individual businesses conducted at the location; or
  - 2. Include a single display area used to advertise on-premise activities.
- Section 4. Specific Requirements for Advertising Devices on Interstate and Parkway Highways. (1) Permit if visible. Except for a nonconforming advertising device, an advertising device which is located in a protected area and which is visible from the main traveled way of an interstate or parkway highway shall have an approved permit from the Transportation Cabinet, Department of Highways to be a legal advertising device. An advertising device closer than fifty (50) feet (fifteen and two-tenths (15.2) meters) to the edge of the main traveled way of any interstate or parkway highway shall not be issued a permit.
- (2) Criteria for billboard advertising devices.
  - (a) 1. A billboard advertising device may be erected or maintained in a protected area of an interstate or parkway highway if:
    - a. The area is a commercially or industrially developed area as defined in Section 1 of this administrative regulation; and
    - b. The advertising device complies with the following provisions:
      - (i) KRS 177.830 through 177.890;
      - (ii) This administrative regulation; and
      - (iii) Applicable county or city zoning ordinances.
  - 2. If a business or industry on which the designation as a commercially or industrially developed area was based is terminated or abandoned, leaving less than ten (10) separate enterprises, the billboard advertising device shall be reclassified as nonconforming.
  - 3. If the Department of Highways reclassifies the device as nonconforming, the owner shall be notified.
  - (b) A billboard advertising device structure designed to be primarily viewed from an interstate or parkway highway shall not be erected within 500 feet (152.4 meters) of any other off-premise advertising device on the same side of the interstate or parkway highway unless separated by a building, natural obstruction or roadway in a manner that only one (1) off-premise advertising device located within the 500 feet (152.4 meters) is visible from the interstate or parkway highway at any one time.
- (3) The erection or existence of an advertising device shall not be permitted in a protected area of an interstate or parkway highway if it:
  - (a) Advertises an activity that is illegal, pursuant to state or federal law;
  - (b) Is obsolete;
  - (c) Is not:
    - 1. Clean;
    - 2. Safe; and
    - 3. In good repair;
  - (d) Is not securely affixed to a substantial structure permanently attached to the ground;
  - (e) Attempts to:
    - 1. Direct the movement of traffic; or
    - 2. Interfere with, imitate, or resemble an official traffic sign, signal, or traffic control device;
  - (f) Prevents the driver of a vehicle from having a clear and

unobstructed view of:

1. An official sign; or
2. Approaching or merging traffic;
- (g) Includes or is illuminated by flashing, intermittent, or moving lights, except for an on-premise device that meets the requirements of Section 3(9)(h) of this administrative regulation;
- (h) Uses lighting, unless it is:
  1. Effectively shielded to prevent a beam of light from being directed at the main traveled way of a highway; or
  2. Of low intensity that will not cause glare or impair the vision of a driver or interfere with the operation of a motor vehicle;
- (i) Moves or has animated or moving parts;
- (j) Is:
  1. Erected or maintained upon a tree;
  2. Painted or drawn on rocks or another natural feature;
- (k) Exceeds 1,250 square feet (116.4 square meters) in area:
  1. Including border and trim; and
  2. Excluding supports;
- (l) Is erected upon or overhanging the right-of-way of a highway; or
- (m) Interferes with an official:
  1. Sign;
  2. Signal; or
  3. Traffic control device.
- (4)(a) To measure distances for the identification of a commercially or industrially developed area, two (2) lines shall be drawn perpendicular to the center line of the controlled interstate or parkway highway, extending from each side of the controlled highway.
  - (b) The first perpendicular line shall be drawn 100 feet from the outer edge of the first encountered separate establishment which is within the area being considered as a commercially or industrially developed area.
  - (c) The second perpendicular line shall be drawn 100 feet from the outer edge of the last encountered separate establishment which is within the area being considered as a commercially or industrially developed area.
  - (d) The distance between the first encountered establishment and the last encountered establishment shall not exceed 1620 feet.
  - (e) Each perpendicular line shall extend for a distance of 660 feet from each edge of the right-of-way of the controlled highway.
  - (f) All area within the confines of the lines perpendicular to the center line of the highway shall be considered when establishing a commercially and industrially developed area.
  - (g) An enterprise or structure on either side of the controlled interstate or parkway highway within the confines of the lines perpendicular to the centerline of the highway may be counted as part of the ten (10) needed.
  - (h) A pictorial representation of an eligible commercially or industrially developed area is on the Transportation Cabinet document entitled "Measurement of Commercially or Industrially Developed Area".

Section 5. Specific Requirements for Advertising Devices on Federal-aid Primary and National Highway System Highways. (1) Billboard advertising devices on NHS and FAP highways. A billboard advertising device may be permitted in a protected area of an NHS or FAP highway if it is located in an unzoned commercial or industrial area or a commercial or industrial zone and if the device complies with applicable state, county, or city zoning ordinances or administrative regulations.

(a) 1. It shall be legal to have a permitted billboard advertising device in an unzoned commercial and industrial area of an NHS or FAP highway if there is a commercial, business, or industrial activity in the area.

2. Upon the termination or abandonment of the business or industry on which the unzoned commercial or industrial area was based, the billboard advertising device shall be reclassified as nonconforming.

3. If the Department of Highways reclassifies the device as nonconforming, the owner shall be notified.

(b) Except for a nonconforming advertising device, a billboard advertising device which is visible from the main traveled way of an

NHS or FAP highway and in a protected area shall have an approved permit from the Department of Highways.

(c) An unzoned commercial or industrial area shall not be created when a commercial or industrial activity is located more than 300 feet (ninety-one and four-tenths (91.4) meters) from the right-of-way of the NHS or FAP highway.

(d) 1. Minimum spacing between billboard advertising devices in an unzoned commercial or industrial area shall be 300 feet (ninety-one and four-tenths (91.4) meters) unless separated by a building, roadway, or natural obstruction in a manner that only one (1) device located within the required spacing is visible from the highway at any time.

2. The minimum spacing requirement shall be reduced to 100 feet (thirty and four-tenths (30.4) meters) within an incorporated municipality which does not have comprehensive zoning.

(e) Minimum spacing between billboard advertising devices in any comprehensively zoned commercial or industrial area shall be 100 feet (thirty and four-tenths (30.4) meters) unless separated by a building, roadway or natural obstruction in a manner that only one (1) sign located within the required spacing is visible from the highway at any time.

(f) An advertising device which meet the criteria set forth in KRS 177.863(1) shall be prohibited.

(2) Establishing limits of an unzoned commercial or industrial area.

(a) In measuring distances for the determination of an unzoned commercial or industrial area near an NHS or FAP highway, two (2) lines shall be drawn from the activity boundary line perpendicular to the centerline of the main traveled way to encompass the greatest longitudinal distance along the center line of the highway.

(b) Measurements for establishing unzoned commercial or industrial areas shall begin at the outside edge of the activity boundary lines and shall be measured 700 feet (213.4 meters) in each direction.

(3) Nonbillboard off-premise advertising devices on NHS and FAP highways permitted.

(a) The owner of a nonbillboard off-premise advertising device shall apply for a permit in accordance with the procedures set forth in Section 6 of this administrative regulation. A metal tag corresponding to the permit shall not be issued by the Department of Highways.

(b) A nonbillboard off-premise advertising device shall not be permitted on or over the state-owned right-of-way of a NHS or FAP highway.

(c) More than one (1) nonbillboard off-premise advertising device relating to a particular city, church, or civic organization shall not be erected in each direction of travel on a NHS or FAP highway.

(d) Spacing between two (2) nonbillboard off-premise advertising devices shall be 100 feet (thirty and four-tenths (30.4) meters).

(e) A nonbillboard off-premise advertising device shall not affect the spacing requirements for billboards.

(f) A church or civic club type nonbillboard advertising device which shall be limited in area to eight (8) square feet (0.743 square meters) shall not contain a message other than the following:

1. Name and address of the church or civic club;
  2. Location and time of meetings, and a directional arrow; or
  3. Special events such as Vacation Bible School, revival, etc.
- These temporary messages shall be in lieu of the original or a part of the original message and shall not exceed the maximum of eight (8) square feet (0.743 square meters) in area.

(4) Public service sign criteria. A public service sign may be allowed on school bus shelter if it conforms to the following requirements:

(a) The maximum size for a public service sign shall be thirty-two (32) square feet (2.97 square meters) in area including border and trim.

(b) 1. The public service sign shall contain a message of benefit to the public which occupies not less than fifty (50) percent of the area of the sign.

2. The remainder of the sign may identify the donor, sponsor or



contributor of the school bus shelter.

3. The sign shall not contain any other message.

(c) Only one (1) public service sign on each school bus shelter shall face in any one (1) direction of travel.

Section 6. Required Permits for Advertising Devices. (1) Permit required:

(a) Except for a nonconforming advertising device, a permit shall be required from the Department of Highways for any off-premise advertising device located in a protected area of an interstate, parkway, NHS, or FAP highway route.

(b) A permit shall be required for each on-premise advertising device on interstate and parkway highway routes.

(c) Compliance with the provisions of this administrative regulation shall be required for an on-premise advertising device on NHS and FAP routes.

(d) By January 1, 1994 each permitted off-premise advertising device shall have a metal tag supplied by the department attached to the device.

(2) Application for an advertising device permit:

(a) 1. Application for an advertising device permit shall be made on Transportation Cabinet form TC 99-31 as revised in October 1997. The application form, completed in triplicate, shall be submitted to the jurisdictional highway district office of the proposed advertising device.

2. The issuance of approved advertising device applications as they relate to the required spacing between billboards shall be determined on a "first-come, first-served" basis.

(b) The application for an advertising device permit shall be accompanied by the following:

1. Vicinity map;

2. Applicant's plot plan;

3. Location, milepoint and sign plans for the advertising device;

4. A copy of all applicable local permits;

5. A copy of the executed lease or ownership of the proposed billboard site, if applicable; and

6. If the request is for an on-premise advertising device, the application shall include a detailed description of the exact wording of the message to be conveyed on the device. This information may be furnished either by photograph, drawing, or illustration.

(c) The applicant shall submit three (3) copies of all required documentation.

(3) An approved advertising device application shall be valid for one (1) year. If the device has not been constructed and inspected for compliance in that year, the applicant shall apply for renewal of the approved application prior to the end of the year of validity.

Section 7. Illegal or Unpermitted Advertising Devices. (1) Unpermitted advertising devices. The jurisdictional chief district engineer or his representative shall notify the sign and property owner of an unpermitted or illegal advertising device by registered letter that the advertising device is in violation of Kentucky's advertising device laws or administrative regulation under the following conditions:

(a) The advertising device which is not located on state-owned highway right-of-way has not been issued a permit; or

(b) The advertising device which is not located on state-owned highway right-of-way for which a permit has been issued is found in violation of state law or this administrative regulation.

(2) Content of notice:

(a) 1. If the advertising device appears to be eligible for a permit, the owner shall be given a period of ten (10) days from the date of notification by registered letter, to make application for a permit.

2. If by the end of the ten (10) days the owner does not submit a completed application to the Department of Highways, the owner shall be sent a new notice allowing him a period of thirty (30) days from the date of the second notice to remove the device.

(b) If an advertising device previously issued a permit is changed after the device received approval from the Department of Highways, the owner shall be allowed a period of thirty (30) days from the date of notification by registered letter for making the

adjustments or corrections necessary to bring the advertising device into compliance with state law or administrative regulation.

(c) If a permit is not necessary for a particular advertising device but the advertising device is not in compliance with KRS Chapter 177 or this administrative regulation, the owner shall be allowed a period of thirty (30) days from the date of notification by registered letter for making any necessary adjustments or corrections to the advertising device.

(d) An advertising device which is ineligible for a permit or otherwise in violation of KRS Chapter 177 or this administrative regulation shall be declared to be a public nuisance and the advertising device shall be removed by the permittee or owner within thirty (30) days after written notification that the advertising device is in violation.

(e) If after the thirty (30) days the noncompliant advertising device remains, the Department of Highways shall notify the owner or permittee of the action which it intends to take to have the noncompliant advertising device removed or otherwise brought into compliance.

(3) Request for reconsideration. If the permittee or owner disagrees with a notice received from the Department of Highways, within twenty (20) days of receipt of the notice, he may:

(a) Contact the person who sent the notice to:

1. Request reconsideration;

2. Attempt to correct a problem with his advertising device; or

3. Provide additional information to the Department of Highways.

(b) File an appeal in accordance with Section 9 of this administrative regulation.

Section 8. Just Compensation for the Removal of an Advertising Device. (1) Payment of just compensation shall be determined by:

(a) An appraisal; or

(b) A value finding;

(2) A nonconforming advertising device shall not qualify for just compensation if it:

(a) Is:

1. Destroyed;

2. Abandoned; or

3. Discontinued;

(b) Receives more than routine maintenance; or

(c) Does not comply with the provisions of:

1. Section 4(3) of this administrative regulation; or

2. KRS 177.863.

Section 9. Appeal Procedure. (1)(a) A party aggrieved by the action of the Transportation Cabinet pursuant to the provisions of this administrative regulation within twenty (20) days of the date of the notice or action may file a written appeal with the Office of General Counsel in the Transportation Cabinet, 501 High Street, Frankfort, Kentucky 40622:

(b) The appeal shall set forth the nature of the complaint and the grounds for the appeal.

(2) The administrative hearing and subsequent procedures shall be conducted pursuant to the provisions of KRS Chapter 13B.

Section 10. Scenic Byways. (1) On any NHS, FAP, interstate, or parkway highway designated by the Transportation Cabinet as a scenic byway, additional outdoor advertising devices shall not be erected, allowed or permitted after the date of the designation of the highway as scenic.

(2) The outdoor advertising devices legally in existence at the time of designation of the highway as scenic may continue to have routine maintenance.

(3) The sponsor of a scenic byway application for a highway which is not an NHS, FAP, interstate, or parkway highway may petition the Transportation Cabinet to impose the outdoor advertising device restrictions set forth in this section.

(4) The following NHS and FAP highways in Kentucky have been designated as scenic byways:

Milepoints	
From	To

**VOLUME 42, NUMBER 2 – AUGUST 1, 2015**

(a) Cordell Hull Highway in Barren County:		
KY 70 – From I-65 overpass to KY 90.	5.118	5.359
KY 90 – From KY 70 at Cave City via Happy Valley Road to US 31E (Glasgow Bypass).	.000	9.923
US 31E – From KY 90 to US 68.	14.849	14.258
US 31EX – From US 68 to Washington Street around Courthouse Square in Glasgow.	1.386	1.516
US 68 – From US 31E to US 31EX.	11.741	12.577
(b) Old Kentucky Turnpike in Larue County:		
US 31E – From the entrance to the Abraham Lincoln Birthplace National Historic Site via Hodgenville to the Nelson County Line.	7.300	20.725
(c) Old Kentucky Turnpike in Nelson County:		
US 31E – From the Larue County Line to US 62 in Bardstown.	.000	14.205
US 62 – From US 31E to US 150.	14.294	14.653
US 150 – From US 62 to entrance of My Old Kentucky Home State Park.	0.000	-0.240
(d) Shakertown Road in Mercer County:		
US 68 – From 1.2 miles east of Shaker Village to 1.2 miles west of Shaker Village.	15.652	13.252
(e) Duncan Hines Scenic Highway in Warren County:		
KY 101 – From US 31W (south) to Edmonson County Line.	11.641	12.850
US 31W – From Duncan Hines former home to KY 446 overpass.	16.559	17.569
(f) Duncan Hines Scenic Highway in Edmonson County:		
KY 101 – From Warren County Line to KY 259 at Rhoda.	0.000	4.131
KY 259 – From KY 101 at Rhoda to KY 70 (east).	9.242	12.096
KY 70 – From KY 259 (south) to KY 259 (north).	12.388	9.939
KY 259 – From KY 238 at Bee Spring to KY 738.	18.998	17.568
(g) Great River Road in Fulton County:		
KY 239 – From Hickman County Line to KY 94 in Cayce.	6.379	3.617
KY 94 – From the Tennessee State Line to KY 1099 west of Hickman.	0.000	10.902
KY 94 – From KY 1099 east of Hickman to KY 239 in Cayce.	13.642	22.121
(h) Great River Road in Hickman County:		
KY 239 – From Fulton County Line to KY 123.	0.000	3.753
KY 123 – From KY 239 to Proposed FAP 94 at Hailwell.	10.048	15.788
KY 123 – From Bottery Road in South Columbus to KY 58.	20.882	21.787
(i) Pine Mountain Road in Letcher County:		
US 119 – From KY 15 in Whitesburg to KY 806 near Oven Fork.	17.308	9.155
(j) US 68 Segment 1 in Boyle County:		
US 68 – From US 150 in Perryville to US 150 in Perryville.	7.369	7.475
(k) US 68 Segment 1 in Mercer County:		
US 68 – From US 127 at Mooreland Avenue to Jessamine County Line.	6.752	20.104
(l) US 68 Segment 1 in Jessamine County:		
US 68 – From Mercer County Line to 0.5 miles south of KY 1980.	0.000	10.610
(m) US 68 Segment 2 in Fayette County:		
US 68 – From Swigert Avenue to Bourbon County Line.	10.565	15.767
(n) US 68 Segment 2 in Bourbon County:		
US 27/68 – From Fayette County Line to US 68X in Paris.	0.000	6.765
US 68X – From 10th Street to 8th Street in	1.366	1.487

Paris.		
US 68X – From Paris Bypass to North Middletown Road in Paris.	2.583	2.772
US 68 – From US 68X to the Nicholas County Line.	2.360	10.814
(o) US 68 Segment 2 in Nicholas County:		
US 68 – From Bourbon County Line to KY 32/36.	0.000	3.717
(p) US 68 Segment 3 in Nicholas County:		
US 68 – From the Licking River Bridge to the Robertson County Line.	11.687	12.211
(q) US 68 Segment 3 in Robertson County:		
US 68 – From Nicholas County Line to the Fleming County Line.	0.000	1.357
(r) US 68 Segment 3 in Fleming County:		
US 68 – From Robertson County Line to the Mason County Line.	0.000	5.423
(s) US 68 Segment 3 in Mason County:		
US 68 – From Fleming County Line to US 62 in Washington.	0.000	11.854
US 62 – From KY 2515 to Ohio State Line.	13.381	18.000
(t) KY 89 (US 421 in Jackson County):		
US 421 – From the junction with KY 89 north to the junction with KY 89 south.	14.261	14.808

Section 11. Identification of NHS and FAP Highways. The following are the FAP highway segments as designated on June 1, 1991 and the current NHS highway segments which are governed by the provisions of this administrative regulation. If in existence, a noncardinal, one (1) way couplet shall also be part of the NHS and FAP system.

	Milepoint	
	From	To
(1) Adair County:		
KY 55 – From Cumberland Parkway in Columbia to the Taylor County Line.	10.059	19.006
KY 80 – From KY 55 (Courthouse Square) via Burkesville RD in Columbia to KY 61 N.	11.775	12.282
KY 61 – From KY 80 in Columbia to Green County Line.	15.248	23.997
(2) Allen County:		
US 231 – From US 31E northwest of Scottsville to Warren County Line.	.000	9.075
US 31E – From Tennessee State Line via Scottsville Bypass to Barren County Line.	.000	19.189
(3) Anderson County:		
US 127 – From Mercer County Line to US 127 Bypass.	.000	2.535
US 127B – From US 127 south of Lawrenceburg to US 127 north of Lawrenceburg.	.000	6.656
US 127 – From US 127 Bypass to Franklin County Line.	8.897	11.120
KY 151 – From US 127 Bypass to Franklin County Line.	.000	4.587
(4) Ballard County:		
US 51 – From Carlisle County Line via 4th Street in Wickliffe to Illinois State Line.	.000	8.297
US 60 – From Green Street in Wickliffe via 4th Street and Lee Street via Barlow and Kevil to McCracken County Line.	.000	16.937
KY 121 – From Carlisle County Line to 4th Street in Wickliffe.	.000	8.609
(5) Barren County:		
KY 70 – From I-65 at Cave City to KY 90.	5.118	5.359
US 68 – From US 31E (South Green Street) to KY 90 at Broadway.	12.577	12.650
KY 90 – From KY 70 at Cave City via Happy Valley Road to US 31E (Glasgow Bypass).	.000	9.923

**VOLUME 42, NUMBER 2 – AUGUST 1, 2015**

KY 90 - From US 68 (Broadway) in Glasgow to Metcalfe County Line.	9.923	22.022
US 68 - From US 31E (Glasgow Bypass) via Main Street to US 31EX (Business) (N Race).	11.741	12.577
US 31EX - From Washington Street in Glasgow via South Green Street to US 68 (E Main St).	1.384	1.461
US 31EX - From US 68 (East Main Street) via West Main Street to North Race Street.	1.461	1.516
US 31E - From Allen County Line via Glasgow Bypass to KY 90.	.000	14.849
(6) Bell County:		
US 25E - From Tennessee State Line to Knox County Line.	.000	18.711
US 119 - From US 25E to Harlan County Line.	.000	15.756
KY 3085 - From KY 2014 via Old US 25E to Knox County Line.	.000	2.025
(7) Bourbon County:		
US 27 - From Fayette County Line via Lexington Road and Paris Bypass to Harrison County Line.	.000	15.435
US 68 - From US 27 in Paris via Paris Bypass to Nicholas County Line.	.000	10.814
US 460 - From Scott County Line to Paris Bypass.	.000	7.696
US 68X - From 10th Street via Main Street to 8th Street in Paris.	1.366	1.487
US 68X - From Paris Bypass via Carlisle Road to North Middletown Road in Paris.	2.583	2.772
US 460 - From US 68X (Carlisle Road) via North Middletown Road to the Montgomery County Line.	9.150	21.933
KY 627 - From Clark County Line via 10th Street to US 68X (Main Street).	.000	9.511
US 460 - From US 68X (Main Street) via 8th Street to US 27 (Paris Bypass).	7.696	9.150
(8) Boyd County:		
US 23 - From Lawrence County Line via Court Street in Catlettsburg, and Greenup Avenue and Winchester Avenue in Ashland to Greenup Co. Line.	.000	21.042
KY 180 - From south limits of I-64 Interchange to US 60.	.627	2.518
US 60 - From KY 180 near Cannonsburg via 13th Street to Winchester Avenue in Ashland.	4.023	12.198
US 23S - From US 60 (Winchester Avenue) via 13th Street Bridge to Ohio State Line.	.000	.591
(9) Boyle County:		
KY 34 - From US 150 (Main Street) in Danville via Lexington Road to Garrard County Line.	12.406	17.770
KY 52 - From US 150 to Garrard County Line.	.000	5.114
US 127 - From Lincoln County Line to US 150 (3rd and Main Street intersection).	.000	5.440
US 127 - From US 127B near KY 2186 to Mercer County Line.	8.083	10.319
US 127B - From US 127 via the Danville Bypass to US 127 near KY 2168.	.000	5.270
US 150 - From Washington County Line to US 68 in Perryville.	.000	4.495
US 68 - From US 150 in Perryville to US 150 in Perryville.	7.369	7.475
US 150 - From US 68 in Perryville to Lincoln County Line.	4.495	18.766

US 127 - From US 150 at Maple Street Intersection via Main St. to US 150 at 3rd Street Intersection.	5.978	5.440
US 150B - From US 127 (Hustonville Road) to US 150 (Standford Road).	.000	2.272
(10) Bracken County:		
KY 9 - From Mason County Line to Pendleton County Line.	.000	19.857
(11) Breathitt County:		
KY 15 - From Perry County Line to Wolfe County Line.	.000	27.505
(12) Breckinridge County:		
KY 259 - From Grayson County Line to KY 79.	.000	7.901
KY 79 - From KY 259 to US 60.	5.294	14.990
KY 3199 - From Hancock County Line to US 60X (Business).	.000	1.260
US 60X - From KY 3199 to US 60 west.	.000	2.500
US 60 - From US 60X (Business) via the Cloverport and Hardinsburg Bypass to the Meade County Line.	3.500	31.788
(13) Bullitt County:		
US 31E - From Spencer County Line via the Harold Bradley Allgood Memorial Highway to the Jefferson County Line.	.000	5.185
(14) Caldwell County:		
US 641 - From Lyon County Line to Crittenden County Line.	.000	4.269
(15) Calloway County:		
KY 121 - From US 641 to Graves County Line.	14.075	24.156
US 641 - From Tennessee State Line via Murray to Marshall County Line.	.000	17.444
(16) Campbell County:		
US 27 - From Pendleton County Line via new bridge to Ohio State Line.	.000	22.622
KY 8 - From the Kenton County Line to the I-471 underpass.	.000	.998
KY 1120 - From Kenton County Line to York Street.	.000	.668
KY 1998 - From US 27 to KY 8.	2.813	5.014
KY 471 - From US 27 to I-471 (Eastbound I-275 Overpasses).	.000	.729
KY 9 - From Pendleton County Line to north limits of I-275 Interchange.	.000	17.978
(17) Carlisle County:		
US 51 - From Hickman County Line to proposed location of the Great River Road.	.000	10.725
US 51 - From a point on US 51 Mainline via the proposed Great River Road to the Ballard County Line.	.000	1.800
US 94 - From Hickman County Line via the proposed Great River Road to proposed US 51.	.000	9.000
KY 121 - From Graves County Line to Ballard County Line.	.000	9.714
(18) Carter County:		
KY 7 - From Elliot County Line to US 60 in Grayson.	.000	10.865
KY 1 - From US 60 to KY 9.	10.646	11.934
KY 9 - From KY 1 and KY 7 to Lewis County Line.	.000	18.262
(19) Casey County:		
US 127 - From Russell County Line to Lincoln County Line.	.000	23.715
(20) Christian County:		
US 41A - From Tennessee State Line to end of north exit ramp of Pennyrite Parkway.	.000	13.611

**VOLUME 42, NUMBER 2 – AUGUST 1, 2015**

US 41LP - From KY 107 to northwest urban limits of Hopkinsville at KY 91/1682.	.000	5.100
KY 3493 - From US 41A at a point south of Hopkinsville to KY 107.	.000	1.892
US 41 - From Todd County Line to southbound exit ramp of the Pennyrile Parkway.	.000	10.325
US 41 - From US 68 to US 68 in Hopkinsville.	11.909	12.441
US 68 - From Trigg County Line to Todd County Line.	.000	21.126
KY 1682 - From US 68 to Pennyrile Parkway.	.000	3.904
(21) Clark County:		
KY 627 - From Madison County Line to KY 1958.	.000	6.360
KY 1958 - From KY 627 to north limits of the I-64 interchange.	.000	2.860
KY 627 - From southern limits of I-64 Interchange to Bourbon County Line.	9.154	14.812
(22) Clay County:		
KY 80 - From south limits of interchange ramps of Daniel Boone Parkway to US 421.	7.101	7.537
US 421 - From KY 80 to Jackson County Line.	16.915	32.841
(23) Clinton County:		
KY 90 - From Cumberland County Line to Wayne County Line.	.000	12.816
US 127 - From Tennessee State Line to Russell County Line.	.000	20.967
(24) Crittenden County:		
US 60 - From Livingston County Line to Union County Line.	.000	23.018
US 641 - From Caldwell County Line to US 60.	.000	7.494
(25) Cumberland County:		
KY 90 - From Metcalfe County Line to Clinton County Line.	.000	22.450
KY 61 - From Tennessee State Line to KY 90 West.	.000	13.701
(26) Daviess County:		
Proposed FAP 10 - From US 60 near Maceo to Indiana State Line.	.000	3.800
US 60 - From Owensboro Beltline to US 60 (Lewisport Road).	.000	2.600
US 60 - From US 60 Bypass West of Owensboro to Hancock County Line.	10.179	27.979
US 60B - From US 60 to US 60 (Lewisport Road).	.000	10.212
US 60S - From KY 54 to Owensboro Beltline.	.000	.500
KY 54 - From US 431 (Frederica Street) east limits of US 60 Bypass Interchange.	.000	2.663
US 431 - From McLean County Line to 2nd Street.	.000	14.670
KY 2245 - From US 431 (Frederica Street) via 5th Street to US 631 (Lewis Street).	.000	.246
US 231 - From US 60 Bypass via Hartford Road, Breckinridge Street, 5th Street, Lewis Street and Ohio River Bridge to Indiana State Line.	11.243	15.721
KY 2235 - From US 60 via Triplet Street to US 60.	.000	.145
KY 1467 - From US 231 (5th Street) via Breckinridge Street and Leitchfield Road to 2nd Street.	.000	.234
(27) Edmonson County:		
KY 101 - From Warren County Line to KY 259 at Rhonda.	.000	4.131

KY 259 - From KY 101 at Rhonda to KY 70 eastbound.	9.242	12.096
KY 70 - From KY 259 southbound to KY 259 northbound.	9.939	12.388
KY 259 - From KY 70 westbound to Grayson County Line.	12.096	22.692
(28) Elliott County:		
KY 7 - From Morgan County Line to Carter County Line.	.000	19.312
(29) Fayette County:		
US 27 - From Jessamine County Line via Nicholasville Road, South Limestone, Euclid Avenue, South Upper, Bolivar, Broadway, and Paris Pike to Bourbon County Line.	.000	15.767
US 25 - From Main Street (US 421) via Newtown Pike to KY 922 at Georgetown Street.	14.632	15.237
KY 4 - The entire length of New Circle Road.	.000	19.283
KY 922 - From US 25 (Georgetown Road) via Newtown Pike to north limits of I-75 Interchange.	.000	3.055
US 60 - From Woodford County Line to I-75	.000	12.805
US 68 - From southeast urban limits of Lexington at Jessamine County Line via Harrodsburg Road to KY 4.	.000	3.110
US 421 - From KY 4 via West Main Street to US 25.	.000	1.798
US 25 - From KY 418 via Richmond Road, East Main Street, and West Main Street to US 421.	8.244	14.632
KY 418 - From US 25 to southeast limits of I-75 Interchange.	.000	2.602
(30) Fleming County:		
KY 32 - From Rowan County Line KY 11 at a point southwest of Flemingsburg.	10.615	28.293
KY 11 - From junction with KY 32 at point southwest of Flemingsburg to Mason County Line.	10.630	17.105
US 68 - From Robertson County Line to Mason County Line.	.000	5.423
(31) Floyd County:		
KY 114 - From Magoffin County Line to KY 1428 in Prestonsburg.	.000	12.430
US 23 - From Pike County Line to Johnson County Line.	.000	21.878
KY 80 - From Knott County Line to US 23.	.000	14.435
KY 1428 - From KY 114 in Prestonsburg to KY 321 in Prestonsburg.	15.605	16.091
KY 321 - From KY 1428 in Prestonsburg to KY 3 south of Auxier.	.000	4.278
KY 3 - From KY 321 south of Auxier to KY 321 near Auxier.	1.060	2.672
KY 321 - From KY 3 to Johnson County Line.	4.278	5.172
(32) Franklin County:		
US 127 - From Anderson County Line via Capital Plaza West Frankfort Connector Wilkerson Boulevard to Owen County Line.	.000	21.507
US 421 - From US 127 (Owenton Road) via Thornhill Bypass to US 460 (Georgetown Road).	3.072	4.523
KY 151 - From Anderson County Line to I-64.	.000	2.222
US 60 - From US 460 at Georgetown Road in Frankfort via Versailles Road to Woodford County Line.	10.716	14.038

**VOLUME 42, NUMBER 2 – AUGUST 1, 2015**

US 421 - From US 127 to Henry County Line.	4.523	17.886
US 460 - From US 60 at Versailles Road in Frankfort via Georgetown RD to Scott County Line.	.000	6.114
KY 676 - From US 127 (Lawrenceburg Road) via East-West Connector in Frankfort to US 60 (Versailles Road).	.000	5.287
(33) Fulton County:		
US 51 - From south limits of Purchase Parkway to Hickman County Line.	.000	5.472
KY 239 - From Hickman County Line to KY 94 in Cayce.	6.379	3.617
KY 94 - From the Tennessee State Line to KY 1099 west of Hickman.	0.000	10.902
KY 94 - From KY 1099 east of Hickman to KY 239 in Cayce.	13.642	22.121
KY 1099 - Fulton Bypass from KY 94 west of Hickman to KY 94 east of Hickman.	.000	2.966
(34) Gallatin County:		
KY 35 - From Owen County Line at Sparta to I-71.	.000	2.128
(35) Garrard County:		
US 27 - From Lincoln County Line to Jessamine County Line.	.000	16.510
KY 34 - From Boyle County Line to US 27.	.000	1.610
KY 1295 - From KY 52 to Madison County Line.	.000	6.928
KY 52 - From Boyle County Line to KY 954.	.000	13.476
KY 954 - From KY 52 to Madison County Line.	.000	7.564
(36) Graves County:		
US 45 - From southern interchange of Purchase Parkway to McCracken County Line.	18.950	31.580
KY 80 - From Purchase Parkway via West Broadway to US 45 at 7th Street in Mayfield.	9.638	11.461
KY 58 - From US 45 at 7th Street via East Broadway to Marshall County Line.	5.530	14.881
KY 121 - From Calloway County Line via Murray Road and 5th Street to KY 58 at Broadway.	.000	10.623
US 45 - From KY 80 at Broadway via North 8th Street to KY 121 at Housman Street.	17.219	17.952
KY 121 - From US 45 (North 8th Street) via Housman Street to Carlisle County Line.	10.623	22.559
(37) Grayson County:		
KY 259 - From Edmonson County Line to US 62 westbound.	.000	12.954
US 62 - From KY 259 southbound to KY 259 northbound.	20.787	21.296
KY 259 - From US 62 Eastbound to Breckinridge County Line.	12.954	21.459
(38) Green County:		
KY 61 - From Adair County Line to US 68.	.000	8.194
US 68 - From KY 61 southbound to West Hodgenville Avenue in Greensburg.	11.954	13.616
KY 61 - From KY 88 north of Greensburg to Larue County Line.	9.796	24.344
(39) Greenup County:		
KY 8 - From Lewis County Line to KY 8 Spur at South Portsmouth.	.000	1.956
US 23 - From Boyd County Line to south end of US Grant Bridge.	.000	28.760
KY 8 - From KY 8 Spur to US 23 at south limits of U.S. Grant Bridge in South Portsmouth.	1.956	3.023

KY 8S - From KY 8 via Carl Perkins Bridge to Ohio State Line.	.000	.610
KY 10 - From Lewis County Line to the second landward pier from river's edge in Ohio.	.000	12.844
(40) Hancock County:		
US 60 - From Daviess County Line to KY 3199 in Hawesville.	.000	10.782
KY 3199 - From US 60 in Hawesville to another junction with US 60.	.000	3.301
US 60 - From KY 3199 to Squirrel Tail Hollow Road.	13.666	14.270
KY 3199 - From another junction with US 60 to the Breckinridge County Line.	3.301	5.558
KY 69 - From US 60 at Hawesville to Indiana State Line.	13.080	13.972
(41) Hardin County:		
US 31WB - From Western Kentucky Parkway to US 31W.	.202	3.704
US 31W - From US 31W Bypass to Meade County Line.	18.818	33.040
US 31W - From Meade County Line to Jefferson County Line.	33.040	37.143
KY 61 - From Larue County Line to US 31W.	.000	5.309
(42) Harlan County:		
US 119 - From Bell County Line along existing and proposed routes to Letcher County Line.	.000	39.182
US 421 - From Virginia State Line to Leslie County Line.	.000	27.632
(43) Harrison County:		
US 27 - From Bourbon County Line to Pendleton County Line.	.000	19.472
(44) Henderson County:		
US 41 - From Pennyriple Parkway to Indiana State Line (north urban limits of Henderson).	13.414	21.193
US 41A - From Dixon Street to the northern most loop of the interchange with US 41.	13.235	17.760
US 60 - From Union County Line to US 41A (Dixon Road).	.000	10.435
KY 425 - From US 60 (Morganfield Road) via Henderson Bypass to end of the northbound ramp junction with the Pennyriple Parkway.	.000	6.201
(45) Henry County:		
KY 55 - From Shelby County Line to KY 22 west in Eminence.	.000	1.408
KY 22 - From KY 55 south to KY 55 north.	7.420	7.522
KY 55 - From KY 22 east to US 421.	1.408	4.490
US 421 - From Franklin County Line to Shelby County Line at Pleasureville.	.000	6.434
US 421 - From Shelby County Line near Pleasureville to Trimble County Line.	6.434	25.144
(46) Hickman County:		
US 51 - From Fulton County Line to Carlisle County Line.	.000	14.451
KY 239 - From Fulton County Line to KY 123.	0.000	3.753
KY 123 - From KY 239 to Proposed FAP 94 at Hailwell.	10.048	15.788
KY 123 - From Bottery Road in South Columbus to KY 58.	20.882	21.787
Proposed FAP 94 - From KY 123 at Hailwell along Cole and Chalk Bluff Roads to KY 123 at South Columbus.	.000	6.000
KY 58 - From KY 123 to KY 80 at Columbus.	0.573	0.761
KY 80 - From KY 58 to KY 123.	0.000	1.526

**VOLUME 42, NUMBER 2 – AUGUST 1, 2015**

KY 123 - From KY 80 to Carlisle County Line.	21.787	22.958
(47) Hopkins County:		
KY 281 - From east limits of interchange ramps of Pennyrite Parkway to US 41.	.000	.712
US 41A - From US 41 and KY 281 to Webster County Line.	.000	13.278
(48) Jackson County:		
KY 30 - From Laurel County Line to Owsley County Line.	.000	20.919
US 421 - From Clay County Line to Rockcastle County Line.	.000	29.585
(49) Jefferson County:		
US 31W - From Hardin County Line via Dixie Highway, Bernheim Lane, 22nd Street, Dumesnil Street and 21st Street to US 31 east at Main and 2nd Streets.	.000	22.135
US 150 - From Main Street via 21st Street and 22nd Street to I-64.	.000	.741
US 150T - From 22nd Street to 21st Street.	.000	.089
US 31 - From US 31E (Main Street) via George Rogers Clark Bridge to 0.02 mile north of 4th Street in Jeffersonville, Indiana.	.000	1.122
US 31E - From Bullitt County Line to US 31W at Main and 2nd Streets.	.000	17.987
US 42 - From Baxter Avenue to US 60.	.000	.805
US 42 - From I-264 to KY 841.	5.779	8.951
KY 841 - From US 31W at Dixie Highway via Gene Snyder Freeway to I-65.	.000	10.250
KY 841 - From I-71 ramps to US 42.	34.758	37.006
KY 1934 - From KY 1230 (Cane Run Road) to I-264.	.000	7.593
US 60 - From US 42 to Story Avenue.	.000	.123
(50) Jessamine County:		
US 27 - From the Garrard County Line to Fayette County Line.	.000	15.070
US 68 - From Mercer County Line to Fayette County Line.	.000	12.060
(51) Johnson County:		
US 23 - From Floyd County Line to Lawrence County Line.	.000	18.386
US 460 - From Magoffin County Line to US 23 near Paintsville.	.000	7.809
KY 321 - From Floyd County Line to US 23 north of Paintsville.	.000	9.562
KY 40 - From US 460 to KY 321.	8.741	9.293
(52) Kenton County:		
KY 8 - From 4th Street to the Campbell County Line.	6.434	7.662
KY 1120 - From I-75 to Campbell County Line.	.000	1.212
(53) Knott County:		
KY 15 - From Letcher County Line to Perry County Line.	.000	9.380
KY 80 - From Perry County Line to Floyd County Line.	.000	20.093
(54) Knox County:		
US 25E - From Bell County Line to Laurel County Line.	.000	26.571
KY 90 - From Whitley County Line to 1.621 miles south of US 25E at KY 3041 (Proposed).	.000	2.100
KY 3041 - From 1.621 miles south of US 25E to US 25E.	.000	1.621
KY 3085 - From Bell County Line via Old US 25E to junction with US 25E.	.000	2.140
(55) Larue County:		

KY 61 - From Green County Line via Hodgenville Bypass to Hardin County Line.	.000	13.603
US 31E - From KY 61 south via Hodgenville to Nelson County Line.	6.900	20.725
(56) Laurel County:		
US 25E - From Knox County Line in Corbin to west limits of I-75 ramps.	.000	2.024
US 25 - From Daniel Boone Parkway in London to KY 490.	13.612	16.315
KY 490 - From US 25 to KY 30 at East Bernstadt.	.000	.877
KY 30 - From KY 490 to Jackson County Line.	1.404	9.806
KY 80 - From Pulaski County Line to the Daniel Boone Parkway and US 25 near London.	.000	11.083
KY 192 - From west ramps of I-75 to the Daniel Boone Parkway east of London.	18.190	22.041
(57) Lawrence County:		
US 23 - From Johnson County Line to Boyd County Line.	.000	28.947
KY 645 - From US 23 to Martin County Line.	.000	5.205
(58) Lee County:		
KY 11 - From Owsley County Line via Beattyville to Wolfe County Line.	.000	14.845
(59) Leslie County:		
US 421 - From Harlan County Line via Main Street in Hyden to KY 118 (Hyden Spur).	.000	22.613
KY 118 - From US 421 in Hyden via Hyden Spur to Daniel Boone Parkway.	.000	3.524
(60) Letcher County:		
KY 15 - From US 119 at Whitesburg to KY 7 North at Isom.	.000	9.230
KY 7 - From KY 15 to KY 15.	13.497	14.157
KY 15 - From KY 7 South in Isom to Knott County Line.	9.230	10.675
US 23 - From Virginia State Line along existing and proposed alignment to Pike County Line.	.000	7.070
US 119 - From Harlan County Line to proposed US 23 near Virginia State Line.	.000	27.798
(61) Lewis County:		
KY 9 - From Carter County Line to Mason County Line.	.000	31.218
KY 8C - From KY 10 to KY 8 south of Quincy.	.000	.127
KY 8 - From KY 8C south of Quincy to Greenup County Line.	28.575	36.910
KY 10 - From KY 9 Greenup County Line.	6.788	19.834
(62) Lincoln County:		
US 27 - From Pulaski County Line via Stanford to Garrard County Line.	.000	21.982
US 127 - From Casey County Line via Hustonville to Boyle County Line.	.000	10.847
US 150 - From Boyle County Line to US 150 Bypass.	.000	4.347
US 150B - From US 150 to US 150.	.000	3.522
US 150 - From US 150/US 150 Bypass near Preacherville Road to Rockcastle County Line.	8.705	19.665
(63) Livingston County:		
US 60 - From McCracken County Line via Smithland, Burna, and Salem to Crittenden County Line.	.000	29.059
US 62 - From Marshall County Line via Lake City to Lyon County Line.	.000	2.854
(64) Logan County:		

**VOLUME 42, NUMBER 2 – AUGUST 1, 2015**

US 79 - From Todd County Line via Clarksville Road and 9th Street to US 431 North.	.000	12.135
US 68 - From Todd County Line via Hopkinsville Road, 4th Street and Franklin Street to Warren County Line.	.000	26.567
US 431 - From Tennessee State Line to Muhlenberg County Line.	.000	31.898
US 68X - From US 68 west of Auburn via Old US 68 to US 60 east of Auburn.	.000	3.035
KY 3172 - From KY 73 via Old US 68 to Warren County Line.	.000	2.515
(65) Lyon County:		
US 62 - From Livingston County Line to US 641 at Fairview.	.000	10.465
US 641 - From US 62 at Fairview to Caldwell County Line.	.000	5.715
(66) McCracken County:		
US 45 - From Graves County Line via Lone Oak Road and Jackson Street to US 60 East (Jackson Street).	.000	10.820
US 60 - From Ballard County Line via Hinkleville Road and Park Avenue to US 45 (28th Street) at Laclede.	.000	13.544
US 60 - From US 45 (28th Street) via Jackson Street, 21st Street, Beltline Highway, and Division Street to the Livingston County Line.	13.544	20.028
US 62 - From US 60 to US 68.	12.881	15.513
US 68 - From US 62 to Marshall County Line.	.000	2.677
(67) McCreary County:		
US 27 - From Tennessee State Line to Pulaski County Line.	.000	22.252
KY 90 - From US 27 to Whitley County Line.	.000	11.920
(68) McLean County:		
US 431 - From Muhlenberg County Line to Daviess County Line.	.000	11.573
(69) Madison County:		
KY 1295 - From Garrard County Line to KY 52.	.000	4.529
KY 52 - From KY 1295 via Lancaster Avenue to KY 876.	5.444	10.910
KY 954 - From Garrard County Line to KY 21.	.000	.139
KY 21 - From KY 954 via Lancaster Road and Chestnut Street in Berea to US 25 at Mt. Vernon Road.	6.176	9.115
US 25 - From KY 21 West via Chestnut Street in Berea to KY 21 East.	2.863	3.810
KY 21 - From US 25 at Estill Street via Prospect Street and Big Hill Road in Berea to US 421.	9.115	14.196
KY 876 - From west limits of I-75 interchange in Richmond to KY 52 (Irvine Road).	7.097	10.755
US 25 - From US 421 via Big Hill Avenue to KY 876.	11.960	15.500
US 421 - From US 25 to Rockcastle County Line.	.000	13.031
US 421S - From KY 52 (Irvine Road) to north urban limits of Richmond at US 25.	.000	3.900
US 25 - From proposed Richmond Bypass to northwest limits of I-75 interchange at Richmond.	19.188	20.158
KY 627 - From US 25 west of I-75 to Clark County Line.	.000	6.118
(70) Magoffin County:		
KY 114 - From US 460 to Floyd County Line.	.000	5.026

US 460 - From Morgan County Line to Johnson County Line.	.000	20.426
(71) Marion County:		
US 68 - From Taylor County Line to KY 55 (Walnut St.).	.000	10.690
KY 55 - From US 68 (Main Street) via Walnut Street to KY 49 (St. Marys Road).	.000	.389
KY 49 - From KY 55 (St. Marys Road) via Walnut Street to KY 49 (Proctor Knott Avenue).	17.815	17.968
KY 55 - From KY 55 (Proctor Knott Avenue) via Walnut and Spalding Avenue to Washington County Line.	.389	4.669
(72) Marshall County:		
KY 58 - From Graves County Line to KY 80.	.000	2.156
KY 80 - From KY 58 to US 68.	.000	16.926
US 68 - From McCracken County Line to Trigg County Line.	.000	28.085
US 641 - From Calloway County Line to US 62.	.000	19.422
US 62 - From I-24 to Livingston County Line.	8.805	12.081
US 641S - From US 641 to Purchase Parkway.	.000	3.519
KY 348 - From Purchase Parkway to US 641.	7.448	8.325
(73) Martin County:		
KY 645 - From KY 40 at a point west of Inez Bypass to KY 3 northbound south of Inez.	4.682	6.605
KY 3 - From KY 645 westbound via Inez Bypass to KY 645 eastbound.	9.709	10.019
KY 645 - From KY 3 southbound via Inez Bypass to KY 40 southeast of Inez.	6.605	7.632
KY 40 - From KY 645 southeast of Inez to West Virginia State Line.	11.900	20.280
KY 645 - From Lawrence County Line to KY 40 at a point west of Inez.	.000	4.682
(74) Mason County:		
KY 11 - From Fleming County Line to KY 9.	.000	8.452
US 68 - From Fleming County Line to US 62 in Washington.	.000	11.854
US 62 - From US 68 in Washington via Lexington Road, Forest Avenue, and Aberdeen Bridge to Ohio State Line.	12.672	18.000
KY 9 - From Lewis County Line to Bracken County Line.	.000	19.554
KY 546S - From KY 9 to Ohio State Line via proposed New Bridge.	.000	4.600
(75) Meade County:		
US 31W - From Hardin County Line to Hardin County Line.	.000	3.827
US 60 - From Breckinridge County Line to US 31W.	.000	15.644
KY 144 - From US 60 to KY 448 near Buck Grove.	25.390	28.665
KY 448 - From KY 144 to KY 1051 (Brandenburg Bypass).	.000	4.392
KY 1051 - From KY 448 via Brandenburg Bypass to KY 79.	.000	2.218
KY 79 - From KY 1051 via Brandenburg Bypass to Indiana State Line.	8.237	9.912
(76) Menifee County:		
US 460 - From Montgomery County Line to Morgan County Line.	.000	19.750
(77) Mercer County:		
US 127 - From Boyle County Line via Danville Road to US 68.	.000	4.402

# VOLUME 42, NUMBER 2 – AUGUST 1, 2015

US 68 - From US 127 at Mooreland Avenue to Jessamine County Line.	6.752	20.104
US 127 - From US 68 to Anderson County Line.	4.402	17.150
(78) Metcalfe County:		
KY 90 - From Barren County Line to Cumberland County Line.	.000	11.719
(79) Montgomery County:		
US 460 - From Bourbon County Line to KY 686 (Mount Sterling Bypass).	.000	8.281
KY 686 - From US 460 (Maysville Road) via Mount Sterling Bypass to US 460 (Frenchburg Road) at south urban limits of Mount Sterling.	.000	3.460
US 460 - From south urban limits of Mount Sterling to Menifee County Line.	10.702	22.151
(80) Morgan County:		
KY 7 - From US 460 in West Liberty to Elliot County Line.	.000	11.683
KY 203 - From Wolfe County Line to US 460.	.000	3.761
US 460 - From Menifee County Line via West Liberty to Magoffin County Line.	.000	28.634
(81) Muhlenberg County:		
US 431 - From Logan County Line to McLean County Line.	.000	27.779
(82) Nelson County:		
US 31E - From Larue County Line via New Haven Road, Cathedral Street, and Stephen Foster Avenue to Spencer County Line.	.000	27.588
US 62 - From US 31E to US 150.	14.294	14.653
US 150 - From US 62 to Washington County Line.	.000	7.682
(83) Nicholas County:		
US 68 - From Bourbon County Line to Robertson County Line.	.000	12.211
(84) Owen County:		
US 127 - From Franklin County Line to KY 35 at Bromley.	.000	24.687
KY 35 - From US 127 to Gallatin County Line.	.000	4.132
(85) Owsley County:		
KY 30 - From Jackson County Line to KY 11 North.	.000	11.206
KY 11 - From KY 30 to Lee County Line.	14.227	17.307
(86) Pendleton County:		
US 27 - From Harrison County Line to Campbell County Line.	.000	19.422
KY 9 - From Bracken County Line to Campbell County Line.	.000	4.339
(87) Perry County:		
KY 15 - From Knott County Line at Vico to Breathitt County Line.	.000	25.179
KY 80 - From KY 15 to Knott County Line.	7.910	15.862
(88) Pike County:		
US 23 - From Letcher County Line along proposed and existing alignments to Floyd County Line.	.000	35.123
US 119 - From US 23 north of Pikeville to West Virginia State Line.	.000	29.748
US 460 - From US 23 north of Shelbiana to Virginia State Line.	.000	24.865
(89) Powell County:		
KY 11 - From Wolfe County Line to Mountain Parkway.	.000	3.504
(90) Pulaski County:		
US 27 - From McCreary County Line to Lincoln County Line.	.000	30.693
KY 80B - From US 27 to KY 80.	.000	2.315

KY 80 - From KY 80 Bypass to Laurel County Line.	21.636	40.393
KY 90 - From Wayne County Line to US 27.	.000	4.169
KY 461 - From KY 80 to Rockcastle County Line.	.000	8.441
(91) Robertson County:		
US 68 - From Nicholas County Line to Fleming County Line.	.000	1.357
(92) Rockcastle County:		
US 150 - From Lincoln County Line to US 25 in Mount Vernon.	.000	10.511
US 25 - From I-75 to US 150.	11.764	13.882
US 421 - From Jackson County Line to Madison County Line.	.000	.601
KY 461 - From Pulaski County Line to US 25.	.000	9.404
US 25 - From KY 461 to I-75.	15.018	15.678
(93) Rowan County:		
KY 32 - From Fleming County Line to south limits of I-64 interchange.	.000	5.784
(94) Russell County:		
US 127 - From Clinton County Line to Casey County Line.	.000	26.998
(95) Scott County:		
US 460 - From Franklin County Line to proposed Georgetown Bypass near Great Crossings.	.000	7.100
Proposed Georgetown Bypass - From US 460 Mainline near Great Crossings to US 25.	.000	3.400
US 460B - From US 25 via US 460 (Georgetown Bypass) to US 62/US 460.	.000	2.891
US 460 - From US 62/US 460B to Bourbon County Line.	8.583	15.421
(96) Shelby County:		
KY 55 - From I-64 via Taylorsville Road to US 60	6.246	7.898
KY 55 - From KY 43/KY 2268 to Henry County Line.	9.131	17.850
US 60 - From KY 55 South (Taylorsville Road) via Midland Trail and Main Street to KY 55 North (Boone Station Road).	8.589	11.398
KY 2268 - From south end of Clear Creek Bridge via 7th Street and Pleasureville Road to KY 55.	0.000	1.308
KY 53 - From I-64 to US 60 (Frankfort Road) via Mt Eden Road.	6.188	7.978
US 421 - From Henry County Line to Henry County Line.	.000	.661
(97) Simpson County:		
US 31W - From south limits of I-65 Interchange to KY 100.	2.300	6.252
KY 100 - From US 31W Mainline to the I-65 ramps east of I-65.	9.675	12.875
(98) Spencer County:		
US 31E - From Nelson County Line to Bullitt County Line.	.000	2.433
(99) Taylor County:		
KY 55 - From Adair County Line to US 68 (Broadway).	.000	10.293
US 68 - From KY 55 via Broadway to Marion County Line.	4.939	13.600
(100) Todd County:		
US 41 - From Tennessee State Line to Christian County Line.	.000	12.458
US 79 - From Tennessee State Line to Logan County Line.	.000	10.606
US 68 - From Christian County Line to Logan County Line.	.000	14.060
(101) Trigg County:		



**VOLUME 42, NUMBER 2 – AUGUST 1, 2015**

US 68 - From Marshall County Line to Christian County Line.	.000	28.115
US 68X - From US 68 west of Cadiz to US 68 east of Cadiz.	0.000	4.519
KY 3468 - From US 68 east of Cadiz via Old US 68 to US 68 west of I-24.	0.000	2.840
(102) Trimble County:		
US 421 - From Henry County Line to US 42 South.	.000	6.704
US 42 - From US 421 South in Bedford to US 421 North in Bedford.	8.078	8.249
US 421 - From US 42 North to Indiana State Line.	6.704	19.287
(103) Union County:		
KY 56 - From Illinois State Line to proposed Morganfield Bypass.	.000	11.600
KY 56 - From existing US 56 via proposed Bypass to US 60.	.000	1.400
US 60 - From Crittenden County Line to proposed Morganfield Bypass.	.000	15.500
US 60 - From existing US 60 via proposed Bypass to US 60 east of Morganfield.	.000	2.900
US 60 - From proposed Bypass east of Morganfield to Henderson County Line.	18.100	26.069
KY 109 - From Webster County Line to US 60.	.000	1.536
(104) Warren County:		
KY 101 - From I-65 to US 31W.	7.861	11.641
US 31W - From KY 101 south to KY 101 north.	27.869	28.557
KY 101 - From US 31W to Edmonson County Line.	11.641	12.850
US 68 - From Logan County Line to US 31W.	.000	13.060
US 31W - From US 68 to KY 446 Overpass.	14.670	17.569
KY 446 - From US 31W to I-65.	.000	1.090
KY 880 - From KY 185 to US 68.	.000	5.128
KY 185 - From KY 880 to US 68.	.000	.292
US 231 - From Allen County Line to I-65.	.000	9.106
KY 3172 - From Logan County Line via Old US 68 to KY 240.	.000	0.300
(105) Washington County:		
KY 55 - From Marion County Line to US 150.	.000	4.551
KY 555 - From US 150 to north end of Bluegrass Parkway Interchange.	.000	14.738
US 150 - From Nelson County Line to Boyle County Line.	.000	21.359
(106) Wayne County:		
KY 90 - From Clinton County Line to Pulaski County Line.	.000	25.235
(107) Webster County:		
US 41A - From Hopkins County Line to KY 670.	.000	1.324
KY 670 - From US 41A to KY 109.	.000	2.712
KY 109 - From KY 670 to Union County Line.	2.876	14.664
(108) Whitley County:		
KY 90 - From McCreary County Line to US 25W.	.000	8.328
US 25W - From KY 90 to east limits of I-75 ramps.	22.183	29.677
KY 90 - From US 25W along proposed alignment to Knox County Line.	.000	2.000
(109) Wolfe County:		
KY 15 - From Breathitt County Line to KY 191.	.000	9.515
KY 15S - From KY 15 to westbound land of Mountain Parkway.	.000	1.054

KY 11 - From Lee County Line to Powell County Line.	.000	5.317
KY 191 - From KY 15 Spur to KY 203.	.000	10.342
KY 203 - From KY 191 to Morgan County Line.	.000	1.323
(110) Woodford County:		
US 60 - From Franklin County Line to Fayette County Line.	.000	13.039

Section 12. No Encroachment Permits for Vegetation Control. An encroachment permit shall not be issued pursuant to the provisions of 603 KAR 5:150 for the clearing or trimming of vegetation on state-owned right-of-way which is in front of an outdoor advertising device.

Section 13. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "The FHWA/Kentucky Agreement for the Control of Outdoor Advertising" between the Kentucky Department of Highways and the Federal Highway Administration, executed December 23, 1971; and

(b) "Application for an Advertising Device Permit," Form TC-99-31, October 1997 edition;

(c) "Measurement of Commercially or Industrially Developed Area," a Transportation Cabinet document effective March 1997.

(2) Material incorporated by reference as a part of this administrative regulation may be viewed, copied, or obtained from the Transportation Cabinet, Permits Branch, 11th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4105. The business hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.}]

NANCY ALBRIGHT, Deputy State Highway Engineer

MICHAEL W. HANCOCK, P.E., Secretary

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: July 13, 2015

FILED WITH LRC: July 15, 2015 at 8 a.m.

CONTACT PERSON: D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the erection and maintenance of static advertising devices.

(b) The necessity of this administrative regulation: This regulation is necessary to inform the public of the permit requirements for static advertising devices.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 177.860 requires the cabinet to promulgate administrative regulations to set reasonable standards for advertising devices. 23 U.S.C. 131 ("The Highway Beautification Act") requires the state to maintain effective control over outdoor advertising devices or risk losing its apportionment of federal aid highway funds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will clarify and update the procedures involved in the permitting, and maintenance of static advertising devices.

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

(a) How the amendment will change the existing administrative regulation: Routine maintenance has been redefined to allow better maintenance of advertising devices by owners. The proposed administrative regulation allows a device owner to maintain non-conforming devices as long as they are substantially the same, and replace parts where it is an in-kind replacement. The allowable areas on interstates and parkways for advertising devices are now

"Kerr areas" in conformance with federal law and the requirement for ten (10) businesses has been removed. The owner of an off-premise advertising device will be required to provide biennial updates and renewals. Owners will furnish current photographs of the front and back of devices and note any changes since the last update and renewal. This administrative regulation also updates the forms involved in the permitting process.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the permit requirements for static billboard devices and to bring them into conformity with 23 U.S.C. 131.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment prescribes standards that pertain to the objectives set forth in KRS 177.850.

(d) How the amendment will assist in the effective administration of the statutes: The amendment updates the permit requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects persons wishing to erect static billboards.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Persons wishing to erect new static billboards will have to file a permit application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no fees involved with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These requirements insure conformity in the erection of static billboard devices.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: There are no known costs associated with the amendments to this administrative regulation.

(a) Initially: None

(b) On a continuing basis: None

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established by this regulation either directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not applied. All persons wishing to apply for a static advertising permit are required to apply to the department.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet's Department of Highways, Division of Maintenance.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 177.860 and 23 U.S.C. 131.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will not be any effect on the expenditures of a state or local agency.

(a) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate additional revenue.

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

(c) How much will it cost to administer this program for the first year? No funding increase to implement the administrative regulation will be required.

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

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation containing the federal mandate. 23 U.S.C. 131, 23 C.F.R. Part 750, and the Bonus Agreement entered into by the Federal Highway Administration (FHWA) and the Kentucky Department of Highways.

2. State compliance standards. Outdoor advertising devices are controlled on interstates, parkways, national highway system, and federal-aid primary highways. Erection of new outdoor advertising devices adjacent to or visible from a scenic highway are prohibited.

3. Minimum or uniform standards contained in the federal mandate. Outdoor advertising devices are to be controlled on interstates, parkways, national highway system, and federal-aid primary highways. No new outdoor advertising devices are allowed on scenic highways.

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

5. Justification for the imposition of the stricter standard or additional or different responsibilities or requirements. In 1961, Kentucky entered into a Bonus Agreement with FHWA. Per the agreement, Kentucky placed stricter controls on outdoor advertising devices in exchange for approximately \$2.5 million in federal bonus payments. Violation of the agreement could cause those funds to be repaid to the federal government.

**TRANSPORTATION CABINET**  
**Department of Highways**  
**Division of Maintenance**  
**(Amended After Comments)**

**603 KAR 10:021. Electronic advertising devices.**

RELATES TO: KRS 177.572-177.576, 177.830-177.890, 177.990(2)

STATUTORY AUTHORITY: KRS 177.860, 23 U.S.C. 131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.860 requires the Commissioner of the Department of Highways to promulgate administrative regulations establishing standards for advertising devices. KRS 177.890 authorizes the Commissioner of the Department of Highways to enter into agreements with the United States Secretary of Transportation in order to carry out national policy relating to interstate, defense, and federal-aid primary highways within the state. 23 U.S.C. 131, the Highway Beautification Act, authorizes retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices. This administrative regulation establishes the standards for on-premise and off-premise electronic advertising devices.

Section 1. General Conditions Relating to Off-Premise Electronic Advertising Devices. (1) An electronic advertising device visible from the main travelled way on an interstate, parkway, national highway system, or federal-aid primary highway shall be prohibited in a protected area unless the device is located in an urban area or urbanized area.

(2) An advertising device in a protected urban area shall be:

(a) A legal, **but not a nonconforming**, static advertising device in existence **or approved by a permit issued within one (1) calendar year prior to[on]** the effective date of this administrative regulation that is proposed for conversion to an electronic advertising device;

(b) Within 660 feet of right-of-way; and

(c) Compliant with the ordinances or regulations of a local governing body that specifically regulates the erection and maintenance of electronic advertising devices.

(3) An electronic advertising device in an urbanized protected area shall be:

(a) Within 660 feet of right-of-way;

(b) Compliant with the ordinances or regulations of a local governing body that specifically regulates the erection and maintenance of electronic advertising devices; or

(c) Compliant with a variance that has been granted by a local governing body such as a planning and zoning commission.

(4) An off-premise electronic advertising device shall not be converted to an off-premise static advertising device prior to receiving a permit pursuant to 603 KAR 10:010.

(5) An electronic advertising device that is visible from more than one (1) interstate, parkway, national highway system, or federal-aid primary highway shall meet the requirements for each highway independently.

(6) The erection or existence of an electronic advertising device shall be prohibited in a protected area if the device:

(a) Advertises an activity that is prohibited by law;

(b) Is abandoned or discontinued;

(c) Is not clean and in good repair;

(d) Is not securely affixed to a substantial structure permanently attached to the ground;

(e) Directs the movement of traffic;

(f) Interferes with, imitates, or resembles an official traffic sign, signal, or traffic control device;

(g) Prevents the driver of a vehicle from having a clear and unobstructed view of an official sign or approaching or merging traffic;

(h) Is erected or maintained upon a tree;

(i) Is erected upon or overhanging the right-of-way;

(j) Has a facing larger than 672 square feet;

(k) Has more than one (1) face per facing;

(l) Is a non-billboard electronic advertising device; or

(m) Is mobile, temporary, or vehicular.

(7) An on-premise advertising device shall not affect spacing requirements for an off-premise electronic advertising device.

(8) An electronic advertising device shall not contain extensions to the face.

(9) Interior angles between two (2) facings of an electronic advertising device shall not exceed forty-five (45) degrees.

(10) The name of the owner of an electronic advertising device shall be legible from the main traveled way and shall not be larger than twenty (20) square feet. The owner's name shall be shown without other owner information and shall not be considered a message.

(11) The message on an electronic advertising device shall:

(a) Be static for at least eight (8) seconds;

(b) Change from one (1) message to another in less than two (2) seconds;

(c) Not blink, scroll, or contain animation or video; and

(d) Be programmed to freeze in a static display if a malfunction occurs.

(12) An electronic advertising device shall be equipped with a sensor or other device that automatically determines the ambient illumination and shall be programmed to automatically dim to a luminance of 300 nits or less if the ambient light is 1.5 foot candles or less.

(13) Spacing between off-premise advertising devices per visible direction of travel on interstates, parkways, national highway systems, or federal-aid primary highways shall be at least:

(a) 2,500 feet between off-premise electronic advertising devices; or

(b) 500 feet between an off-premise electronic advertising device and an off-premise static advertising device.

Section 2. Exchange of Billboards for Permit. (1) An exchange of four (4) existing off-premise advertising devices shall be required for one (1) new off-premise electronic advertising device permit located within the protected area of an interstate, parkway, national highway system, or federal aid primary highway.

(2) An exchange of three (3) existing off-premise advertising devices shall be required for the conversion of an existing legal static advertising device in an urban area or an urbanized protected area.

(3) An off-premise advertising device to be exchanged shall be:

(a) Situated in an unpermissible location in a protected area;

(b) Visible from a scenic highway;

(c) Currently nonconforming as established in Section 5 of this administrative regulation or pursuant to local regulations; or

(d) Illegal.

(4) An advertising device proposed for an exchange for a permit shall be no less than fifty (50) square feet per facing.

(5) An advertising device proposed for exchange that meets the requirements of subsections (3) and (4) of this section shall be approved by the department prior to exchange.

(6) The owner of an exchanged advertising device shall receive credit by the department for each advertising device removed after the effective date of this administrative regulation.

(7) If an advertising device is removed by an owner in order to obtain a permit under this administrative regulation, but the permit is denied by the department, the department shall credit the owner for the removed device pending the outcome of the appeal or until a permit is filed for another advertising device.

(8) Where the permittee voluntarily removes an advertising device and receives credit toward a permit for an electronic advertising device, the permittee waives any right or claim to any additional compensation from the department for that device.

Section 3. Off-premise Electronic Advertising Devices on Interstates and Parkways. (1) Electronic advertising devices shall only be erected or maintained in a protected area of an interstate or parkway that:

(a) Is zoned industrial or commercial and was an incorporated municipality on September 21, 1959; or

(b) Was zoned commercial or industrial and included a commercial industrial land use on September 21, 1959.

(2) An electronic advertising device shall be no closer than fifty (50) feet to the edge of the main traveled way or turning roadway of the interstate or parkway.

Section 4. Off-Premise Electronic Advertising Devices on National Highway System and Federal-Aid Primary Highways. An electronic advertising device visible from a national highway system or federal-aid primary highway shall be erected and maintained in:

- (1) A commercial or industrial zone; or
- (2) An unzoned commercial or industrial area with a commercial or industrial activity that is located on the same side of the highway and within 700 feet of the activity boundary line measured along or parallel to the pavement of the highway.

Section 5. Nonconforming Electronic Advertising Devices. (1) A nonconforming electronic advertising device in a protected area shall not require a permit and shall continue to exist if the device:

- (a) Has not been abandoned or discontinued;
- (b) Has been subjected to only routine maintenance as established in subsection (7) of this section;
- (c) Is in compliance with state law and administrative regulations as well as local zoning, sign, or building restrictions at permitting; and
- (d) Remains substantially the same including the structure as it was on the effective date of the state law or administrative regulation that made the device nonconforming.

(2) The owner of a nonconforming advertising device shall submit biennial updates on a completed Advertising Device Biennial Certification Form, TC Form 99-206.

(3) An incomplete or inaccurate submission shall not be considered an update submittal.

(4) The update submittal for a nonconforming electronic advertising device shall be submitted electronically to the department pursuant to the following table:

Dept. of Highways' District #	Submittal Year	Submittal Period*
1 & 7	Odd	January 1- April 30th
2 & 4	Even	January 1- April 30th
3 & 9	Odd	May 1st- August 31st
6 & 8	Even	May 1st- August 31st
5 & 11	Odd	September 1st – December 31st
10 & 12	Even	September 1st – December 31st

\*A submittal shall be received during the submittal period to be considered.

(5) Failure to submit an update within thirty (30) days of the deadline established in subsection (4) of this section shall subject the owner of the nonconforming electronic advertising device to a fine of \$250 per permit pursuant to KRS 177.990(2).

(6) A nonconforming advertising device may be sold, leased, or transferred without affecting its status, but its location shall not be changed. A transfer of ownership for a nonconforming advertising device shall be submitted on a completed Advertising Device Ownership Transfer, TC Form 99-205.

(7) An owner may conduct routine maintenance of a nonconforming electronic advertising device. The following shall be considered routine maintenance:

- (a) In kind replacement of material components with a like material component;
  - (b) Painting of supports and frames;
  - (c) Changing existing nonstructural light fixtures for energy efficiency;
  - (d) Replacement of nuts, bolts, or nails;
  - (e) A safety related addition such as a catwalk that does not prolong the life of the advertising device but provides protection for workers; and
  - (f) Rebuilding a destroyed advertising device.
- (8) The following shall be considered non routine maintenance:
- (a) Enlargement of the device;
  - (b) A change in the structural support including material

diameters, dimensions, or type that would result in increased economic life such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;

- (c) The addition of bracing, guy wires, or other reinforcement;
  - (d) A change in the location of the structure; or
  - (e) A change in the direction of the face.
- (9) Non routine maintenance on a nonconforming electronic advertising device shall constitute a violation of this administrative regulation and action shall be taken pursuant to Section 9 of this administrative regulation.

Section 6. On-Premise Advertising Devices. (1) An on-premise advertising device shall only advertise or promote the activities or products offered on the property where the advertising device is located.

(2) An on-premise electronic advertising device shall be erected:

- (a) On the property where the business is located and inside the activity boundary line; or
- (b) On the property where the business is located and no farther than 400 feet from the activity boundary line.

(3) An on-premise advertising device placed within fifty (50) feet of the activity boundary line shall not exceed the maximum size established in KRS 177.863(3)(a). An entrance or exit on the property shall be considered within the activity boundary line.

(4) An on-premise electronic advertising device that complies with this administrative regulation shall only be erected:

(a)1. Within 660 feet of the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway both in and outside of an urban area; or

2. Outside of an urban area and beyond 660 feet of the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway; and

(b) If the device complies with this administrative regulation, and county or city zoning ordinances pursuant to KRS 177.860(4).

(5) If further than fifty (50) feet outside of the activity boundary line, an on-premise electronic advertising device shall not exceed:

- (a) Twenty (20) feet in length, width, or height; and
- (b) 150 square feet in area, including border and trim and excluding supports.

(6) No more than one (1) on-premise electronic advertising device shall be located at a distance greater than fifty (50) feet outside of the activity boundary line.

(7) If taking measurements for the placement of an on-premise electronic advertising device for an industrial park, the service road shall be considered within the activity boundary line of the industrial park.

(8) An on-premise electronic advertising device erected to advertise one (1) of the businesses in a shopping center, mall, or other combined business location shall not be located more than fifty (50) feet outside of the activity boundary line of the business being advertised.

(9) If taking measurements for the placement of an on-premise electronic advertising device for a shopping center, mall, or other combined business location, the combined parking area shall be considered within the activity boundary line.

(10) An on-premise static advertising device erected for a shopping center, mall, or other combined business location shall either:

- (a) Identify a business or businesses conducted at the location; or
- (b) Include a display area used to advertise on-premise activities.

(11) An on-premise electronic advertising device erected for a shopping center, mall, or other combined business location may either:

- (a) Identify each of the individual businesses conducted at the location; or
- (b) Include a display area used to advertise on-premise activities.

(12) An on-premise advertising device shall not:

- (a) Move, or have moving or animated parts;
- (b) Be erected or maintained on a tree; or

(c) Be erected upon or overhanging the right-of-way.

(13) An on-premise electronic advertising device shall be equipped with a sensor or other device that automatically determines the ambient illumination and shall be programmed to automatically dim to a luminance of 300 nits or less if the ambient light is 1.5 foot candles or less.

(14) An on-premise electronic advertising device shall not affect the spacing requirements of a device as established in KRS 177.863(2)(d).

(15) Extensions of a facing up to fifteen (15) percent shall be allowed on an electronic advertising device:

(a) Within fifty (50) feet of the activity boundary line but shall not exceed the maximum size of the facing of the advertising device as established in KRS 177.863(3)(a); or

(b) Outside of fifty (50) feet of the activity boundary line but shall not exceed the maximum size of the advertising device in subsection (4)(b) of this section.

(16) An on-premise electronic advertising device shall be in compliance with the provisions of this administrative regulation but shall not require a permit.

Section 7. Scenic Highways and Byways. (1) After designation of a scenic highway by the Transportation Cabinet, no additional off-premise electronic advertising devices shall be erected, allowed, or permitted that are visible from the scenic highway.

(2) The sponsor of a scenic byway application may petition the Transportation Cabinet to impose the same administrative regulations for an electronic advertising device located on a scenic byway as an electronic advertising device located on a scenic highway.

(3) Only routine maintenance shall be performed on an off-premise electronic advertising device legally in existence on the date of the scenic highway designation.

Section 8. Permits, Renewals, and Transfers. (1) The requirements of this section shall apply to off-premise electronic advertising devices on an interstate, parkway, national highway system, or federal-aid primary highway.

(2) With the exception of nonconforming electronic advertising devices, a permit shall be required from the department for a device located in a protected area.

(3) The initial permit shall be valid until the expiration of the applicable renewal period. If the renewal period falls within six (6) months of the initial permit issuance, the initial permit shall be valid until the next renewal period.

(4) An application for an electronic advertising device permit shall be made on a completed Application for Advertising Device, TC Form 99-31.

(5) The issuance of an advertising device permit shall be determined based on the order in which a completed application is made to the department.

(6) A permittee shall submit biennial renewals on a completed Advertising Device Biennial Certification Form, TC Form 99-206. An incomplete or inaccurate submission shall not be considered.

(7)(a) If submitting a biennial renewal, the permittee shall certify that the electronic advertising device meets the permit requirements of this administrative regulation.

(b) If the electronic advertising device no longer meets the permit requirements of this administrative regulation, the permittee may request a conditional renewal to allow the permittee to become compliant with the permit requirements.

(c) If the permittee fails to become compliant within thirty (30) days, the permit shall not be renewed.

(8) A renewal submittal for an electronic advertising device shall be submitted electronically to the department pursuant to the following schedule:

Dept. of Highways' District #	Submittal Year	Submittal Period*
1 & 7	Odd	January 1- April 30th
2 & 4	Even	January 1- April 30th

3 & 9	Odd	May 1st- August 31st
6 & 8	Even	May 1st- August 31st
5 & 11	Odd	September 1st – December 31st
10 & 12	Even	September 1st – December 31st

\*A submittal shall be received during the submittal period to be considered.

(9) Failure to submit a renewal within thirty (30) days of the deadline established in subsection (8) of this section shall subject the owner of the nonconforming electronic advertising device to a fine of \$250 per permit pursuant to KRS 177.990(2).

(10) An electronic advertising device may be sold, leased, or otherwise transferred without affecting its status, but its location shall not be changed. A transfer of ownership for an electronic advertising device shall be submitted on a completed Advertising Device Ownership Transfer, TC Form 99-205.

(11) An application amendment for substantial change to an approved electronic advertising device permit shall be submitted and approved by the department prior to work being performed. Substantial change to an advertising device shall include:

(a) Enlargement of the device;

(b) Replacement, rebuilding, or re-erection of a device that has not been destroyed;

(c) A change in the structural support including material diameters, dimensions, or type that would result in increased economic life such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;

(d) A change or upgrade in the technology related to the electronic advertising device;

(e) The addition of bracing, guy wires, or other reinforcement;

(f) A change in the location of the structure; or

(g) A change in the direction of the face.

(12) The permit for an off-premise electronic advertising device that has not been constructed prior to the renewal date shall be cancelled.

Section 9. Notice of Violations; Appeals. (1) The department shall notify the owner of an electronic advertising device by certified letter that the device is in violation of KRS Chapter 177 or this administrative regulation.

(2)(a) An owner aggrieved by the findings of the department may request an administrative hearing pursuant to KRS Chapter 13B. The request shall be in writing and within twenty (20) days of the certified letter.

(b) A request for a hearing shall thoroughly detail the grounds upon which the hearing is requested.

(c) The hearing request shall be addressed to the Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622.

(3) If the owner fails to request an administrative hearing or fails to remedy the violations within thirty (30) days, the department shall proceed to take legal action pursuant to Section 10 of this administrative regulation.

Section 10. Penalties. (1) The owner of an electronic advertising device who violates a provision of this administrative regulation shall be assessed a penalty of \$500 per violation pursuant to KRS 177.990(2).

(2) The department shall deny or revoke a permit if the permit application contains false or materially misleading information.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Advertising Device", TC Form 99-31, May 2013;

(b) "Advertising Device Ownership Transfer", TC Form 99-205, December 2013;

(c) "Advertising Device Biennial Certification Form", TC Form 99-206, December 2013;

(d) "Agreement for Carrying Out National Policy Relative to Control of Outdoor Advertising in Areas Adjacent to the National System of Interstate and Defense Highways and the Federal-Aid Primary System", December 23, 1971; and

(e) The formal designation of interstates, parkways, national

highway system, and federal-aid primary highways by the Transportation Cabinet on the cabinet's Web site at: <http://maps.kytc.ky.gov/PAFOA/>.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the cabinet's Web site at <http://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx>.

NANCY ALBRIGHT, Deputy State Highway Engineer

MICHAEL W. HANCOCK, P.E., Secretary

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: July 13, 2015

FILED WITH LRC: July 15, 2015 at 8 a.m.

CONTACT PERSON: D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes standards for the erection of outdoor electronic advertising devices.

(b) The necessity of this administrative regulation: This regulation is necessary to ensure conformity in the erection of electronic advertising devices.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 177.860 requires the cabinet to promulgate administrative regulations to set reasonable standards for advertising devices. 23 U.S.C. 131 ("The Highway Beautification Act") requires the state to maintain effective control over outdoor advertising devices or risk losing its apportionment of federal aid highway funds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the procedures involved in permitting and maintenance of electronic advertising devices.

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

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

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This new administrative regulation affects persons wishing to erect outdoor electronic advertising devices.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Persons wishing to erect an outdoor electronic advertising device will have to: File an application for a permit; exchange four (4) existing off-premise advertising devices to erect one (1) new electronic billboard; or exchange three (3) existing off-premise advertising devices to convert one (1) static advertising device to an electronic advertising device.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no fees involved with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These requirements insure conformity in the erection of electronic advertising devices.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: There are no known costs associated with the amendments to this administrative regulation.

(a) Initially: None

(b) On a continuing basis: None

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established by this regulation either directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not specifically applied. All persons wishing to erect an electronic advertising device will have to apply for a permit.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet's Department of Highways and Division of Maintenance.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 176.860 and 23 U.S.C. 131.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will not be any effect on the expenditures of a state or local agency.

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

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

(c) How much will it cost to administer this program for the first year? No funding increase to implement the administrative regulation will be required.

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

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation containing the federal mandate. 23 U.S.C. 131 and the Bonus Agreement entered into by the Federal Highway Administration (FHWA) and the Kentucky Department of Highways.

2. State compliance standards. Outdoor advertising advices are controlled on interstates, parkways, national highway system, and federal-aid primary highways. Erection of new outdoor advertising devices adjacent to or visible from a scenic highway are prohibited.

3. Minimum or uniform standards contained in the federal

mandate. Outdoor advertising devices are to be controlled on interstates, parkways, national highway system, and federal-aid primary highways. No new outdoor advertising devices are allowed on scenic highways.

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

5. Justification for the imposition of the stricter standard or additional or different responsibilities or requirements. In 1961, Kentucky entered into a Bonus Agreement with FHWA. Per the agreement, Kentucky placed stricter controls on outdoor advertising devices in exchange for approximately \$2.5 million in federal bonus payments. Violation of the agreement could cause those funds to be repaid to the federal government.

**PUBLIC PROTECTION CABINET**  
**Department of Alcoholic Beverage Control**  
**(Amended After Comments)**

**804 KAR 4:370. Entertainment destination center license.**

RELATES TO: KRS 148.853(2)(b), 241.060(1), 243.030(21), (34)[(44), (46)], 243.040[(48)], 243.050[(4), (5)]

STATUTORY AUTHORITY: KRS 241.060(1), 243.030(21), (34)[(46)], 243.040[(48)]

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)[(44)] and (34) authorizes[(46) and 243.040(48) 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 located within the boundaries of the entertainment destination center's licensed[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 facility[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: July 14, 2015

FILED WITH LRC: July 14, 2015 at 4 p.m.

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 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 administrative 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 administrative 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. Also this regulation corrects the references to statutes which were recodified. As amended after comments, it also removes the 100 foot restriction.

(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. As amended after comments, the removal of the 100 foot restriction will allow all licensees within the EDC the same opportunity to set up temporary locations as

permitted by their leases.

(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: As amended after comments, licensees who were previously affected by the 100 foot restriction will no longer be under that restriction.

(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. As amended after comments, licensees who were previously subject to the 100 foot restriction will be able to benefit from the potential of using space within the EDC previously off-limits to them.

(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.

## CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Amended After Comments)

### 902 KAR 20:160. Chemical dependency treatment services and facility specifications.

RELATES TO: KRS 202A.241, 210.005, 216B.010, 216B.015, ~~[216B.030]~~, 216B.105, 216B.990, 309.080, 309.130, 311.560(4), 311.571, 311.840 – 311.862, 314.011(8), 314.042(8), 319.050, 319.056, 319.064, 319C.010, 320.210(2), 335.100, 335.300, 335.080, 335.500, 42 C.F.R. Part 2, 45 C.F.R. 160, 164, 42 U.S.C. 1320d-2 – 1320d-8, 42 U.S.C. 290ee-3

STATUTORY AUTHORITY: KRS 216B.010, 216B.042(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 require the Cabinet for Health and Family Services to regulate health facilities and health services. This administrative regulation establishes licensure requirements for the operation, services, and facility specifications of chemical dependency treatment programs, including programs which elect to provide outpatient behavioral health services for individuals with a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis.

Section 1. Definitions. (1) "Aftercare" means the process of providing continued services following primary chemical dependency treatment~~[, in order]~~ to support and increase gains made during treatment. (2) "Behavioral health professional" means:

(a) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc;

(b) A physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571;

(c) A psychologist licensed and practicing in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning or licensed psychological practitioner practicing in accordance with KRS 319.056;

(e) A clinical social worker licensed and practicing in accordance with KRS 335.100;

(f) An advanced practice registered nurse licensed and practicing in accordance with KRS 314.042;

(g) A physician assistant licensed under KRS 311.840 to 311.862;

(h) A marriage and family therapist licensed and practicing in accordance with KRS 335.300;

(i) A professional clinical counselor licensed and practicing in accordance with KRS 335.500; or

(j) A licensed professional art therapist as defined by KRS 309.130(2).

(3) "Behavioral health professional under clinical supervision" means a:

(a) Psychologist certified and practicing in accordance with KRS 319.056;

(b) Licensed psychological associate licensed and practicing in accordance with KRS 319.064;

(c) Marriage and family therapist associate as defined by KRS 335.300(3);

(d) Social worker certified and practicing in accordance with KRS 335.080;

(e) Licensed professional counselor associate as defined by KRS 335.500(4); or

(f) Licensed professional art therapist associate as defined by KRS 309.130(3).

(4) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(5) "Governing authority" means the individual, agency, partnership or corporation that directs and establishes policy concerning the management and operation of a chemical dependency treatment program.

(6) [(3)] "Interdisciplinary team" means a group of at least four (4) professionals including a physician, registered nurse, certified chemical dependency counselor and a person with a master's degree in psychology, social work or counseling.

(7) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).

(8) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).

(9) "Peer support specialist" means a paraprofessional who meets the application, training, examination, and supervision requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240.

(10) [(8)] [(4)] "Qualified dietician" means:

(a) A person who has a Bachelor of Science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) A person who has a Masters Degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) A person who has a Bachelor of Science degree in home economics and three (3) years of work experience with a registered dietician.

(5) "Restraint" means a physical or mechanical device used to restrict the movement of the patient or a portion of the patient's body.

(11) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms resulting from use of a substance which the individual continues to take despite experiencing substance-related problems as a result, including:

(a) Intoxication;

(b) Withdrawal; or

(c) A substance induced mental health disorder.

Section 2. Scope of Operation and Services. (1) A chemical dependency treatment service shall have a structured inpatient program to provide medical, social, diagnostic, and treatment services to individuals with substance use disorder~~[persons who suffer from illness related to the misuse or abuse of alcohol and other drugs].~~

(2) Chemical dependency treatment services shall:

(a) Have a duration of less than thirty (30) days;

(b) Be hospital based or freestanding;

(c) Have eight (8) or more patient beds;

(d) Be under the medical direction of a physician; and

(e) Provide continuous nursing services.

(3) If a chemical dependency treatment program provides outpatient behavioral health services as described in Section 5 of this administrative regulation for individuals with a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis:

(a) The outpatient behavioral health services shall be provided:  
1. On a separate floor, in a separate wing, or in a separate building on the campus of the chemical dependency treatment program's inpatient facility; or

2. At an extension off the campus of the chemical dependency treatment program's inpatient facility;

(b) The chemical dependency treatment program shall pay a fee in the amount of \$250 per off-campus extension providing outpatient behavioral health services, submitted to the Office of Inspector General at the time of:

1. Initial licensure, if applicable;

2. The addition of a new extension to the chemical dependency treatment program's license; and

3. Renewal;

(c) Each off-campus extension or on-campus program of outpatient behavioral health services shall be listed on the chemical dependency treatment program's license;

(d) An off-campus extension or a separate building on the campus of the chemical dependency treatment program's inpatient facility where outpatient behavioral health services are provided shall comply with the physical environment requirements of Section 8 of this administrative regulation and be approved by the State Fire Marshal's office prior to:

1. Initial licensure;

2. The addition of the extension or on-campus program of outpatient behavioral health services in a separate building; or

3. A change of location;

(e) The program shall employ directly or by contract a sufficient number of personnel to provide outpatient behavioral health services;

(f) The outpatient behavioral health services program shall have a program director who:

1. May also serve as the chemical dependency treatment program's treatment director described in Section 3(10) of this administrative regulation; and

2. Shall be a:

a. Psychiatrist;

b. Physician;

c. Certified or licensed psychologist;

d. Licensed psychological practitioner;

e. Psychiatric nurse;

f. Advanced practice registered nurse;

g. Licensed professional clinical counselor;

h. Licensed marriage and family therapist;

i. Licensed professional art therapist;

j. Licensed board certified behavioral analyst; or

k. Licensed clinical social worker; and

(g) Unless an extension of time is granted pursuant to subsection (4) of this section, the outpatient program shall become accredited by one (1) of the following within one (1) year of adding outpatient behavioral health services to the chemical dependency treatment program's license:

1. Joint Commission;

2. Commission on Accreditation of Rehabilitation Facilities;

3. Council on Accreditation; or

4. A nationally recognized accreditation organization.

(4)(a) If a chemical dependency treatment services outpatient program has not obtained accreditation within the one (1) year timeframe required by subsection (3)(g) of this section, the program may request a one (1) time only extension to complete the accreditation process.

(b) A request for extension shall:

1. Be submitted in writing to the Office of Inspector General at least sixty (60) days prior to expiration of the one (1) year deadline described in subsection (3)(g) of this section;

2. Include evidence that the program initiated the process of becoming accredited within sixty (60) days of adding outpatient behavioral health services to the program's license and is continuing its efforts to obtain accreditation; and

3. Include an estimated timeframe by which approval of accreditation is anticipated.

(5) A program shall cease providing outpatient behavioral health services if the program fails to meet one (1) of the following

requirements:

(a) Become accredited in accordance with subsection (3)(g) of this section;

(b) Request an extension in accordance with subsection (4) of this section if accreditation has not been obtained; or

(c) Maintain accreditation.

(6) Proof of accreditation shall be provided to the Office of Inspector General upon receiving accreditation and at the time of annual renewal.

Section 3. Administration and Operation. (1) The licensee shall be responsible for compliance with federal, state, and local laws and regulations~~[law]~~ pertaining to the operation of chemical dependency treatment programs.

~~(2)~~~~(4)~~(a) The governing authority shall appoint a program administrator who shall have a:

1. Bachelor's degree in a health or human services field;

2. Bachelor's degree in another field supplemented with one (1) year of work experience in the field of chemical dependency; or

3. High school diploma and four (4) years of experience in the field of chemical dependency.

(b) The governing authority shall establish, in writing:

1. Program goals and objectives; and

2. An evaluation plan for annual assessment of the attainment of the goals and objectives.

~~(3)~~~~(2)~~ Program administrator.

(a) The program administrator shall:

1. Be responsible for the daily management of the facility; and

2. Serve as the~~[shall provide]~~ liaison between the governing authority and staff members.

(b) The program administrator shall keep the governing authority informed of the operations of the facility through ~~[periodic]~~ reports and attendance at meetings of the governing authority.

~~(4)~~~~(3)~~ Administrative records and reports.

(a) A medication error, drug reaction, accident, or other incident involving a patient, visitor, or staff member, shall be ~~documented~~~~[reported]~~ in writing, signed by the program administrator and any witness to the event, and placed in an incident file.

(b) Licensure inspection reports, plans of correction, and program evaluations shall be available to the public, upon request, at the facility.

~~(5)~~~~(4)~~ Policies.

(a) Administrative policies. The program shall have a written administrative policy to cover each aspect of the facility's operation, as follows:

1. A description of the organizational structure, staffing, and allocation of responsibility and accountability;

2. A description of referral linkages with other facilities and providers;

3. A description of the services included in the program, including outpatient behavioral health services if provided;

4. An expense and revenue accounting system following generally accepted accounting procedures;

5. A volunteer program; and

6. Program evaluation and quality assurance review.

(b) Patient care policy. A written patient care policy shall be developed and shall include a description of:

1. Actions to be taken when a patient is lost, unaccounted for, or otherwise absent without authorization;

2. Provisions for patient visitation and use of telephones;

3. Provision of emergency medical services; and

4. Patient admission and discharge criteria, including the categories of individuals accepted and not accepted by the program.

(c) Patient rights policy. A written policy shall be developed **and maintained** to enhance patient dignity and to protect human rights. The policy shall assure that each patient or client receiving outpatient behavioral health services is:

1. Informed of rules and regulations governing patient conduct and responsibilities, including the procedure for handling grievances;

2. Informed, prior to admission for rehabilitation or receipt of

outpatient behavioral health services, of services available and charges for treatment, including charges not covered under Medicare, Medicaid, or other third-party payor;

3. Encouraged and assisted to:

- a. Understand and exercise patient rights;
- b. Voice grievances; and

c. Recommend changes in policies and services. Upon request by a patient~~[If a patient so requests]~~, a grievance or recommendation shall be conveyed to that body within the organization with authority to take corrective action;[-]

4. Presented with the opportunity to participate in the planning of his or her treatment;

5. Informed of the right to refuse to participate in experimental research;

6. Assured confidential treatment of records and presented with the opportunity to approve or refuse release of records to any individual not involved in his or her care, except as required by Kentucky law or third party payment contract; and

7. Treated with consideration, respect, and recognition of personal dignity and individuality, including privacy in treatment and personal health needs.

~~(6)~~~~(5)~~ Personnel.

(a) The governing authority shall:

1. Establish a personnel policy; and

2.~~[which the governing authority shall]~~ Review the personnel policy at least one (1) time annually and update as needed~~[on an annual basis]~~.

(b) There shall be a personnel record for each person employed by the chemical dependency treatment inpatient facility and, if applicable, the outpatient behavioral health services program, which shall include the following:

1. Evidence of the results of a tuberculosis test, performed either prior to or within the first week of employment and annually thereafter;

2. Evidence of education, training, and experience, and a copy of current license or certification credentials, if applicable;

3. Evidence that the employee received orientation to the facility's written policies within the first week of employment; and

4. Evidence of regular in-service training which corresponds with job duties and includes a list of training and dates completed.

~~(7)~~~~(6)~~ Staffing requirements.

(a) The chemical dependency treatment program shall have personnel sufficient to meet patient needs at the inpatient facility on a twenty-four (24) hour basis.

(b) The number and classification of personnel required shall be based on the number of patients and the individual treatment plans.

~~(8)~~ Medical director. The chemical dependency treatment program's inpatient facility shall have a medical director who shall:

(a) Be a physician licensed in accordance with KRS 311.571;

(b) Be responsible for the medical aspect of the program; and

(c) Have duties which~~(a) Responsibility for the medical aspect of the program shall reside with a qualified physician, in the post of medical director. The duties of the medical director]~~ shall include:

1. Patient admission;

2. Approval of patient treatment plans;

3. Participation in the quality assurance review; and

4. Provision of medical services, personally or by a designated physician, either in-house or on-call, on a twenty-four (24) hour basis.

~~(9)~~~~(b)~~ Interdisciplinary team. The chemical dependency treatment program shall have~~[There shall be]~~ an interdisciplinary team responsible for:

~~(a)~~~~[1-]~~ Developing individual treatment plans;

~~(b)~~~~[2-]~~ Developing aftercare plans; and

~~(c)~~~~[3-]~~ Conducting quality assurance reviews.

~~(10)~~~~(e)~~ Treatment director. The chemical dependency treatment program shall have a full time treatment director responsible for:

~~(a)~~~~[4-]~~ Coordinating the interdisciplinary team in developing individual treatment plans;

~~(b)~~~~[2-]~~ Initiating a periodic review of each patient's treatment plan;

~~(c)~~~~[3-]~~ Supervising the maintenance of patient records; and

~~(d)~~~~[4-]~~ Coordinating the interdisciplinary team in developing an aftercare plan for each patient to provide continuity of care.

~~(11)~~~~(d)~~ Nursing services within the chemical dependency treatment program's inpatient facility.

~~(a)~~ Nursing services shall be available on a twenty-four (24) hour basis.

~~(b)~~ The program shall have at least one (1) full-time registered nurse.

~~(c)~~ ~~If~~~~When~~ a registered nurse is not on duty, ~~[there shall be]~~ a licensed practical nurse shall be~~[present who is]~~ responsible for the nursing care of patients and~~[during her tour of duty. When a licensed practical nurse is on duty,]~~ a registered nurse shall be on call.

~~(12)~~~~(e)~~ Medical supervision. A physician, or registered nurse under the direction of a physician, shall supervise:

~~(a)~~ Implementation of the medical aspects of the treatment plan; and

~~(b)~~ All staff directly involved in patient medical care.

~~(13)~~~~(f)~~ In-service training.

~~(a)~~ All personnel of the chemical dependency treatment program's inpatient facility or, if applicable, the outpatient behavioral health services program, shall participate in ongoing in-service training specific to the employee's~~[programs relating to their respective]~~ job activities.

~~(b)~~ Training~~[These programs]~~ shall include:

1. Thorough job orientation for new personnel; and

2. Regular in-service training ~~[programs]~~ emphasizing professional competence and the human relationship necessary for effective health care.

~~(14)~~~~(7)~~ Patient records of the chemical dependency treatment program's inpatient facility.

~~(a)~~1. An individual record shall be maintained for each patient.

2. Each entry shall be signed and dated by the person making the entry.

(b) At the time of admission, the following information shall be entered into the patient's record:

1. Name, date of admission, birth date and place, marital status and Social Security number;

2. Person to contact in case of emergency;

3. Next of kin; and

4. Type and place of employment.

(c) The record shall contain documentation of medical services provided during detoxification and rehabilitation, including the results of physical examinations.

~~(d)~~1. The record shall contain the patient's treatment plan outlining goals and objectives for the individual during treatment.

2. The record shall also contain documentation of how the plan was implemented and of patient progress in meeting the goals and objectives outlined in the treatment plan.

(e) The record shall contain notation of medication administered, stating the date, time, dosage, and frequency of administration and the name of the person administering each dose.

(f) The record shall contain a discharge summary and a plan for aftercare.

(g) The discharge summary shall be entered in the patient's record within seven (7) days after discharge and shall include:

1. The course and progress of the patient with regard to the individual treatment plan;

2. General observations of the patient's condition initially, during treatment and at discharge; and

3. The recommendations and arrangements for further treatment including prescribed medications and aftercare.

(h) If the patient is referred to another service provider after discharge, and if the patient executes a written release, a copy of the discharge summary shall be with the patient's permission sent to the provider with the patient's permission.

(i) After a patient's death or discharge, the completed record shall be placed in an inactive file and:

1. Retained for six (6)~~[five (5)]~~ years; or

2. ~~If~~~~In case of~~ a minor, three (3) years after the patient reaches the age of majority under state law, whichever is longest.

(15) Confidentiality and Security: Use and Disclosure.

(a) The chemical dependency treatment program shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law, including 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(b) The chemical dependency treatment program may use and disclose medical records. Use and disclosure shall be as established or required by:

1. HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164; or

2. 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(c) This administrative regulation shall not be construed to forbid the chemical dependency treatment program from establishing higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or 42 U.S.C. 290ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(16)[(8)] Linkage agreements.

(a) The program shall have linkages through written agreements with providers of other levels of care which may be medically indicated to supplement the services available in the program.

(b)[These] Linkages shall include a hospital and an emergency medical transportation service in the area.

(17)[(9)] Quality assurance. The program[service] shall have a quality assurance program that includes an effective mechanism for reviewing and evaluating patient care on a regular basis by the interdisciplinary team.

(18)[(40)] Medications.

(a) A prescription or nonprescription medication administered to a patient shall be noted in the patient's records with the date, time and dosage, and signed by the person administering the medication.

(b) Each prescription medication shall be plainly labeled with the:

1. Patient's name;
- 2.[, the] Name of the drug;
- 3.[.] Strength;
- 4.[.] Name of pharmacy;
- 5.[.] Date;
- 6.[.] Physician name;
- 7.[.] Caution statement; and
8. Directions for use.

(c)1. A prescription or nonprescription medication shall not be administered to a patient except on the written order of a physician or other practitioner acting within his or her statutory scope of practice.

2. A medication shall be administered by licensed personnel.

(d)1. Medication shall be kept in a locked storage area which shall be well lighted and of sufficient size to permit storage without crowding.

2. Medication requiring refrigeration shall be kept in a separate locked box in a refrigerator.

3. Medication for external use shall be stored separately from medication administered by mouth or injection.

(e) A medication error or drug reaction shall be reported immediately to the medical director and treatment coordinator and an entry shall be made in the patient's record.

(f) An emergency medical kit, with contents approved by a physician, shall be:

1. Maintained at the facility; and[.]
2. [It shall be] Inspected after use or at least monthly to remove deteriorated and outdated drugs and to ensure completeness of content.

(19)[(44)] Restraints. Requirements for the use of restraints shall be met pursuant to KRS 20A.241 and 908 KAR 3:010, Section 9[(9)].

(20)[(42)] Activities schedule. A daily schedule of program activities shall be posted in the chemical dependency treatment program's inpatient facility.

Section 4. Provision of Services. (1) Detoxification. A chemical dependency treatment program's inpatient facility shall provide medical detoxification services pursuant to the requirements of 902 KAR 20:111[shall be available] directly or through another licensed provider[.] for a patient who requires detoxification.

(2) Rehabilitation. A chemical dependency treatment program's inpatient facility[The program] shall provide:

(a) Medical services as needed, under the supervision of a physician;

(b) Scheduled individual, group, and family counseling;

(c) Psychological testing and evaluation as needed;

(d) Education of the patient on the subject of chemical dependency and related lifestyle issues, including nutrition and communication skills;

(e) Recreational activities with facilities and equipment, consistent with the patient's needs and the therapeutic program;

(f) Referral to other rehabilitative or community service agencies providing services not available through the program; and

(g) Aftercare services provided directly or through arrangement with another agency.

(3) Physical examinations. Within ten (10) days prior to, or three (3) days after admission to the chemical dependency treatment program's inpatient facility for rehabilitation, a patient shall have a physical examination with tests ordered by a physician.

(4) Psychosocial history.

(a) A patient in a chemical dependency treatment program's inpatient facility shall have a psychosocial history and assessment interview within seventy-two (72) hours after admission for rehabilitation.

(b) The following data shall be collected and recorded in the patient record:

- 1.[(a)] History of alcohol and drug use;
- 2.[(b)] A determination of current emotional state;
- 3.[(c)] Vocational history;
- 4.[(d)] Familial relationships; and
- 5.[(e)] Educational background.

(5) Treatment plan.

(a) The interdisciplinary team, with the participation of the patient, shall develop an individual treatment plan within four (4) days after admission to the chemical dependency treatment program's inpatient facility for rehabilitation, based on the patient's medical evaluation and psychosocial history and assessment.

(b) The treatment plan shall:

1.[(a)] Specify the services required for meeting the patient's needs;

2.[(b)] Identify goals necessary for the patient to achieve, maintain or reestablish physical health and adaptive capabilities;

3.[(c)] Establish goals with both long-term and short-term objectives and the anticipated time expected to meet these goals; and

4.[(d)] Identify the location and frequency of treatment procedures, including referrals for a required service not provided by the program.

(6) The treatment plan shall be reviewed and updated at least weekly for the duration of the inpatient treatment.

(7)(a) The patient's family or significant others shall be involved in the treatment process, if approved by the patient.

(b) An attempt to involve family members or significant others shall be reported in the patient's medical record.

(8) Aftercare plan.

(a)1. A written aftercare plan shall be developed prior to completion of treatment in the chemical dependency treatment program's inpatient facility by[.] the:

a. Interdisciplinary team;

b.[, the] Patient; and

c.[.] With the patient's permission, the patient's family or significant others[shall develop a written aftercare plan].

2. The aftercare plan shall be designed to establish continued

contact for the support of the patient.

(b) The aftercare plan shall include methods and procedures to meet patient needs through direct contact or with assistance from other community human services organizations.

(c) If [When] aftercare services are provided directly, review and update [a periodic review and updating] of the aftercare plan shall be conducted with the frequency of review determined by the:

1. Interdisciplinary team;
2. [the] Patient; and

3. With the patient's permission, the patient's family or significant others.

(d) If the patient is referred to another agency for aftercare services, follow-up shall be conducted to determine if services are being provided.

Section 5. Provision of Outpatient Behavioral Health Services, Plan of Care, and Client Records. (1) Pursuant to Section 2(3) of this administrative regulation, a chemical dependency treatment program may provide one (1) or more of the following outpatient behavioral health services for individuals with a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis:

(a) Screening which shall be provided by a behavioral health professional, behavioral health professional under clinical supervision, ~~or~~ certified alcohol and drug counselor, **licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate** to determine the:

1. Likelihood that an individual has a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis; and

2. Need for an assessment;

(b) Assessment which shall:

1. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, ~~or~~ a certified alcohol and drug counselor, **licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate** who gathers information and engages in a process with the client, thereby enabling the professional to:

a. Establish the presence or absence of a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis;

b. Determine the client's readiness for change;

c. Identify the client's strengths or problem areas which may affect the treatment and recovery processes; and

d. Engage the client in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the client to develop a plan of care if a clinical disorder or service need is assessed; and

4. Not include psychological or psychiatric evaluations or assessments;

(c) Psychological testing which shall:

1. Be performed by a licensed psychologist, licensed psychological associate, or licensed psychological practitioner; and

2. Include a psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities, and interpretation and written report of testing results;

(d) Crisis intervention which:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to the client or another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities;

3. Shall be provided:

a. On-site at the chemical dependency treatment program's facility;

b. As an immediate relief to the presenting problem or threat; and

c. In a face-to-face, one (1) on one (1) encounter;

4. May include verbal de-escalation, risk assessment, or cognitive therapy;

5. Shall be provided by a:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision; ~~or~~

c. Certified alcohol and drug counselor;

**d. Licensed clinical alcohol and drug counselor; or**

**e. Licensed clinical alcohol and drug counselor associate;**

6. Shall be followed by a referral to noncrisis services, if applicable; and

7. May include:

a. Further service prevention planning, including:

(i) Lethal means reduction for suicide risk; or

(ii) Substance use disorder relapse prevention; or

b. Verbal de-escalation, risk assessment, or cognitive therapy;

(e) Mobile crisis services which shall:

1. Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year;

2. Be provided for a duration of less than twenty-four (24) hours;

3. Not be an overnight service;

4. Be a multi-disciplinary team based intervention that ensures access to acute substance use services and supports to:

a. Reduce symptoms or harm; or

b. Safely transition an individual in an acute crisis to appropriate, least restrictive level of care;

5. Involve all services and supports necessary to provide:

a. Integrated crisis prevention;

b. Assessment and disposition;

c. Intervention;

d. Continuity of care recommendations; and

e. Follow-up services;

6. Be provided **in a home or community setting** by a:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision; ~~or~~

c. Certified alcohol and drug counselor;

**d. Licensed clinical alcohol and drug counselor; or**

**e. Licensed clinical alcohol and drug counselor associate;** and

7. Ensure access to a board certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year;

(f) Day treatment which shall:

1. Be a nonresidential, intensive treatment program designed for children who:

a. Have a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis;

b. Are under twenty-one (21) years of age; and

c. Are at high risk of out-of-home placement due to a behavioral health issue;

2. Consist of an organized, behavioral health program of treatment and rehabilitative services for substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis;

3. Have unified policies and procedures that address the organization's philosophy, admission and discharge criteria, admission and discharge process, staff training, and integrated case planning;

4. Include the following:

a. Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

b. Behavior management and social skill training;

c. Independent living skills that correlate to the age and development stage of the client; and

d. Services designed to explore and link with community resources before discharge and to assist the client and family with transition to community services after discharge;

5. Be provided as follows:

a. In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

b. On school days and during scheduled breaks;

c. In coordination with the child's individual educational plan or Section 504 plan if the child has an individual educational plan or

Section 504 plan:

d. By personnel that includes a behavioral health professional, a behavioral health professional under clinical supervision, a certified alcohol and drug counselor, **a licensed clinical alcohol and drug counselor, a licensed clinical alcohol and drug counselor associate,** or a peer support specialist; and

e. According to a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider; and

6. Not include a therapeutic clinical service that is included in a child's individualized education plan;

(g) Peer support which shall:

1. Be provided by a peer support specialist;

2. Be structured and scheduled nonclinical therapeutic activity with a client or group of clients;

3. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills; and

4. Be identified in the client's plan of care;

(h) Intensive outpatient program services which shall:

1. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

2. Be provided at least three (3) hours per day at least three (3) days per week;

3. Include the following:

a. Individual outpatient therapy;

b. Group outpatient therapy;

c. Family outpatient therapy unless contraindicated;

d. Crisis intervention; or

e. Psycho-education during which the client or client's family member shall be:

(i) Provided with knowledge regarding the client's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

(ii) Taught how to cope with the client's diagnosis or condition in a successful manner;

4. Include a treatment plan which shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lower level of care;

5. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, ~~or a~~ **certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate;**

6. Include access to a board-certified or board-eligible psychiatrist for consultation;

7. Include access to a psychiatrist, other physician, or advanced practice registered nurse for medication prescribing and monitoring; and

8. Be provided in a setting with a minimum client-to-staff ratio of ten (10) clients to one (1) staff person;

(i) Individual outpatient therapy which shall:

1. Be provided to promote the:

a. Health and wellbeing of the client; or

b. Recovery from a substance related disorder;

2. Consist of:

a. A face-to-face encounter with the client; and

b. A behavioral health therapeutic intervention provided in accordance with the client's plan of care;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the client; and

c. Improving functioning;

4. Not exceed three (3) hours per day; and

5. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, ~~or a~~ **certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate;**

(j) Group outpatient therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the client; or

b. Recovery from a substance related disorder;

2. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the client's plan of care;

3. Excluding multi-family group therapy, be provided in a group setting of nonrelated individuals, not to exceed twelve (12) individuals in size. For group outpatient therapy, a nonrelated individual means any individual who is not a spouse, significant other, parent or person with custodial control, child, sibling, stepparent, stepchild, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, or grandchild;

4. Focus on the psychological needs of the client as evidenced in the client's plan of care;

5. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

6. Not include physical exercise, a recreational activity, an educational activity, or a social activity;

7. Not exceed three (3) hours per day per client unless additional time is medically necessary in accordance with 907 KAR 3:130;

8. Ensure that the group has a deliberate focus and defined course of treatment;

9. Ensure that the subject of group outpatient therapy shall be related to each client participating in the group; and

10. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, ~~or a~~ **certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate** who shall maintain individual notes regarding each client within the group in the client's record;

(k) Family outpatient therapy which shall:

1. Consist of a face-to-face behavioral health therapeutic intervention provided through scheduled therapeutic visits between the therapist, at least one (1) member of the client's family, and the client unless the client's presence is not required in his or her plan of care;

2. Address issues interfering with the relational functioning of the family;

3. Seek to improve interpersonal relationships within the client's home environment;

4. Be provided to promote the health and wellbeing of the client or recovery from a substance use disorder;

5. Not exceed three (3) hours per day per client unless additional time is medically necessary in accordance with 907 KAR 3:130; and

6. Be provided by a behavioral health professional, a behavioral health professional under clinical supervision, ~~or a~~ **certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate;**

(l) Collateral outpatient therapy which shall consist of a face-to-face behavioral health consultation:

1. With a parent, caregiver, or person who has custodial control of a client under the age of twenty-one (21), household member, legal representative, school personnel, or treating professional;

2. Provided by a behavioral health professional, behavioral health professional under clinical supervision, ~~or a~~ **certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate;** and

3. Provided upon the written consent of a parent, caregiver, or person who has custodial control of a client under the age of twenty-one (21). Documentation of written consent shall be signed and maintained in the client's record;

(m) Screening, brief intervention, and referral to treatment for substance use disorders which shall:

1. Be an evidence-based early intervention approach for an individual with non-dependent substance use prior to the need for more extensive or specialized treatment;

2. Consist of:

a. Using a standardized screening tool to assess the individual

for risky substance use behavior:

b. Engaging a client who demonstrates risky substance use behavior in a short conversation, providing feedback and advice;

c. Referring the client to therapy or other services that address substance use if the client is determined to need additional services; and

3. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, ~~for a~~ **certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate; or**

(n) Targeted case management services which shall:

1. Include services to an:

a. Adult or a child with substance use disorder; or

b. Adult or child with co-occurring mental health or substance use disorder and chronic or complex physical health issues;

2. Be provided by a case manager as described in subsection (2) or (3) of this section; and

3. Include the following assistance:

a. Comprehensive assessment and reassessment of client needs to determine the need for medical, educational, social, or other services. The reassessment shall be conducted annually or more often if needed based on changes in the client's condition;

b. Development of a specific care plan which shall be based on information collected during the assessment and revised if needed upon reassessment;

c. Referral and related activities, which may include:

(i) Scheduling appointments for the client to help the individual obtain needed services; or

(ii) Activities that help link the client with medical, social, educational providers, or other programs and services which address identified needs and achieve goals specified in the care plan;

d. Monitoring which shall be face-to-face and occur no less than once every three (3) months to determine that:

(i) Services are furnished according to the client's care plan;

(ii) Services in the care plan are adequate; and

(iii) Changes in the needs or status of the client are reflected in the care plan; and

e. Contacts with the client, family members, service providers, or others are conducted as frequently as needed to help the client:

(i) Access services;

(ii) Identify needs and supports to assist the client in obtaining services; and

(iii) Identify changes in the client's needs.

(2) A case manager who provides targeted case management services to clients with a substance use disorder shall:

(a) Be a certified alcohol and drug counselor, meet the grandfather requirements of 907 KAR 15:040, Section 4(1)(a)3, or have a bachelor's degree in a human services field, including:

1. Psychology;

2. Sociology;

3. Social work;

4. Family studies;

5. Human services;

6. Counseling;

7. Nursing;

8. Behavioral analysis;

9. Public health;

10. Special education;

11. Gerontology;

12. Recreational therapy;

13. Education;

14. Occupational therapy;

15. Physical therapy;

16. Speech-language pathology;

17. Rehabilitation counseling; or

18. Faith-based education;

(b)1. Have a minimum of one (1) year of full-time employment working directly with adolescents or adults in a human service setting after completion of the requirements described in paragraph (a) of this subsection; or

2. Have a master's degree in a human services field as

described in paragraph (a) of this subsection;

(c)1. Have successfully completed case management training in accordance with 908 KAR 2:260; and

2. Successfully complete continuing education requirements in accordance with 908 KAR 2:260; and

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

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

2. Has supervisory contact at least two (2) times per month with at least one (1) of the contacts on an individual in person basis.

(3) A case manager who provides targeted case management services to clients with a mental health or substance use disorder and chronic or complex physical health issues shall:

(a) Meet the requirements of subsection (2)(a) of this section;

(b)1. After completion of a bachelor's degree, have a minimum of five (5) years of experience providing service coordination or referring clients with complex behavioral health needs and co-occurring disorders or multi-agency involvement to community based services; or

2. After completion of a master's degree in a human services field as described in subsection (2)(a) of this section, have a minimum of two (2) years of experience providing service coordination or referring clients with complex behavioral health needs and co-occurring disorders or multi-agency involvement to community based services;

(c)1. Have successfully completed case management training in accordance with 908 KAR 2:260; and

2. Successfully complete continuing education requirements in accordance with 908 KAR 2:260; and

(d) For a bachelor's level case manager, be supervised by a behavioral health professional who:

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

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

(4) Plan of care.

(a) Each client receiving outpatient behavioral health services from a chemical dependency treatment program shall have an individual plan of care signed by a behavioral health professional.

(b) A plan of care shall:

1. Describe the services to be provided to the client, including the frequency of services;

2. Contain measurable goals for the client to achieve, including the expected date of achievement for each goal;

3. Describe the client's functional abilities and limitations or diagnosis listed in the current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders;

4. Specify each staff member assigned to work with the client;

5. Identify methods of involving the client's family or significant others if indicated;

6. Specify criteria to be met for termination of treatment;

7. Include any referrals necessary for services not provided directly by the chemical dependency treatment program; and

8. State the date scheduled for review of the plan.

(c) The client shall participate to the maximum extent feasible in the development of his or her plan of care, and the participation shall be documented in the client's record.

(d)1. The initial plan of care shall be developed through multidisciplinary team conferences at least thirty (30) days following the first ten (10) days of treatment.

2. The plan of care for individuals receiving intensive outpatient program services shall be reviewed every thirty (30) days thereafter and updated every sixty (60) days or earlier if clinically indicated.

3. Except for intensive outpatient program services, the plan of care for individuals receiving any other outpatient behavioral health service described in subsection (1) of this section shall be reviewed and updated every six (6) months or earlier if clinically indicated.

4. The plan of care and each review and update shall be signed by the participants in the multidisciplinary team conference

that developed it.

(5) [A medical service, including a change of medication, a diet restriction, or a restriction on physical activity, shall be ordered by a physician or other ordering practitioner acting within the limits of his or her statutory scope of practice.]

(6) Client Records.

(a) A client record shall be maintained for each individual receiving outpatient behavioral health services.

(b) Each entry shall be current, dated, signed, and indexed according to the service received.

(c) Each client record shall contain:

1. An identification sheet, including the client's name, address, age, gender, marital status, expected source of payment, and referral source;

2. Information on the purpose for seeking a service;

3. If applicable, consent of appropriate family members or guardians for admission, evaluation, and treatment;

4. Screening information pertaining to the mental health or substance use disorder;

5. If applicable, a psychosocial history;

6. If applicable, staff notes on services provided;

7. If applicable, the client's plan of care;

8. If applicable, disposition;

9. If applicable, assigned status;

10. If applicable, assigned therapists; and

11. If applicable, a termination study recapitulating findings and events during treatment, clinical impressions, and condition on termination.

Section 6. Compliance with Building Codes, Ordinances and Regulations; Chemical Dependency Treatment Program's Inpatient Facility. (1) Nothing stated herein shall relieve the licensee from compliance with building codes, ordinances, and regulations which are enforced by city, county, or state jurisdictions.

(2) The following shall apply:

(a) Requirements for safety pursuant to the National Fire Protection Association 101, Life Safety Code adopted by the Kentucky Department of Housing, Buildings and Construction;

(b) Requirements for plumbing pursuant to 815 KAR 20:010 through 20:191;

(c) Requirements for making buildings and facilities accessible to and usable by persons with disabilities.

(3) The facility shall be approved by the Fire Marshal's Office before a license or license renewal is granted.

(4) The facility shall receive necessary approval from appropriate agencies prior to occupancy and licensure.

(5) Physical and sanitary environment.

(a) The physical plant and overall facility environment shall be maintained to protect the safety and well-being of patients, personnel and visitors.

(b) A person shall be designated responsible for services and for the establishment of practices and procedures in each of the following areas:

1. Plant maintenance;

2. Laundry operations either on site or off site; and

3. Housekeeping.

(c) The facility buildings, equipment, and surroundings shall be kept in good repair, neat, clean, free from accumulation of dirt and rubbish and free from foul, stale or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.

2. Written housekeeping procedures shall be established for each area and copies shall be available to personnel.

3. Equipment and supplies shall be provided for cleaning surfaces. The equipment shall be maintained in a safe, sanitary condition.

4. A hazardous cleaning solution, compound, or substance shall be labeled, stored in an approved container, and kept separate from nonhazardous cleaning materials.

5. The facility shall be free from insects, rodents, and their harborage.

6. Garbage and trash shall be stored in closed containers in an area separate from an area used for the preparation or storage of

food.

7. The garbage and trash area shall be cleaned regularly and shall be in good repair.

(d) The facility shall have available at all times a quantity of linen essential to the proper care and comfort of residents.

1. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose.

2. Soiled linen and clothing shall be placed in suitable bags or closed containers and stored in a separate area ventilated to the exterior of the building.

Section 7. Chemical Dependency Treatment Program's Inpatient [6.] Facility Requirements and Special Conditions. (1) Patient rooms. Each patient room shall meet the following requirements:

(a) The maximum room capacity shall be six (6) patients.

(b) The minimum room area, exclusive of toilet room, closet, locker, wardrobe, or vestibule, shall be:

1. 100 square feet for a one (1) bed room; and

2. Eighty (80) square feet per bed for multibed rooms.

(c) 1. Partitions, cubicle curtains, or placement of furniture shall be used to provide privacy in a multiperson room.

2. Ample closet and drawer space shall be provided for the storage of each patient's personal property.

(d) The placement of a patient in a multibed room shall be appropriate to the age and program needs of the patient.

(2) Lavatory.

(a) In a single or multibed room with a private toilet room, the lavatory may be located in the toilet room.

(b) If two (2) or more patients share a common toilet a lavatory shall be provided in each patient room.

(3) Centralized toilet area.

(a) If a centralized toilet area is used, the facility shall provide, for each gender on each floor, one (1) toilet for each eight (8) residents or a major fraction thereof.

(b) Toilets shall be separated by a permanent partition and at least one (1) toilet for each gender shall be designed for wheelchair use.

(4) Patient baths.

(a) There shall be one (1) shower stall or one (1) bathtub for each fifteen (15) patients not individually served.

(b) Each bathtub or shower shall provide space for the private use of the fixture and for dressing.

(5) The patient shall be encouraged to take responsibility for maintaining his or her own living quarters and for other day-to-day housekeeping activities of the program, as appropriate to his or her clinical status.

(6) Dietary service.

(a) The facility shall have a dietary department, organized, directed, and staffed to provide quality food service and optimal nutritional care.

1. The dietary service shall be directed on a full-time basis by an individual who, by education or specialized training and experience, is knowledgeable in food service management.

2. The dietary service shall have at least one (1) [qualified] dietician licensed pursuant to KRS 310.021 to supervise the nutritional aspects of patient care and to approve menus on at least a consultative basis.

3. If food service personnel are assigned a duty outside the dietary department, the [a] duty shall not interfere with the sanitation, safety, or time required for regular dietary assignments.

(b) 1. A menu shall be planned, written, and rotated to avoid repetition.

2. Nutritional needs shall be met in accordance with:

a. Recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; [c] and

b. [in accordance with] Physician orders.

(c) 1. A meal served shall correspond with the posted menu.

2. If [When] a change in the menu is necessary:

a. [c] Substitution shall provide equal nutritive value; [c] and

b. The change shall be recorded on the menu.

3. A menu shall be kept on file for thirty (30) days.



- (d) Food shall be:  
 1. Prepared by methods that conserve nutritive value, flavor, and appearance; and  
 2. Served at the proper temperature.  
 (e) 1. At least three (3) meals shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and breakfast.  
 2. Each meal shall be served at a regular time and a nourishing between-meal or bedtime snack offered.  
 (f) Food services shall be provided in accordance with the facility shall comply with relevant provisions of 902 KAR 45:005.

Section 8. Physical environment of an off-campus extension or separate building on the campus of the chemical dependency treatment program's inpatient facility where outpatient behavioral health services are provided. (1) Accessibility. The off-campus extension or separate building on the campus of the chemical dependency treatment program's inpatient facility shall meet requirements for making buildings and facilities accessible to and usable by individuals with physical disabilities pursuant to KRS 198B.260 and 815 KAR 7:120.

(2) Physical location and overall environment.

(a) The program shall:

1. Comply with building codes, ordinances, and administrative regulations which are enforced by city, county, or state jurisdictions;

2. Display a sign that can be viewed by the public that contains the facility name, hours of operation, and a street address;

3. Have a publicly listed telephone number and a dedicated phone number to send and receive faxes with a fax machine that shall be operational twenty-four (24) hours per day;

4. Have a reception and waiting area;

5. Provide a restroom; and

6. Have an administrative area.

(b) The condition of the physical location and the overall environment shall be maintained in such a manner that the safety and well-being of clients, personnel, and visitors are assured.

(3) Prior to occupancy, the facility shall have final approval from appropriate agencies.

MARYELLEN B. MYNEAR, Inspector General

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 7, 2015

FILED WITH LRC: July 8, 2015 at 4 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for licensure as a chemical dependency treatment service program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum requirements for licensure as a chemical dependency treatment service program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the minimum requirements for licensure as a chemical dependency treatment service program.

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

(a) How the amendment will change this existing administrative regulation: This amendment expands the scope of services which may be provided by a chemical dependency treatment service program to include outpatient behavioral health services for individuals with a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis. In response to public comments received, this amended after comments administrative regulation has been revised to include a definition for "substance abuse disorder", adds licensed clinical alcohol and drug counselors and licensed clinical alcohol and drug counselor associates to the list of professionals who may provide designated outpatient services, and makes other technical changes for clarity.

(b) The necessity of the amendment to this administrative regulation: This amendment and amended after comments regulation are necessary to expand the scope of services which may be provided under a chemical dependency treatment service program's license, thereby increasing access to substance abuse treatment services.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment and amended after comments regulation conform to the content of the authorizing statutes by establishing requirements for the operation of chemical dependency treatment services programs.

(d) How the amendment will assist in the effective administration of the statutes: This amendment and amended after comments regulation will assist in the effective administration of the statutes by expanding the scope of services which may be provided under a chemical dependency treatment service program's license, thereby increasing access to substance abuse treatment services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently four (4) licensed chemical dependency treatment service programs.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Chemical dependency treatment service programs may elect to provide outpatient behavioral health services for individuals with a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The provision of outpatient behavioral health services by chemical dependency treatment service programs is optional.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Chemical dependency treatment service programs will be eligible to enroll in the Kentucky Medicaid Program for reimbursement of outpatient behavioral health services provided to Medicaid recipients.

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

(a) Initially: The cost of implementing the amendment of this administrative regulation is expected to be absorbable.

(b) On a continuing basis: The cost of implementing this administrative regulation is expected to be absorbable.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation will be from agency and state general funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation establishes standards for the licensure of chemical dependency treatment service programs.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function.

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

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

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

(c) How much will it cost to administer this program for the first year? The cost of implementing this administrative regulation is expected to be absorbable.

(d) How much will it cost to administer this program for subsequent years? The cost of implementing this administrative regulation is expected to be absorbable.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amended After Comments)

#### 907 KAR 9:005. Non-outpatient level I and II psychiatric residential treatment facility service and coverage policies.

RELATES TO: KRS 205.520, 216B.450, 216B.455, 216B.459  
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 440.160, 42 U.S.C. 1396a-d

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes Medicaid program coverage policies regarding Level I and Level II psychiatric residential treatment facility services that are not provided on an outpatient basis.

Section 1. Definitions. (1) "Active treatment" means a covered Level I or II psychiatric residential treatment facility service provided:

(a) In accordance with an individual plan of care as specified in 42 C.F.R. 441.154; and (b) By an individual employed or contracted by a Level I or II PRTF including a:

1. Qualified mental health personnel;
2. Qualified mental health professional;

3. Mental health associate; or

4. Direct care staff person.

(2) "Acute care hospital" is defined by KRS 205.639(1).

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

(4) "Behavioral health professional" means:

(a) A psychiatrist;

(b) A physician licensed in Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties;

(c) A licensed psychologist~~[licensed and practicing in accordance with KRS 319.050];~~

(d) A~~[certified psychologist with autonomous functioning or] licensed psychological practitioner~~~~[certified and practicing in accordance with KRS 319.056];~~

(e) A licensed clinical social worker~~[licensed and practicing in accordance with KRS 335.100];~~

(f) An advanced practice registered nurse~~[licensed and practicing in accordance with KRS 314.042];~~

(g) A licensed marriage and family therapist~~[licensed and practicing in accordance with KRS 335.300];~~

(h) A licensed professional clinical counselor~~[licensed and practicing in accordance with KRS 335.500];~~

(i) A licensed professional art therapist certified and practicing in accordance with KRS 309.130;~~[or]~~

(j) A licensed clinical~~[An] alcohol and drug counselor contingent and effective upon approval by the Centers for Medicare and Medicaid Services; or~~

(k) A certified psychologist with autonomous functioning~~[certified and practicing in accordance with KRS 309.080 to 309.089].~~

(5)~~[(4)]~~ "Behavioral health professional under clinical supervision" means:

(a) A certified psychologist~~[certified and practicing in accordance with KRS 319.056];~~

(b) A licensed psychological associate~~[licensed and practicing in accordance with KRS 319.064];~~

(c) A marriage and family therapy~~[therapist] associate~~~~[permitted and practicing in accordance with KRS 335.300];~~

(d) A certified social worker~~[certified and practicing in accordance with KRS 335.080]; [or]~~

(e) A licensed professional counselor associate;

(f) A licensed professional art therapist associate;~~[or]~~

(g) Physician assistant; or

(h) A licensed clinical alcohol and drug counselor associate contingent and effective upon approval by the Centers for Medicare and Medicaid Services~~[licensed and practicing in accordance with KRS 335.500].~~

(6) "Certified alcohol and drug counselor" means an individual who meets the requirements established in KRS 309.083.

(7) "Certified psychologist" means an individual who is recognized as a certified psychologist in accordance with 201 KAR Chapter 26.

(8) "Certified psychologist with autonomous functioning" means an individual who is a certified psychologist with autonomous functioning pursuant to KRS 319.056.

(7) "Certified social worker" means an individual who meets the requirements established in KRS 335.080.

(8)~~[(5)]~~ "Child with a severe emotional disability" is defined by KRS 200.503(2).

(9)~~[(6)]~~ "Department" means the Department for Medicaid Services or its designee.

(10)~~[(7)]~~ "Diagnostic and assessment services" means at least one (1) face-to-face specialty evaluation or specialty evaluation performed via telemedicine of a recipient's medical, social, and psychiatric status provided by a physician or qualified mental health professional that shall:

(a) Include:

1. Interviewing and evaluating; or

2. Testing;

(b) Be documented and record all contact with the recipient and other interviewed individuals; and

(c) Result in a:

1. Medical data code in accordance with 45 C.F.R. 162.1000; and

2. Specific treatment recommendation.

(11) "Enrollee" means a recipient who is enrolled with a managed care organization.

(12)[(8)] "Federal financial participation" is defined by 42 C.F.R. 400.203.

(13)[(9)] "Intensive treatment services" means a program:

(a) For a child:

1. With a severe emotional disability; and
- a. An intellectual disability;
- b. A severe and persistent aggressive behavior;
- c. Sexually acting out behavior; or
- d. A developmental disability;

2. Who requires a treatment-oriented residential environment; and

3. Between the ages of four (4) to twenty-one (21) years; and

(b) That provides psychiatric and behavioral health services two (2) or more times per week to a child referenced in paragraph (a) of this subsection:

1. As indicated by the child's psychiatric and behavioral health needs; and
2. In accordance with the child's therapeutic plan of care.

(14)[(40)] "Interdisciplinary team" means:

(a) For a recipient who is under the age of eighteen (18) years:

1. A parent, legal guardian, or caregiver of the recipient;
2. The recipient;
3. A qualified mental health professional; and
4. A staff person, if available, who worked with the recipient during the recipient's most recent placement if the recipient has previously been in a Level I or II PRTF; or

(b) For a recipient who is eighteen (18) years of age or older:

1. The recipient;
2. A qualified mental health professional; and
3. A staff person, if available, who worked with the recipient during the recipient's most recent placement if the recipient has previously been in a Level I or II PRTF.

(15)[(44)] "Level I PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(a).

(16)[(42)] "Level II PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(b).

(17) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).

(18) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).

(19) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(20) "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(21) "Licensed professional art therapist" is defined by KRS 309.130(2).

(22) "Licensed professional art therapist associate" is defined by KRS 309.130(3).

(23) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(24) "Licensed professional counselor associate" is defined by KRS 335.500(4).

(25) "Licensed psychological associate" means an individual who:

(a) Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychological associate requirements established in 201 KAR Chapter 26.

(26) "Licensed psychological practitioner" means an individual who meets the requirements established in KRS 319.053.

(27) "Licensed psychologist" means an individual who:

(a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.

(28) "Marriage and family therapy associate" is defined by KRS 335.300(3).

(29)[(43)] "Medicaid payment status" means a circumstance in which:

(a) The person:

1. Is eligible for and receiving Medicaid benefits; and
2. Meets patient status criteria for Level I or II psychiatric residential treatment facility services; and

(b) The facility is billing the Medicaid program for services provided to the person.

(30)[(44)] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(31)[(45)] "Mental health associate" means:

(a) 1. An individual with a minimum of a bachelor's degree in a mental health related field;

2. A registered nurse; or

3. A licensed practical nurse with at least one (1) year's experience in a psychiatric inpatient or residential treatment setting for children; or

(b) An individual with:

1. A high school diploma or an equivalence certificate; and
2. At least two (2) years work experience in a psychiatric inpatient or residential treatment setting for children.

(32) "Peer support specialist" means an individual who meets the peer specialist qualifications established in:

(a) 908 KAR 2:220;

(b) 908 KAR 2:230; or

(c) 908 KAR 2:240.

(33)[(46)] "Physician" is defined by KRS 311.550(12).

(34) "Physician assistant" is defined by KRS 311.840(3).

(35)[(47)] "Private psychiatric hospital" is defined by KRS 205.639(2).

(36) "Provider" is defined by KRS 205.8451(7).

(37) "Provider abuse" is defined by KRS 205.8451(8).

(38)[(48)] "Psychiatric residential treatment facility" or "PRTF" is defined by KRS 216B.450(5).

(39)[(49)] "Psychiatric services" means:

(a) An initial psychiatric evaluation of a recipient which shall include:

1. A review of the recipient's:
- a. Personal history;
- b. Family history;
- c. Physical health;
- d. Prior treatment; and
- e. Current treatment;
2. A mental status examination appropriate to the age of the recipient;
3. A meeting with the family or any designated significant person in the recipient's life; and
4. Ordering and reviewing:
- a. Laboratory data;
- b. Psychological testing results; or
- c. Any other ancillary health or mental health examinations;

(b) Development of an initial plan of treatment which shall include:

1. Prescribing and monitoring of psychotropic medications; or
2. Providing and directing therapy to the recipient;

(c) Implementing, assessing, monitoring, or revising the treatment as appropriate to the recipient's psychiatric status;

(d) Providing a subsequent psychiatric evaluation as appropriate to the recipient's psychiatric status;

(e) Consulting, if determined to be necessary by the psychiatrist responsible for providing or overseeing the recipient's psychiatric services, with another physician, an attorney, police, regarding the recipient's care and treatment; or

(f) Ensuring that the psychiatrist responsible for providing or overseeing the recipient's psychiatric services has access to the information referenced in paragraph (e) of this subsection.

(40)[(20)] "Qualified mental health personnel" is defined by KRS 216B.450(6).

(41)[(24)] "Qualified mental health professional" is defined by

KRS 216B.450(7).

(42) "Recipient" is defined by KRS 205.8451(9).

(43) "Recipient abuse" is defined by KRS 205.8451(10).

(44)(22) "Review agency" means for a review, evaluation, or authorization decision regarding an individual who is:

(a) Not enrolled with a managed care organization:

1. The department; or
2. An entity under contract with the department; or

(b) Enrolled with a managed care organization:

1. The managed care organization with which the enrollee is enrolled; or
2. An entity under contract with the managed care organization with which the enrollee is enrolled.

(45)(23) "State mental hospital" is defined by KRS 205.639(3).

(46)(24) "Telemedicine" means two-way, real time interactive communication between a patient and a physician or practitioner located at a distant site for the purpose of improving a patient's health through the use of interactive telecommunications equipment that includes, at a minimum, audio and video equipment.

(47)(25) "Treatment plan" means a plan created for the care and treatment of a recipient that:

(a) Is developed in a face-to-face meeting by the recipient's interdisciplinary team;

(b) Describes a comprehensive, coordinated plan of medically necessary behavioral health services that specifies a modality, frequency, intensity, and duration of services sufficient to maintain the recipient in a PRTF setting; and

(c) Identifies:

1. A program of therapies, activities, interventions, or experiences designed to accomplish the plan;

2. A qualified mental health professional, a mental health associate, or qualified mental health personnel who shall manage the continuity of care;

3. Interventions by caregivers in the PRTF and school setting that support the recipient's ability to be maintained in a PRTF setting;

4. Behavioral, social, and physical problems with interventions and objective, measurable goals;

5. Discharge criteria that specifies the:

a. Recipient-specific behavioral indicators for discharge from the service;

b. Expected service level that would be required upon discharge; and

c. Identification of the intended provider to deliver services upon discharge;

6. A crisis action plan that progresses through a continuum of care that is designed to reduce or eliminate the necessity of inpatient services;

7. A plan for:

a. Transition to a lower intensity of services; and

b. Discharge from PRTF services;

8. An individual behavior management plan;

9. A plan for the involvement and visitation of the recipient with the birth family, guardian, or other significant person, unless prohibited by a court, including therapeutic off-site visits pursuant to the treatment plan; and

10. Services and planning, beginning at admission, to facilitate the discharge of the recipient to an identified plan for home-based services or a lower level of care.

Section 2. Provider Participation. (1)(a) In order to participate, or continue to participate, in the Kentucky Medicaid Program, a Level I PRTF shall:

1. Have a utilization review plan for each recipient consisting of, at a minimum, a pre-admission certification review submitted via telephone or electronically to the review agency prior to admission of the recipient;

2. Perform and place in each recipient's record:

- a. A medical evaluation;
- b. A social evaluation; and
- c. A psychiatric evaluation;

3. Establish a plan of care for each recipient which shall be placed in the recipient's record;

4. Appoint a utilization review committee which shall:

a. Oversee and implement the utilization review plan; and

b. Evaluate each Medicaid admission and continued stay prior to the expiration of the Medicaid certification period to determine if the admission or stay is or remains medically necessary;

5. Comply with staffing requirements established in 902 KAR 20:320;

6. Be located in the Commonwealth of Kentucky;

7. Maintain accreditation by the Joint Commission on Accreditation of Health Care Organizations or the Council on Accreditation of Services for Families and Children or any other accrediting body with comparable standards that is recognized by the state; and

8. Comply with all conditions of Medicaid provider participation established in 907 KAR 1:671 and 907 KAR 1:672.

(b) In order to participate, or continue to participate, in the Kentucky Medicaid Program, a Level II PRTF shall:

1. Have a utilization review plan for each recipient;

2. Establish a utilization review process which shall evaluate each Medicaid admission and continued stay prior to the expiration of the Medicaid certification period to determine if the admission or stay is or remains medically necessary;

3. Comply with staffing requirements established in 902 KAR 20:320;

4. Be located in the Commonwealth of Kentucky;

5. Maintain accreditation by the Joint Commission on Accreditation of Health Care Organizations or the Council on Accreditation of Services for Families and Children or any other accrediting body with comparable standards that is recognized by the state;

6. Comply with all conditions of Medicaid provider participation established in 907 KAR 1:671 and 907 KAR 1:672;

7. Perform and place in each recipient's record a:

a. Medical evaluation;

b. Social evaluation; and

c. Psychiatric evaluation; and

8. Establish a plan of care for each recipient which shall:

a. Address in detail the intensive treatment services to be provided to the recipient; and

b. Be placed in the recipient's record.

(2)(a) A pre-admission certification review for a Level I PRTF shall:

1. Contain:

a. The recipient's valid Medicaid identification number;

b. For a recipient who is not enrolled with a managed care organization, a valid MAP-569, Certification of Need by Independent Team Psychiatric Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21) which satisfies the requirements of 42 C.F.R. 44.152 and 42 C.F.R. 44.153 for patients age twenty-one (21) and under;

c. A DMS-IV R diagnosis on all five (5) axes, except that failure to record an axis IV or V diagnosis shall be used as the basis for a denial only if those diagnoses are critical to establish the need for Level I PRTF treatment;

d. A description of the initial treatment plan relating to the admitting symptoms;

e. Current symptoms requiring inpatient treatment;

f. Information to support the medical necessity and clinical appropriateness of the services or benefits of the admission to a Level I PRTF in accordance with 907 KAR 3:130;

g. Medication history;

h. Prior hospitalization;

i. Prior alternative treatment;

j. Appropriate medical, social, and family histories; and

k. Proposed aftercare placement;

2. Remain in effect for the days certified by the review agency; and

3. Be completed within thirty (30) days.

(b) A pre-admission certification review for a Level II PRTF for a non-emergent admission shall:

1. Contain:

- a. The recipient's valid Medicaid identification number;
- b. For a recipient who is not enrolled with a managed care organization, a valid MAP-569, Certification of Need by Independent Team Psychiatric Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21) which satisfies the requirements of 42 C.F.R. 44.152 and 42 C.F.R. 441.153 for patients age twenty-one (21) and under;
- c. A DSM-IV-R diagnosis on all five (5) axes, except that failure to record an axis IV or V diagnosis shall be used as the basis for a denial only if those diagnoses are critical to establish the need for Level II PRTF treatment;
- d. A description of the initial treatment plan relating to the admitting symptoms;
- e. Current symptoms requiring inpatient treatment;
- f. Information to support the medical necessity and clinical appropriateness of the services or benefits of the admission to a Level II PRTF in accordance with 907 KAR 3:130;
- g. Medication history;
- h. Prior hospitalization;
- i. Prior alternative treatment;
- j. Appropriate medical, social, and family histories; and
- k. Proposed aftercare placement;
- 2. Remain in effect for the days certified by the review agency; and
- 3. Be completed within thirty (30) days.
- (3) Failure to admit a recipient within the recipient's certification period shall require a new pre-admission certification review request.
- (4) A utilization review plan for an emergency admission to a Level II PRTF shall contain:
  - (a) For a recipient who is not enrolled with a managed care organization, a completed MAP-570, Medicaid Certification of Need for Inpatient Psychiatric Services for Individuals Under Age Twenty-One (21):
    - 1. Completed by the facility's interdisciplinary team; and
    - 2. Placed in the recipient's medical record;
    - (b) Documentation, provided by telephone or electronically to the review agency within two (2) days of the recipient's emergency admission, justifying:
      - 1. The recipient's emergency admission;
      - 2. That ambulatory care resources in the recipient's community and placement in a Level I PRTF do not meet the recipient's needs;
      - 3. That proper treatment of the recipient's psychiatric condition requires services provided by a Level II PRTF under the direction of a physician; and
      - 4. That the services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services are no longer needed;
    - (c) The recipient's valid Medicaid identification number;
    - (d) For a recipient who is not enrolled with a managed care organization, a valid MAP-569, Certification of Need by Independent Team Psychiatric Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21) which satisfies the requirements of 42 C.F.R. 441.152 and 42 C.F.R. 441.153 for recipients age twenty-one (21) and under;
    - (e) A DMS-IV-R diagnosis on all five (5) axes, except that failure to record an axis IV or V diagnosis shall be used as the basis for a denial only if those diagnoses are critical to establish the need for Level II PRTF treatment;
    - (f) 1. A description of the initial treatment plan relating to the admitting symptom; and
    - 2. As part of the initial treatment plan, a full description of the intensive treatment services to be provided to the recipient;
    - (g) Current symptoms requiring residential treatment;
    - (h) Medication history;
    - (i) Prior hospitalization;
    - (j) Prior alternative treatment;
    - (k) Appropriate medical, social, and family histories; and
    - (l) Proposed aftercare placement.
  - (5) For an individual who becomes Medicaid eligible after admission and who is not enrolled with a managed care

organization, a Level I or II PRTF's interdisciplinary team shall complete a MAP-570, Medicaid Certification of Need for Inpatient Psychiatric Services for Individuals Under Age Twenty-One (21), and the form shall be placed in the recipient's medical record.

(6) For a recipient, a Level I or II PRTF shall maintain medical records that shall:

- (a) Be:
  - 1. Current;
  - 2. Readily retrievable;
  - 3. Organized;
  - 4. Complete; and
  - 5. Legible;
- (b) Reflect sound medical recordkeeping practice in accordance with:
  - 1. 902 KAR 20:320;
  - 2. KRS 194A.060;
  - 3. KRS 434.840 through 860;
  - 4. KRS 422.317; and
  - 5. 42 C.F.R. 431 Subpart F;
- (c) Document the need for admission and appropriate utilization of services;
- (d) Be maintained, including information regarding payments claimed, for a minimum of six (6) years or until an audit dispute or issue is resolved, whichever is longer; and
- (e) Be made available for inspection or copying or provided to the following upon request:
  - 1. A representative of the United States Department for Health and Human Services or its designee;
  - 2. The United States Office of the Attorney General or its designee;
  - 3. The Commonwealth of Kentucky, Office of the Attorney General or its designee;
  - 4. The Commonwealth of Kentucky, Office of the Auditor of Public Accounts or its designee;
  - 5. The Commonwealth of Kentucky, Cabinet for Health and Family Services, Office of the Inspector General or its designee;
  - 6. The department; or
  - 7. A managed care organization with whom the department has contracted if the recipient is enrolled with the managed care organization.
- (7)(a) If a Level I or Level II psychiatric residential treatment facility receives any duplicate payment or overpayment from the department or managed care organization, regardless of reason, the Level I or Level II psychiatric residential treatment facility shall return the payment to the department or managed care organization that issued the duplicate payment or overpayment in accordance with 907 KAR 1:671.
- (b) Failure to return a payment to the department or managed care organization in accordance with paragraph (a) of this section may be:
  - 1. Interpreted to be fraud or abuse; and
  - 2. Prosecuted in accordance with applicable federal or state law.
- (8)(a) When the department or managed care organization makes payment for a covered service and the Level I or Level II psychiatric residential treatment facility accepts the payment:
  - 1. The payment shall be considered payment in full;
  - 2. A bill for the same service shall not be given to the recipient;
- and
- 3. Payment from the recipient for the same service shall not be accepted by the Level I or Level II psychiatric residential treatment facility.
- (b) 1. A Level I or Level II psychiatric residential treatment facility may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:
  - a. Recipient requests the service; and
  - b. Level I or Level II psychiatric residential treatment facility makes the recipient aware in advance of providing the service that the:
    - (i) Recipient is liable for the payment; and
    - (ii) Department or managed care organization if the recipient is enrolled with a managed care organization is not covering the service.

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

a. Level I or Level II psychiatric residential treatment facility shall not bill the department or managed care organization, if applicable, for the service; and

b. Department or managed care organization, if applicable, shall not:

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

(ii) Make any payment to the Level I or Level II psychiatric residential treatment facility regarding the service.

**(c) Except as established in paragraph (b) of this subsection or except for a cost sharing obligation owed by a recipient, a provider shall not bill a recipient for any part of a service provided to the recipient.**

(9)(a) A Level I or Level II psychiatric residential treatment facility attests by the Level I or Level II psychiatric residential treatment facility's staff's or representative's signature that any claim associated with a service is valid and submitted in good faith.

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

1. Department or its designee;

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

3. Kentucky Office of Attorney General or its designee;

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

5. United States General Accounting Office or its designee; or

6. For an enrollee, managed care organization in which the enrollee is enrolled.

(c)1. If a Level I or Level II psychiatric residential treatment facility receives a request from the:

a. Department to provide a claim, related information, related documentation, or record for auditing purposes, the Level I or Level II psychiatric residential treatment facility shall provide the requested information to the department within the timeframe requested by the department; or

b. Managed care organization in which an enrollee is enrolled to provide a claim, related information, related documentation, or record for auditing purposes, the Level I or Level II psychiatric residential treatment facility shall provide the requested information to the managed care organization within the timeframe requested by the managed care organization.

2.a. The timeframe requested by the department or managed care organization for a Level I or Level II psychiatric residential treatment facility to provide requested information shall be:

(i) A reasonable amount of time given the nature of the request and the circumstances surrounding the request; and

(ii) A minimum of one (1) business day.

b. A Level I or Level II psychiatric residential treatment facility may request a longer timeframe to provide information to the department or a managed care organization if the Level I or Level II psychiatric residential treatment facility justifies the need for a longer timeframe.

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

2. Willful abuse by a Level I or Level II psychiatric residential treatment facility shall result in the suspension or termination of the Level I or Level II psychiatric residential treatment facility from Medicaid Program participation in accordance with 907 KAR 1:671.

Section 3. Covered Admissions. (1) A covered admission for a Level I PRTF:

(a) Shall be prior authorized by a review agency; and

(b)1. Shall be limited to those for a child age six (6) through twenty (20) years of age who meets Medicaid payment status criteria; or

2. May continue based on medical necessity, for a recipient who is receiving active treatment in a Level I PRTF on the recipient's twenty-first (21st) birthday if the recipient has not reached his or her twenty-second (22nd) birthday.

(2) A covered admission for a Level II PRTF shall be:

(a) Prior authorized;

(b) Limited to those for a child:

1.a. Age four (4) through twenty-one (21) years who meets Medicaid payment status criteria; and

b. Whose coverage may continue, based on medical necessity, if the recipient is receiving active treatment in a Level II PRTF on the recipient's twenty-first (21st) birthday and the recipient has not reached his or her twenty-second (22nd) birthday;

2. With a severe emotional disability in addition to severe and persistent aggressive behaviors, an intellectual disability, sexually acting out behaviors, or a developmental disability; and

3.a. Who does not meet the medical necessity criteria for an acute care hospital, private psychiatric hospital, or state mental hospital; and

b. Whose treatment needs cannot be met in an ambulatory care setting, Level I PRTF, or in any other less restrictive environment; and

(c) Reimbursed pursuant to 907 KAR 9:010.

Section 4. PRTF Covered Services. (1)(a) There shall be a treatment plan developed for each recipient.

(b) A treatment plan shall specify:

1. The amount and frequency of services needed; and

2. The number of therapeutic pass days for a recipient, if the treatment plan includes any therapeutic pass days.

(2) To be covered by the department:

(a) The following services shall be available to a recipient covered under Section 3 of this administrative regulation and shall meet the requirements established in paragraph (b) of this subsection:

1. Diagnostic and assessment services;

2. Treatment plan development, review, or revision;

3. Psychiatric services;

4. Nursing services which shall be provided in compliance with 902 KAR 20:320;

5. Medication which shall be provided in compliance with 907 KAR 1:019;

6. Evidence-based treatment interventions;

7. Individual therapy which shall comply with 902 KAR 20:320;

8. Family therapy or attempted contact with family which shall comply with 902 KAR 20:320;

9. Group therapy which shall comply with 902 KAR 20:320;

10. Individual and group interventions that shall focus on additional and harmful use or abuse issues and relapse prevention if indicated;

11. Substance abuse education;

12. Activities that:

a. Support the development of an age-appropriate daily living skill including positive behavior management or support; or  
b. Support and encourage the parent's ability to re-integrate the child into the home;

13. Crisis intervention which shall comply with:

a. 42 C.F.R. 483.350 through 376; and

b. 902 KAR 20:320;

14. Consultation with other professionals including case managers, primary care professionals, community support workers, school staff, or others;

15. Educational activities; or

16. Non-medical transportation services as needed to accomplish objectives;

(b) A Level I PRTF service listed in paragraph (a) of this subsection shall be:

1. Provided under the direction of a physician;

2. If included in the recipient's treatment plan, described in the recipient's current treatment plan;

3. Medically necessary; and

4. Clinically appropriate pursuant to the criteria established in 907 KAR 3:130;

(c) A Level I PRTF service listed in subparagraph (a)7, 8, 9, 11, or 13 shall be provided by a qualified mental health professional, behavioral health professional, or behavioral health professional under clinical supervision; or

(d) A Level II PRTF service listed in paragraph (a) of this subsection shall be:

1. Provided under the direction of a physician;
2. If included in the recipient's treatment plan, described in the recipient's current treatment plan;
3. Provided at least once a week:
  - a. Unless the service is necessary twice a week, in which case the service shall be provided at least twice a week; or
  - b. Except for diagnostic and assessment services which shall have no weekly minimum requirement;
4. Medically necessary; and
5. Clinically appropriate pursuant to the criteria established in 907 KAR 3:130.

(3) A Level II PRTF service listed in subparagraph (a)7, 8, 9, 11, or 13 shall be provided by a qualified mental health professional, behavioral health professional, or behavioral health professional under clinical supervision.

Section 5. Determining Patient Status. (1) The department shall review and evaluate the health status and care needs of a recipient in need of Level I or II PRTF care using the criteria identified in 907 KAR 3:130 to determine if a service or benefit is clinically appropriate.

(2) The care needs of a recipient shall meet the patient status criteria for:

(a) Level I PRTF care if the recipient requires:

1. Long term inpatient psychiatric care or crisis stabilization more suitably provided in a PRTF than in a psychiatric hospital; and

2. Level I PRTF services on a continuous basis as a result of a severe mental or psychiatric illness, including a severe emotional disturbance; or

(b) Level II PRTF care if the recipient:

1. Is a child with a severe emotional disability;

2. Requires long term inpatient psychiatric care or crisis stabilization more suitably provided in a PRTF than a psychiatric hospital;

3. Requires Level II PRTF services on a continuous basis as a result of a severe emotional disability in addition to a severe and persistent aggressive behavior, an intellectual disability, a sexually acting out behavior, or a developmental disability; and

4. Does not meet the medical necessity criteria for an acute care hospital or a psychiatric hospital and has treatment needs which cannot be met in an ambulatory care setting, Level I PRTF, or other less restrictive environment.

Section 6. Durational Limit, Re-evaluation, and Continued Stay. (1) A recipient's stay, including the duration of the stay, in a Level I or II PRTF shall be subject to the department's approval.

(2)(a) A recipient in a Level I PRTF shall be re-evaluated at least once every thirty (30) days to determine if the recipient continues to meet Level I PRTF patient status criteria established in Section 5(2) of this administrative regulation.

(b) A Level I PRTF shall complete a review of each recipient's treatment plan at least once every thirty (30) days.

(c) The review referenced in paragraph (b) of this subsection shall include:

1. Dated signatures of:

a. Appropriate staff; and

b. If present for the treatment plan meeting, a parent, guardian, legal custodian, or conservator;

2. An assessment of progress toward each treatment plan goal and objective with revisions indicated; and

3. A statement of justification for the level of services needed including:

a. Suitability for treatment in a less-restrictive environment; and

b. Continued services.

(d) If a recipient no longer meets Level I PRTF patient status criteria, the department shall only reimburse through the last day of the individual's current approved stay.

(e) The re-evaluation referenced in paragraph (a) of this subsection shall be performed by a review agency.

(3) A Level II PRTF shall complete by no later than the third (3rd) business day following an admission, an initial review of services and treatment provided to a recipient which shall include:

(a) Dated signatures of appropriate staff, parent, guardian, legal custodian, or conservator;

(b) An assessment of progress toward each treatment plan goal and objective with revisions indicated; and

(c) A statement of justification for the level of services needed including:

1. Suitability for treatment in a less-restrictive environment; and

2. Continued services.

(4)(a) For a recipient aged four (4) to five (5) years, a Level II PRTF shall complete a review of the recipient's treatment plan of care at least once every fourteen (14) days after the initial review referenced in subsection (3) of this section.

(b) The review referenced in paragraph (a) of this subsection shall include:

1. Dated signatures of appropriate staff, parent, guardian, legal custodian, or conservator;

2. An assessment of progress toward each treatment plan goal and objective with revisions indicated; and

3. A statement of justification for the level of services needed including:

a. Suitability for treatment in a less-restrictive environment; and

b. Continued services.

(5)(a) For a recipient aged six (6) to twenty-two (22) years, a Level II PRTF shall complete a review of the recipient's treatment plan of care at least once every thirty (30) days after the initial review referenced in subsection (3) of this section.

(b) The review referenced in paragraph (a) of this subsection shall include:

1. Dated signatures of appropriate staff, parent, guardian, legal custodian, or conservator;

2. An assessment of progress toward each treatment plan goal and objective with revisions indicated; and

3. A statement of justification for the level of services needed including:

a. Suitability for treatment in a less-restrictive environment; and

b. Continued services.

Section 7. Exclusions and Limitations in Coverage. (1) The following shall not be covered as Level I or II PRTF services under this administrative regulation:

~~(a)[1. Chemical dependency treatment services if the need for the services is the primary diagnosis of the recipient, except chemical dependency treatment services shall be covered as incidental treatment if minimal chemical dependency treatment is necessary for successful treatment of the primary diagnosis;~~

~~(b)] Outpatient services;~~

~~(b)[(e)] Pharmacy services, which shall be covered in accordance with 907 KAR 1:019;~~

~~(c)[(d)] Durable medical equipment, which shall be covered in accordance with 907 KAR 1:479;~~

~~(d)[(e)] Hospital emergency room services, which shall be covered in accordance with 907 KAR 10:014;~~

~~(e)[(f)] Acute care hospital inpatient services, which shall be covered in accordance with 907 KAR 10:012;~~

~~(f)[(g)] Laboratory and radiology services, which shall be covered in accordance with 907 KAR 10:014 or 907 KAR 1:028;~~

~~(g)[(h)] Dental services, which shall be covered in accordance with 907 KAR 1:026;~~

~~(h)[(i)] Hearing and vision services, which shall be covered in accordance with 907 KAR 1:038; or~~

~~(i)[(j)] Ambulance services, which shall be covered in accordance with 907 KAR 1:060.~~

(2) A Level I or II PRTF shall not charge a recipient or responsible party representing a recipient any difference between private and semiprivate room charges.

(3) The department shall not reimburse for Level I or II PRTF services for a recipient if appropriate alternative services are available for the recipient in the community.

(4) The following shall not qualify as reimbursable in a PRTF setting:

(a) An admission that is not medically necessary;

(b) Services for an individual:

1. With a major medical problem or minor symptoms;
2. Who might only require a psychiatric consultation rather than an admission to a PRTF; or
3. Who might need only adequate living accommodations, economic aid, or social support services.

Section 8. Reserved Bed and Therapeutic Pass Days. (1)(a) The department shall cover a bed reserve day for an acute hospital admission, a state mental hospital admission, a private psychiatric hospital admission, or an admission to a psychiatric bed in an acute care hospital for a recipient's absence from a Level I or II PRTF if the recipient:

1. Is in Medicaid payment status in a Level I or II PRTF;
2. Has been in the Level I or II PRTF overnight for at least one (1) night;
3. Is reasonably expected to return requiring Level I or II PRTF care; and
- 4.a. Has not exceeded the bed reserve day limit established in paragraph (b) of this subsection; or
- b. Received an exception to the limit in accordance with paragraph (c) of this subsection.

(b) The annual bed reserve day limit per recipient shall be five (5) days per calendar year in aggregate for any combination of bed reserve days associated with an acute care hospital admission, a state mental hospital admission, a private psychiatric hospital admission, or an admission to a psychiatric bed in an acute care hospital.

(c) The department shall allow a recipient to exceed the limit established in paragraph (b) of this subsection, if the department determines that an additional bed reserve day is in the best interest of the recipient.

(2)(a) The department shall cover a therapeutic pass day for a recipient's absence from a Level I or II PRTF if the recipient:

1. Is in Medicaid payment status in a Level I or II PRTF;
2. Has been in the Level I or II PRTF overnight for at least one (1) night;
3. Is reasonably expected to return requiring Level I or II PRTF care; and
- 4.a. Has not exceeded the therapeutic pass day limit established in paragraph (b) of this subsection; or
- b. Received an exception to the limit in accordance with paragraph (c) of this subsection.

(b) The annual therapeutic pass day limit per recipient shall be fourteen (14) days per calendar year.

(c) The department shall allow a recipient to exceed the limit established in paragraph (b) of this subsection, if the department determines that an additional therapeutic pass day is in the best interest of the recipient.

(3)(a) The bed reserve day and therapeutic pass day count for each recipient shall be zero (0) upon the effective date of this administrative regulation.

(b) For subsequent calendar years, the bed reserve day and therapeutic pass day count for each recipient shall begin at zero (0) on January 1 of the calendar year.

(4) An authorization decision regarding a bed reserve day or therapeutic pass day in excess of the limits established in this section shall be performed by a review agency.

(5)(a) An acute care hospital bed reserve day shall be a day when a recipient is temporarily absent from a Level I or II PRTF due to an admission to an acute care hospital.

(b) A state mental hospital bed reserve day, private psychiatric hospital bed reserve day, or psychiatric bed in an acute care hospital bed reserve day, respectively, shall be a day when a recipient is temporarily absent from a Level I or II PRTF due to receiving psychiatric treatment in a state mental hospital, private psychiatric hospital, or psychiatric bed in an acute care hospital respectively.

(c) A therapeutic pass day shall be a day when a recipient is temporarily absent from a Level I or II PRTF for a therapeutic purpose that is:

1. Stated in the recipient's treatment plan; and
2. Approved by the recipient's treatment team.

(6)(a) A Level I or II PRTF's occupancy percent shall be based

on a midnight census.

(b) An absence from a Level I or II PRTF that is due to a bed reserve day for an acute hospital admission, a state mental hospital admission, a private psychiatric hospital admission, or an admission to a psychiatric bed in an acute care hospital shall count as an absence for census purposes.

(c) An absence from a Level I or II PRTF that is due to a therapeutic pass day shall not count as an absence for census purposes.

Section 9. Outpatient Services Requirements Established in 907 KAR 9:015. The department's coverage provisions and requirements regarding outpatient behavioral health services provided by a Level I or II PRTF shall be as established in 907 KAR 9:015.

Section 10. Third Party Liability. A Level I or Level II PRTF shall comply with KRS 205.622.

Section 11. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A Level I PRTF or Level II PRTF that chooses to use electronic signatures shall:

- (a) Develop and implement a written security policy that shall:
  1. Be adhered to by each of the Level I PRTF's or Level II PRTF's employees, officers, agents, or contractors;
  2. Identify each electronic signature for which an individual has access; and
  3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
- (b) Develop a consent form that shall:
  1. Be completed and executed by each individual using an electronic signature;
  2. Attest to the signature's authenticity; and
  3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

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

1. A copy of the Level I PRTF's or Level II PRTF's electronic signature policy;
2. The signed consent form; and
3. The original filed signature.

Section 12. Auditing Authority. The department or the managed care organization in which an enrollee is enrolled shall have the authority to audit any:

- (1) Claim;
- (2) Medical record; or
- (3) Documentation associated with any claim or medical record.

Section 13. Federal Financial Participation. (1) The department's coverage of services pursuant to this administrative regulation shall be contingent upon [A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services]:

- (a) Receipt of [1) Denies or does not provide] federal financial participation for the coverage [policy]; and [or]
- (b) Centers for Medicare and Medicaid Services' approval of the coverage [2) Disapproves the policy].

(2) The coverage of services provided by a licensed clinical alcohol and drug counselor or licensed clinical alcohol and drug counselor associate shall be contingent and effective upon approval by the Centers for Medicare and Medicaid Services.

Section 14. [40:] Appeal Rights. (1)(a) An appeal of an adverse [a negative] action by the department regarding a service and a recipient who is not enrolled with a managed care organization [Medicaid beneficiary] shall be in accordance with 907 KAR 1:563.

(b) An appeal of an adverse action by a managed care



organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

(2) An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 15.[14-] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP-569, Certification of Need by Independent Team Psychiatric Preadmission Review of Elective Admissions for Kentucky Medicaid Recipients Under Age Twenty-One (21)", revised 5/90; and

(b) "MAP-570, Medicaid Certification of Need for Inpatient Psychiatric Services for Individuals Under Age Twenty-one (21)", revised 5/90.

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

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 7, 2015

FILED WITH LRC: July 9, 2015 at 11 a.m.

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) coverage provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's coverage provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's coverage provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing DMS's coverage provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies that this administrative regulation applies to non-outpatient services provided by a Level I or II PRTF; inserts new definitions necessary for clarity; inserts electronic signature provisions; and inserts a provision authorizing DMS or managed care organizations to audit claims and records. The amendment after comments inserts physician assistant in the definition of "behavioral health professional under clinical supervision" and elaborates regarding providers not billing recipients for services.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as DMS is expanding its coverage and reimbursement scope for outpatient behavioral health services to include such services provided in a Level I or II PRTF. DMS is doing so via new administrative regulations - 907 KAR 9:015 (Coverage provisions and requirements regarding outpatient behavioral health services provided by a Level I or II

psychiatric residential treatment facility) and 907 KAR 9:0200 (Reimbursement provisions and requirements regarding outpatient behavioral health services provided by a Level I or II psychiatric residential treatment facility). Consequently, it is necessary to amend this administrative regulation to clarify that its requirements and provisions do not apply to outpatient behavioral health services provided by a Level I or II PRTF. The amendment after comments is necessary to add physician assistants as practitioners under supervision and to add clarity.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying that the requirements and provisions in this administrative regulation do not apply to outpatient behavioral health services provided by a Level I or II PRTF. The amendment after comments will conform to the content of the authorizing statutes by including physician assistants as authorized practitioners under supervision.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by clarifying that the requirements and provisions in this administrative regulation do not apply to outpatient behavioral health services provided by a Level I or II PRTF. The amendment after comments will assist in the effective administration of the authorizing statutes by including physician assistants as authorized practitioners under supervision.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Level I and II PRTFs will be affected by the amendment. Currently, there are twenty-three (23) Level I PRTFs enrolled in the Medicaid Program and zero (0) Level II PRTFs enrolled in the Medicaid Program.

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

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit due to clarity regarding which administrative regulation is applicable to non-outpatient behavioral health services provided in a Level I or II PRTF.

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

(a) Initially: No cost will be incurred as a result of the amendment.

(b) On a continuing basis: No cost will be incurred as a result of the amendment.

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

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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal

mandate. 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396d(a)(16), 42 U.S.C. 1396d(h), 42 C.F.R. 441.151 and 42 C.F.R. 440.160.

2. State compliance standards. To qualify as a Level I or II PRTF, a facility must meet the criteria established in KRS 216B.450 through 457.

3. Minimum or uniform standards contained in the federal mandate. Per federal Medicaid law, inpatient psychiatric facility services for individuals under twenty-one (21) is not a mandatory Medicaid benefit, but if a state's state plan includes intermediate care facility services for individuals with mental retardation, it must also cover inpatient psychiatric facility services for individuals under twenty-one (21). Additionally, states may be required to provide inpatient psychiatric care under the early and periodic screening, diagnosis and treatment program (EPSDT). Pursuant to 42 C.F.R. 440.160, "Inpatient psychiatric services for individuals under age 21" means services that—

(a) Are provided under the direction of a physician;

(b) Are provided by—

(1) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations, or

(2) A psychiatric facility which is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Council on Accreditation of Services for Families and Children, the Commission on Accreditation of Rehabilitation Facilities, or by any other accrediting organization, with comparable standards, that is recognized by the State.

(c) Meet the requirements in §441.151 of this subchapter." Additionally, 42 C.F.R. 441.151 states, "(a) Inpatient psychiatric services for individuals under age 21 must be:

(1) Provided under the direction of a physician;

(2) Provided by—

(i) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations; or

(ii) A psychiatric facility that is not a hospital and is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards that is recognized by the State.

(3) Provided before the individual reaches age twenty-one (21), or, if the individual was receiving the services immediately before he or she reached age twenty-one (21), before the earlier of the following—

(i) The date the individual no longer requires the services; or

(ii) The date the individual reaches twenty-two (22); and

(4) Certified in writing to be necessary in the setting in which the services will be provided (or are being provided in emergency circumstances) in accordance with Section 441.152.

(b) Inpatient psychiatric services furnished in a psychiatric residential treatment facility as defined in Section 483.352 of this chapter, must satisfy all requirements in subpart G of part 483 of this chapter governing the use of restraint and seclusion."

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

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

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

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

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

(c) How much will it cost to administer this program for the first year? No cost will be incurred as a result of the amendment.

(d) How much will it cost to administer this program for subsequent years? No cost will be incurred as a result of the amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Medicaid Services

##### Division of Policy and Operations

##### (Amended After Comments)

#### **907 KAR 9:015. Coverage provisions and requirements regarding outpatient services provided by Level I or Level II psychiatric residential treatment facilities.**

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

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program outpatient behavioral health services provided by Level I or Level II psychiatric residential treatment facilities.

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Approved behavioral health services provider" means:

(a) A physician;

(b) A psychiatrist;

(c) An advanced practice registered nurse;

(d) A physician assistant;

(e) A licensed psychologist;

(f) A licensed psychological practitioner;

(g) A certified psychologist with autonomous functioning;

(h) A licensed clinical social worker;

(i) A licensed professional clinical counselor;

(j) A licensed marriage and family therapist;

(k) A licensed psychological associate;

(l) A certified psychologist;

(m) A marriage and family therapy associate;

(n) A certified social worker;

(o) A licensed professional counselor associate;

(p) A licensed professional art therapist;

(q) A licensed professional art therapist associate;

(r) A licensed clinical alcohol and drug counselor in accordance

with Section 12 of this administrative regulation;

(s) A licensed clinical alcohol and drug counselor associate in accordance with Section 12 of this administrative regulation; or

(t) A certified alcohol and drug counselor.

(3) "Behavioral health practitioner under supervision" means an individual who is:

(a) 1. A licensed professional counselor associate;

2. A certified social worker;

3. A marriage and family therapy associate;

4. A licensed professional art therapist associate;

5. A licensed assistant behavior analyst;

6. A physician assistant;

7. A certified alcohol and drug counselor; or

8. A licensed clinical alcohol and drug counselor associate in accordance with Section 12 of this administrative regulation; and

(b) Employed by or under contract with the same billing provider as the billing supervisor.

(4) "Billing provider" means the individual who, group of individual providers that, or organization that:

(a) Is authorized to bill the department or a managed care organization for a service; and

(b) Is eligible to be reimbursed by the department or a managed care organization for a service.

(5) "Billing supervisor" means an individual who is:

(a) 1. A physician;

2. A psychiatrist;

3. An advanced practice registered nurse;

4. A licensed psychologist;

5. A licensed clinical social worker;

6. A licensed professional clinical counselor;

7. A licensed psychological practitioner;

8. A certified psychologist with autonomous functioning;

9. A licensed marriage and family therapist;

10. A licensed professional art therapist; or

11. A licensed behavior analyst; and

(b) Employed by or under contract with the same billing provider as the behavioral health practitioner under supervision who renders services under the supervision of the billing supervisor.

(6) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).

(7) "Certified psychologist" means an individual who is recognized as a certified psychologist in accordance with 201 KAR Chapter 26.

(8) "Certified psychologist with autonomous functioning" means an individual who is a certified psychologist with autonomous functioning pursuant to KRS 319.056.

(9) "Certified social worker" means an individual who meets the requirements established in KRS 335.080.

(10) "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.

(11) "Department" means the Department for Medicaid Services or its designee.

(12) "Electronic signature" is defined by KRS 369.102(8).

(13) "Enrollee" means a recipient who is enrolled with a managed care organization.

(14) "Face-to-face" means occurring:

(a) In person; or

(b) If authorized by 907 KAR 3:170, via a real-time, electronic communication that involves two (2) way interactive video and audio communication.

(15) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(16) "Level I PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(a).

(17) "Level II PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(b).

(18) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(19) "Licensed behavior analyst" is defined by KRS 319C.010(6).

(20) "Licensed clinical alcohol and drug counselor" is defined

by KRS 309.080(4).

(21) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).

(22) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(23) "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(24) "Licensed professional art therapist" is defined by KRS 309.130(2).

(25) "Licensed professional art therapist associate" is defined by KRS 309.130(3).

(26) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(27) "Licensed professional counselor associate" is defined by KRS 335.500(4).

(28) "Licensed psychological associate" means an individual who:

(a) Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychological associate requirements established in 201 KAR Chapter 26.

(29) "Licensed psychological practitioner" means an individual who meets the requirements established in KRS 319.053.

(30) "Licensed psychologist" means an individual who:

(a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.

(31) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(32) "Marriage and family therapy associate" is defined by KRS 335.300(3).

(33) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(34) "Peer support specialist" means an individual who meets the peer specialist qualifications established in:

(a) 908 KAR 2:220;

(b) 908 KAR 2:230; or

(c) 908 KAR 2:240.

(35) "Person-centered service plan" means a plan of services for a recipient that meets the requirements established in 42 C.F.R. 441.540.

(36) "Physician" is defined by KRS 205.510(11).

(37) "Physician assistant" is defined by KRS 311.840(3).

(38) "Provider" is defined by KRS 205.8451(7).

(39) "Provider abuse" is defined by KRS 205.8451(8).

(40) "Recipient" is defined by KRS 205.8451(9).

(41) "Recipient abuse" is defined by KRS 205.8451(10).

(42) "Recipient's representative" means:

(a) For a recipient who is authorized by Kentucky law to provide written consent, an individual acting on behalf of, and with written consent from, the recipient; or

(b) A legal guardian.

(43) "Section 504 plan" means a plan developed under the auspices of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (Section 504), to ensure that a child who has a disability identified under the law and is attending an elementary or secondary educational institution receives accommodations to ensure the child's academic success and access to the learning environment.

Section 2. General Coverage Requirements. (1) For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(a) Medically necessary; and

(b) Provided:

1. Except as established in subsection (6) or (7) of this section, to a recipient who is under twenty-two (22) years of age; and

2. By a Level I or Level II psychiatric residential treatment facility that meets the provider participation requirements

established in Section 3 of this administrative regulation.

(2)(a) Face-to-face contact between a practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a recipient under the age of twenty-one (21) years if the collateral outpatient therapy is in the recipient's plan of care;

2. A family outpatient therapy service in which the corresponding current procedural terminology code establishes that the recipient is not present;

3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or others in which the corresponding current procedural terminology code establishes that the recipient is not present; or

4. A service planning activity in which the corresponding current procedural terminology code establishes that the recipient is not present.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A billable unit of service shall be actual time spent delivering a service in a face-to-face encounter **except for any component of service planning that does not require the presence of the recipient or recipient's representative.**

(4) A service shall be:

(a) Stated in the recipient's plan of care; and

(b) Provided in accordance with the recipient's plan of care.

(5)(a) A Level I or Level II psychiatric residential treatment facility shall establish a plan of care for each recipient receiving services from the Level I or Level II psychiatric residential treatment facility.

(b) A plan of care shall meet the ~~the treatment~~ plan **of care** requirements established in 902 KAR 20:320, **Section 14**.

(6)(a) Family outpatient therapy may be provided to an individual who is over twenty-two (22) years of age if the:

1. Individual is a family member of a recipient who is:

a. Under twenty-two (22) years of age; and

b. Receiving outpatient behavioral health services from the same Level I or Level II PRTF that is providing family outpatient therapy regarding the recipient; and

2. Family outpatient therapy focuses on the needs and treatment of the recipient who is under twenty-two (22) years of age as identified in the recipient's plan of care.

(b) Peer support may be provided to an individual who is over twenty-two (22) years of age if the:

1. Individual is a family member of a recipient who is:

a. Under twenty-two (22) years of age; and

b. Receiving outpatient behavioral health services from the same Level I or Level II PRTF that is providing peer support regarding the recipient; and

2. Peer support focuses on the needs and treatment of the recipient who is under twenty-two (22) years of age as identified in the recipient's plan of care.

(7)(a) A recipient may continue to receive an outpatient behavioral health service listed in paragraph (b) of this subsection pursuant to this administrative regulation without disruption after reaching the age of twenty-two (22) years if the outpatient behavioral health service continues to be medically necessary for the recipient as identified in the recipient's plan of care.

(b) The outpatient behavioral health services that a recipient may receive in accordance with paragraph (a) of this subsection may include:

1. Individual outpatient therapy;
2. Group outpatient therapy;
3. Family outpatient therapy;
4. Collateral outpatient therapy;
5. Intensive outpatient program services;
6. Day treatment;
7. Assertive community treatment;
8. Therapeutic rehabilitation services;
9. Peer support; or
10. Comprehensive community support services.

Section 3. Provider Participation. (1)(a) To be eligible to provide services under this administrative regulation, a Level I or

Level II psychiatric residential treatment facility shall:

1. Be currently enrolled as a provider in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

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

3. Be licensed as a Level I or Level II psychiatric residential treatment facility to provide outpatient behavioral health services in accordance with 902 KAR 20:320; and

4. Have:

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

b. Documented experience in serving individuals with behavioral health disorders;

c. The administrative capacity to ensure quality of services;

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

e. The capacity to document and maintain individual health records.

(b) The documentation referenced in paragraph (a)4.b. of this subsection shall be subject to audit by:

1. The department;

2. The Cabinet for Health and Family Services, Office of Inspector General;

3. A managed care organization, if the Level I or Level II psychiatric residential treatment facility is enrolled in its network;

4. The Centers for Medicare and Medicaid Services;

5. The Kentucky Office of the Auditor of Public Accounts; or

6. The United States Department of Health and Human Services, Office of the Inspector General.

(2) In accordance with 907 KAR 17:015, Section 3(3), a Level I or Level II psychiatric residential treatment facility which provides an outpatient service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(3) A Level I or Level II psychiatric residential treatment facility shall:

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

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

Section 4. Covered Services. (1) Except as specified in the requirements stated for a given service, the services covered may be provided for a:

(a) Mental health disorder;

(b) Substance use disorder; or

(c) Co-occurring mental health and substance use disorders.

(2) The following services shall be covered under this administrative regulation in accordance with the following requirements:

(a) A screening, crisis intervention, or intensive outpatient program service provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A certified psychologist with autonomous functioning;

4. A licensed clinical social worker;

5. A licensed professional clinical counselor;

6. A licensed professional art therapist;

7. A licensed marriage and family therapist;

8. A physician;

9. A psychiatrist;

10. An advanced practice registered nurse;

11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

12. A certified psychologist working under the supervision of a board-approved licensed psychologist;

13. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation; or

14. A behavioral health practitioner under supervision:

a. In accordance with Section 12 of this administrative regulation; and

b. Except for a licensed assistant behavior analyst;

- (b) An assessment provided by:
  1. A licensed psychologist;
  2. A licensed psychological practitioner;
  3. A certified psychologist with autonomous functioning;
  4. A licensed clinical social worker;
  5. A licensed professional clinical counselor;
  6. A licensed professional art therapist;
  7. A licensed marriage and family therapist;
  8. A physician;
  9. A psychiatrist;
  10. An advanced practice registered nurse;
  11. A licensed behavior analyst;
  12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
  13. A certified psychologist working under the supervision of a board-approved licensed psychologist;
  14. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation; or
  15. A behavioral health practitioner under supervision in accordance with Section 12 of this administrative regulation;
- (c) Psychological testing provided by:
  1. A licensed psychologist;
  2. A licensed psychological practitioner;
  3. A certified psychologist with autonomous functioning;
  4. A licensed psychological associate working under the supervision of a board-approved licensed psychologist; or
  5. A certified psychologist working under the supervision of a board-approved licensed psychologist;
- (d) Day treatment or mobile crisis services provided by:
  1. A licensed psychologist;
  2. A licensed psychological practitioner;
  3. A certified psychologist with autonomous functioning;
  4. A licensed clinical social worker;
  5. A licensed professional clinical counselor;
  6. A licensed professional art therapist;
  7. A licensed marriage and family therapist;
  8. A physician;
  9. A psychiatrist;
  10. An advanced practice registered nurse;
  11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
  12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
  13. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation;
  14. A behavioral health practitioner under supervision:
    - a. Except for a licensed assistant behavior analyst; and
    - b. In accordance with Section 12 of this administrative regulation; or
  15. A peer support specialist working under the supervision of an approved behavioral health services provider in accordance with Section 12 of this administrative regulation;
- (e) Peer support provided by a peer support specialist working under the supervision of an approved behavioral health services provider in accordance with Section 12 of this administrative regulation;
- (f) Individual outpatient therapy, group outpatient therapy, or collateral outpatient therapy provided by:
  1. A licensed psychologist;
  2. A licensed psychological practitioner;
  3. A certified psychologist with autonomous functioning;
  4. A licensed clinical social worker;
  5. A licensed professional clinical counselor;
  6. A licensed professional art therapist;
  7. A licensed marriage and family therapist;
  8. A physician;
  9. A psychiatrist;
  10. An advanced practice registered nurse;
  11. A licensed behavior analyst;
  12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
  13. A certified psychologist working under the supervision of a board-approved licensed psychologist;
  14. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation; or
  15. A behavioral health practitioner under supervision:
    - a. Except for a licensed assistant behavior analyst; and
    - b. In accordance with Section 12 of this administrative regulation;
- (g) Family outpatient therapy provided by:
  1. A licensed psychologist;
  2. A licensed psychological practitioner;
  3. A certified psychologist with autonomous functioning;
  4. A licensed clinical social worker;
  5. A licensed professional clinical counselor;
  6. A licensed professional art therapist;
  7. A licensed marriage and family therapist;
  8. A physician;
  9. A psychiatrist;
  10. An advanced practice registered nurse;
  11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
  12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
  13. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation; or
  14. A behavioral health practitioner under supervision:
    - a. Except for a licensed assistant behavior analyst; and
    - b. In accordance with Section 12 of this administrative regulation;
- (h) Service planning provided by:
  1. A licensed psychologist;
  2. A licensed psychological practitioner;
  3. A certified psychologist with autonomous functioning;
  4. A licensed clinical social worker;
  5. A licensed professional clinical counselor;
  6. A licensed professional art therapist;
  7. A licensed marriage and family therapist;
  8. A physician;
  9. A psychiatrist;
  10. An advanced practice registered nurse;
  11. A licensed behavior analyst;
  12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
  13. A certified psychologist working under the supervision of a board-approved licensed psychologist; or
  14. A behavioral health practitioner under supervision except for:
    - a. A certified alcohol and drug counselor; or
    - b. A licensed clinical alcohol and drug counselor associate;
- (i) A screening, brief intervention, and referral to treatment for a substance use disorder or SBIRT provided by:
  1. A licensed psychologist;
  2. A licensed psychological practitioner;
  3. A certified psychologist with autonomous functioning;
  4. A licensed clinical social worker;
  5. A licensed professional clinical counselor;
  6. A licensed professional art therapist;
  7. A licensed marriage and family therapist;
  8. A physician;
  9. A psychiatrist;
  10. An advanced practice registered nurse;
  11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
  12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
  13. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation; or
  14. A behavioral health practitioner under supervision:
    - a. Except for a licensed assistant behavior analyst; and
    - b. In accordance with Section 12 of this administrative regulation;
- (j) Assertive community treatment provided by:
  1. A licensed psychologist;
  2. A licensed psychological practitioner;
  3. A certified psychologist with autonomous functioning;
  4. A licensed clinical social worker;
  5. A licensed professional clinical counselor;

6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
13. A behavioral health practitioner under supervision except for a:
  - a. Licensed assistant behavior analyst;
  - b. Certified alcohol and drug counselor; or
  - c. Licensed clinical alcohol and drug counselor associate;
14. A peer support specialist working under the supervision of an approved behavioral health services provider except for a:
  - a. Licensed clinical alcohol and drug counselor;
  - b. Licensed clinical alcohol and drug counselor associate; or
  - c. Certified alcohol and drug counselor;
15. A community support associate;
- (k) Comprehensive community support services provided by:
  1. A licensed psychologist;
  2. A licensed psychological practitioner;
  3. A certified psychologist with autonomous functioning;
  4. A licensed clinical social worker;
  5. A licensed professional clinical counselor;
  6. A licensed professional art therapist;
  7. A licensed marriage and family therapist;
  8. A physician;
  9. A psychiatrist;
  10. An advanced practice registered nurse;
  11. A licensed behavior analyst;
  12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
  13. A certified psychologist working under the supervision of a board-approved licensed psychologist;
  14. A behavioral health practitioner under supervision except for a:
    - a. Licensed clinical alcohol and drug counselor associate; or
    - b. Certified alcohol and drug counselor; or
  15. A community support associate;
- (l) Therapeutic rehabilitation program services provided by:
  1. A licensed psychologist;
  2. A licensed psychological practitioner;
  3. A certified psychologist with autonomous functioning;
  4. A licensed clinical social worker;
  5. A licensed professional clinical counselor;
  6. A licensed professional art therapist;
  7. A licensed marriage and family therapist;
  8. A physician;
  9. A psychiatrist;
  10. An advanced practice registered nurse;
  11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
  12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
  13. A behavioral health practitioner under supervision except for a:
    - a. Licensed assistant behavior analyst;
    - b. Licensed clinical alcohol and drug counselor associate; or
    - c. Certified alcohol and drug counselor; or
  14. A peer support specialist working under the supervision of an approved behavioral health services provider except for a:
    - a. Licensed clinical alcohol and drug counselor;
    - b. Licensed clinical alcohol and drug counselor associate; or
    - c. Certified alcohol and drug counselor.
- (3)(a) A screening shall:
  1. Determine the likelihood that an individual has a mental health disorder, substance use disorder, or co-occurring disorders;
  2. Not establish the presence or specific type of disorder; and
  3. Establish the need for an in-depth assessment.
- (b) An assessment shall:
  1. Include gathering information and engaging in a process

- with the individual that enables the practitioner to:
  - a. Establish the presence or absence of a mental health disorder, substance use disorder, or co-occurring disorders;
  - b. Determine the individual's readiness for change;
  - c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and
  - d. Engage the individual in the development of an appropriate treatment relationship;
2. Establish or rule out the existence of a clinical disorder or service need;
3. Include working with the individual to develop a plan of care; and
4. Not include psychological or psychiatric evaluations or assessments.
- (c) Psychological testing shall:
  1. Include:
    - a. A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and
    - b. Interpretation and a written report of testing results; and
  2. Be performed by an individual who has met the requirements of KRS Chapter 319 related to the necessary credentials to perform psychological testing.
- (d) Crisis intervention:
  1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:
    - a. The recipient; or
    - b. Another individual;
  2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals;
  3. Shall be provided:
    - a. On-site at the facility where the outpatient behavioral health services are provided;
    - b. As an immediate relief to the presenting problem or threat; and
  - c. In a face-to-face, one-on-one encounter between the provider and the recipient;
  4. Shall be followed by a referral to non-crisis services if applicable; and
  5. May include:
    - a. Further service prevention planning that includes:
      - (i) Lethal means reduction for suicide risk; or
      - (ii) Substance use disorder relapse prevention; or
    - b. Verbal de-escalation, risk assessment, or cognitive therapy.
- (e) Mobile crisis services shall:
  1. Be available twenty-four (24) hours per day, seven (7) days per week, every day of the year;
  2. Ensure access to a board-certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days per week, every day of the year;
  3. Be provided for a duration of less than twenty-four (24) hours;
  4. Not be an overnight service;
  5. Be a multi-disciplinary team-based intervention in a home or community setting that ensures access to mental health and substance use disorder services and supports to:
    - (i) Reduce symptoms or harm; or
    - (ii) Safely transition an individual in an acute crisis to the appropriate least restrictive level of care;
  6. Involve all services and supports necessary to provide:
    - a. Integrated crisis prevention;
    - b. Assessment and disposition;
    - c. Intervention;
    - d. Continuity of care recommendations; and
    - e. Follow-up services; and
  7. Be provided face-to-face in a home or community setting.
- (f) 1. Day treatment shall be a non-residential, intensive treatment program for an individual under the age of twenty-one (21) years who has:
  - a. A mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders; and
  - b. A high risk of out-of-home placement due to a behavioral

health issue.

2. Day treatment shall:

a. Consist of an organized behavioral health program of treatment and rehabilitative services;

b. Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skills training;

(iii) Independent living skills that correlate to the age and developmental stage of the recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

c. Be provided:

(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

(ii) On school days and on non-instructional weekdays during the school year including scheduled school breaks;

(iii) In coordination with the recipient's individualized educational plan or Section 504 plan if the recipient has an individualized educational plan or Section 504 plan;

(iv) Under the supervision of a licensed or certified approved behavioral health services provider in accordance with Section 12 of this administrative regulation or a behavioral health practitioner working under clinical supervision in accordance with Section 12 of this administrative regulation; and

(v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider.

3. To provide day treatment services, a Level I or Level II psychiatric residential treatment facility shall have:

a. The capacity to employ staff authorized to provide day treatment services in accordance with this section and to coordinate the provision of services among team members; and

b. Knowledge of substance use disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education plan.

(g)1. Peer support services shall:

a. Be emotional support that is provided ~~to a recipient~~ by:

(i) An individual who has been trained and certified in accordance with 908 KAR 2:220 and who is experiencing or has experienced a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a recipient by sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change;

(ii) A parent who has been trained and certified in accordance with 908 KAR 2:230 of a child having or who has had a mental health, substance use, or co-occurring mental health and substance use disorder to a parent or family member of a child sharing a similar mental health, substance use, or co-occurring mental health and substance use disorder in order to bring about a desired social or personal change; or

(iii) A family member who has been trained and certified in accordance with 908 KAR 2:230 of a child having or who has had a mental health, substance use, or co-occurring mental health and substance use disorder to a parent or family member of a child sharing a similar mental health, substance use, or co-occurring mental health and substance use disorder in order to bring about a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;

d. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

e. Be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

f. Be identified in each recipient's plan of care; and

g. Be designed to contribute directly to the recipient's individualized goals as specified in the recipient's plan of care.

2. To provide peer support services, a Level I or Level II psychiatric residential treatment facility shall:

a. Have demonstrated:

(i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240;

c. Use an approved behavioral health services provider in accordance with Section 12 of this administrative regulation to supervise peer support specialists;

d. Have the capacity to coordinate the provision of services among team members; and

e. Have the capacity to provide on-going continuing education and technical assistance to peer support specialists.

(h)1. Intensive outpatient program services shall:

a. Be an alternative to or transition from inpatient hospitalization or partial hospitalization for a mental health disorder, substance use disorder, or co-occurring disorders;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Be provided at least three (3) hours per day at least three (3) days per week; and

d. Include:

(i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

(ii) Crisis intervention; or

(iii) Psycho-education.

2. During psycho-education the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a Level I or Level II psychiatric residential treatment facility shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, physician, or an advanced practice registered nurse for medication prescribing and monitoring;

c. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) recipients to one (1) staff person;

d. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles; and

e. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members.

(i) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and well-being of the **recipient[individual]**; and

b. **Recipient's** recovery from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders;

2. Consist of:

a. A face-to-face, one-on-one encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

3. Be aimed at:

a. Reducing adverse symptoms;

- b. Reducing or eliminating the presenting problem of the recipient; and
- c. Improving functioning; and
- 4. Not exceed three (3) hours per day unless additional time is medically necessary.
- (j)1. Group outpatient therapy shall:
  - a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;
  - b. Be provided to promote the:
    - (i) Health and well-being of the **recipient[individual]**; and
    - (ii) **Recipient's** recovery from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders;
  - c. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;
  - d. Be provided to a recipient in a group setting:
    - (i) Of nonrelated individuals except for multi-family group therapy; and
    - (ii) Not to exceed twelve (12) individuals;
  - e. Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;
  - f. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;
  - g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and
  - h. Not exceed three (3) hours per day per recipient unless additional time is medically necessary.
- 2. The group shall have a:
  - a. Deliberate focus; and
  - b. Defined course of treatment.
- 3. The subject of group outpatient therapy shall relate to each recipient participating in the group.
- 4. The provider shall keep individual notes regarding each recipient of the group and within each recipient's health record.
- (k)1. Family outpatient therapy shall consist of a face-to-face behavioral health therapeutic intervention provided:
  - a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and
  - b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.
- 2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.
- 3. Family outpatient therapy shall:
  - a. Be provided to promote the:
    - (i) Health and well-being of the **recipient[individual]**; or
    - (ii) **Recipient's** recovery from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders; and
  - b. Not exceed three (3) hours per day per individual unless additional time is medically necessary.
- (l)1. Collateral outpatient therapy shall:
  - a. Consist of a face-to-face behavioral health consultation:
    - (i) With a parent or caregiver of a recipient, household member of a recipient, recipient's representative, school staff person, treating professional, or other person with custodial control or supervision of the recipient; and
    - (ii) That is provided in accordance with the recipient's plan of care; and
  - b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age.
- 2. Consent given to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed by the recipient or recipient's representative and filed in the recipient's health record.
- (m)1. Service planning shall:
  - a. Involve assisting a recipient in creating an individualized plan for services needed for maximum reduction of the effects of a mental health disorder;

- b. Involve restoring a recipient's functional level to the recipient's best possible functional level; and
- c. Be performed using a person-centered planning process.
- 2. A service plan:
  - a. Shall be directed by the:
    - (i) Recipient; or
    - (ii) **Recipient's representative if the recipient is under the age of eighteen (18) years or is unable to provide direction;**
  - b. Shall include practitioners of the recipient's choosing; and
  - c. May include:
    - (i) A mental health advance directive being filed with a local hospital;
    - (ii) A crisis plan; or
    - (iii) A relapse prevention strategy or plan.
- (n) Screening, brief intervention, and referral to treatment for a substance use disorder shall:
  - 1. Be an evidence-based early intervention approach for an individual with non-dependent substance use in order to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; and
  - 2. Consist of:
    - a. Using a standardized screening tool to assess an individual for risky substance use behavior;
    - b. Engaging a recipient, who demonstrates risky substance use behavior, in a short conversation and providing feedback and advice to the recipient; and
    - c. Referring a recipient to additional mental health disorder, substance use disorder, or co-occurring disorders services if the recipient is determined to need additional services to address **the recipient's** substance use.
- (o)1. Assertive community treatment shall:
  - a. Be an evidence-based psychiatric rehabilitation practice which provides a comprehensive approach to service delivery for individuals with a severe mental illness; and
  - b. Include:
    - (i) Assessment;
    - (ii) Treatment planning;
    - (iii) Case management;
    - (iv) Psychiatric services;
    - (v) Medication prescribing and monitoring;
    - (vi) Individual outpatient therapy;
    - (vii) Group outpatient therapy;
    - (viii) Mobile crisis services;
    - (ix) Mental health consultation;
    - (x) Family support and basic living skills; or
    - (xi) Peer support.
- 2.a. Mental health consultation shall involve brief, collateral interactions with other treating professionals who may have information for the purpose of treatment planning and service delivery.
- b. Family support shall involve the assertive community treatment team's working with the recipient's natural support systems to improve family relations in order to:
  - (i) Reduce conflict; and
  - (ii) Increase the recipient's autonomy and independent functioning.
- c. Basic living skills shall be rehabilitative services focused on teaching activities of daily living necessary to maintain independent functioning and community living.
- 3. To provide assertive community treatment services, a psychiatric residential treatment facility shall:
  - a. Employ at least one (1) team of multidisciplinary professionals:
    - (i) Led by an approved behavioral health services provider except for a licensed clinical alcohol and drug counselor, a licensed clinical alcohol and drug counselor associate, or a certified alcohol and drug counselor; and
    - (ii) Comprised of at least four (4) full-time equivalents including a psychiatrist, a nurse, a case manager, a peer support specialist, or an approved behavioral health services provider except for a licensed clinical alcohol and drug counselor, a licensed clinical alcohol and drug counselor associate, or a certified alcohol and drug counselor;



b. Have adequate staffing to ensure that no team's caseload size exceeds ten (10) participants per team member (for example, if the team includes five (5) individuals, the caseload for the team shall not exceed fifty (50) recipients);

c. Have the capacity to:

(i) Employ staff authorized to provide assertive community treatment services in accordance with this paragraph;

(ii) Coordinate the provision of services among team members;

(iii) Provide the full range of assertive community treatment services as stated in this paragraph; and

(iv) Document and maintain individual health records; and

d. Demonstrate experience in serving individuals with persistent and severe mental illness who have difficulty living independently in the community.

(p)1. Comprehensive community support services shall:

a. Be activities necessary to allow an individual to live with maximum independence in the community;

b. Be intended to ensure successful community living through the utilization of skills training as identified in the recipient's plan of care; and

c. Consist of using a variety of psychiatric rehabilitation techniques to:

(i) Improve daily living skills;

(ii) Improve self-monitoring of symptoms and side effects;

(iii) Improve emotional regulation skills;

(iv) Improve crisis coping skills; and

(v) Develop and enhance interpersonal skills.

2. To provide comprehensive community support services, a psychiatric residential treatment facility shall:

a. Have the capacity to employ staff authorized pursuant to 908 KAR 2:250 to provide comprehensive community support services in accordance with subsection (2)(k) of this section and to coordinate the provision of services among team members; and

b. Meet the requirements for comprehensive community support services established in 908 KAR 2:250.

(q)1. Therapeutic rehabilitation program services shall be:

a. A rehabilitative service for an individual under the age of twenty-one (21) years who has a severe emotional disability; and

b. Designed to maximize the reduction of the effects of a mental health disorder and the restoration of the individual's functional level to the individual's best possible functional level.

2. A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the person-centered service plan.

3. A therapeutic rehabilitation program shall:

a. Be delivered using a variety of psychiatric rehabilitation techniques;

b. Focus on:

(i) Improving daily living skills;

(ii) Self-monitoring of symptoms and side effects;

(iii) Emotional regulation skills;

(iv) Crisis coping skills; and

(v) Interpersonal skills; and

c. Be delivered individually or in a group.

(4) The extent and type of a screening shall depend upon the nature of the problem of the individual seeking or being referred for services.

(5) A diagnosis or clinical impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

(6) The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.

Section 5. Additional Limits and Non-covered Services or Activities. (1)(a) Except as established in paragraph (b) of this subsection, unless a diagnosis is made and documented in the recipient's health record within three (3) visits, the service shall not be covered.

(b) The requirement established in paragraph (a) of this subsection shall not apply to:

1. Mobile crisis services;

2. Crisis intervention;

3. A screening; or

4. An assessment.

(2) For a recipient who is receiving assertive community treatment, the following shall not be billed or reimbursed for the same period of time in which the recipient receives assertive community treatment[date of service for the recipient]:

(a) An assessment;

(b) Case management;

(c) Individual outpatient therapy;

(d) Group outpatient therapy;

(e) Peer support services; or

(f) Mobile crisis services.

(3) The department shall not reimburse for both a screening and an SBIRT provided to a recipient on the same date of service.

(4) The following services or activities shall not be covered under this administrative regulation:

(a) A service provided to:

1. A resident of:

a. A nursing facility; or

b. An intermediate care facility for individuals with an intellectual disability;

2. An inmate of a federal, local, or state:

a. Jail;

b. Detention center; or

c. Prison; or

3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the psychiatric residential treatment facility;

(c) A consultation or educational service provided to a recipient or to others;

(d) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of "face-to-face" established in Section 1(14) of this administrative regulation;

(e) Travel time;

(f) A field trip;

(g) A recreational activity;

(h) A social activity; or

(i) A physical exercise activity group.

(5)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except as established in Section 4(3)(l)1 of this administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

(6) A billing supervisor arrangement between a billing supervisor and a behavioral health practitioner under supervision shall not:

(a) Violate the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision; or

(b) Substitute for the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision.

Section 6. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the same service is covered, during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a Level I or Level II psychiatric residential treatment facility.

Section 7. Records Maintenance, Documentation, Protection, and Security. (1) A Level I or Level II psychiatric residential treatment facility shall maintain a current health record for each

recipient.

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

(b) The individual who provided the service shall date and sign the health record within forty-eight (48) hours of the date that the individual provided the service.

(3) A health record shall:

(a) Include:

1. An identification and intake record including:

- a. Name;
- b. Social Security number;
- c. Date of intake;
- d. Home (legal) address;
- e. Health insurance or Medicaid participation information;
- f. **If applicable, the** referral source's name and address;
- g. Primary care physician's name and address;
- h. The reason the individual is seeking help including the presenting problem and diagnosis;

i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The physical health provider's name; and

j. The name of the informant and any other information deemed necessary by the Level I or Level II psychiatric residential treatment facility in order to comply with the requirements of:

(i) This administrative regulation;

(ii) The Level I or Level II psychiatric residential treatment facility's licensure board;

(iii) State law; or

(iv) Federal law;

2. Documentation of the:

- a. Screening;
- b. Assessment if an assessment was performed; and
- c. Disposition if a disposition was performed;
3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services; and

(b) Be:

1. Maintained in an organized central file;

2. Furnished upon request:

- a. To the Cabinet for Health and Family Services; or
- b. For an enrollee, to the managed care organization in which the recipient is enrolled or has been enrolled in the past;

3. Made available for inspection and copying by:

- a. Cabinet for Health and Family Services' personnel; or
- b. Personnel of the managed care organization in which the recipient is enrolled if applicable;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.

(4) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(5)(a) A Level I or Level II psychiatric residential treatment facility's notes regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit; and

and

2. Describe the:

a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. **Behavioral health practitioner's**[Therapist's] intervention;

c. Changes in the plan of care if changes are made; and

d. Need for continued treatment if deemed necessary.

(b)1. Any edit to notes shall:

a. Clearly display the changes; and

b. Be initialed and dated by the person who edited the notes.

2. Notes shall not be erased or illegibly marked out.

(c)1. Notes recorded by a behavioral health practitioner working under supervision shall be co-signed and dated by the supervising professional within thirty (30) days.

2. If services are provided by a behavioral health practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervising professional which reflects consultations with the behavioral health practitioner working under supervision concerning the:

a. Case; and

b. Supervising professional's evaluation of the services being provided to the recipient.

(6) Immediately following a screening of a recipient, the practitioner shall perform a disposition related to:

(a) A provisional diagnosis;

(b) A referral for further consultation and disposition, if applicable; or

(c)1. If applicable, termination of services and referral to an outside source for further services; or

2. If applicable, termination of services without a referral to further services.

(7) Any change to a recipient's plan of care shall be documented, signed, and dated by the rendering practitioner and by the recipient or recipient's representative.

(8)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;

2. Be dated;

3. Be titled to indicate the service rendered;

4. State a starting and ending time for the service; and

5. Be recorded and signed by the rendering practitioner and include the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not covered under this administrative regulation, or other non-reimbursable contacts shall:

1. Be recorded in the notes; and

2. Not be reimbursable.

(9)(a) A termination summary shall:

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

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

- a. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's plan of care;
- b. Final diagnosis of clinical impression; and
- c. Individual's condition upon termination and disposition.

(b) A health record relating to an individual who has been terminated from receiving services shall be fully completed within ten (10) days following termination.

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

(11)(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring Level I or Level II psychiatric residential treatment facility shall, within ten (10) business days of awareness of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

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

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

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

2.a. 42 U.S.C. 290ee-3; and

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

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, an acute care hospital, or to the residential setting of a Level I or Level II PRTF for care or

treatment, the transferring outpatient Level I or Level II psychiatric residential treatment facility shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

- 1.a. The Health Insurance Portability and Accountability Act;
- b. 42 U.S.C. 1320d-2 to 1320d-8; and
- c. 45 C.F.R. Parts 160 and 164; or
- 2.a. 42 U.S.C. 290ee-3; and
- b. 42 C.F.R. Part 2.

(12)(a) If a Level I or Level II psychiatric residential treatment facility's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of an owner or deaths of owners, the health records of the Level I or Level II psychiatric residential treatment facility shall:

1. Remain the property of the Level I or Level II psychiatric residential treatment facility; and
2. Be subject to the retention requirements established in subsection (13) of this section.

(b) A Level I or Level II psychiatric residential treatment facility shall have a written plan addressing how to maintain health records in the event of death of an owner or deaths of owners.

(13)(a) Except as established in paragraph (b) or (c) of this subsection, a Level I or Level II psychiatric residential treatment facility shall maintain a health record regarding a recipient for at least six (6) years from the last date of the service or until any audit dispute or issue is resolved beyond six (6) years.

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

1. Six (6) years unless the recipient is a minor; or
2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

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

(14)(a) A Level I or Level II psychiatric residential treatment facility shall comply with 45 C.F.R. Part 164.

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

1. Be treated as confidential;
2. Not be disclosed to an unauthorized individual; and
3. Be disclosed to an authorized representative of:
  - a. The department;
  - b. Federal government; or
  - c. For an enrollee, the managed care organization in which the enrollee is enrolled.

(c)1. Upon request, a Level I or Level II psychiatric residential treatment facility shall provide to an authorized representative of the department, federal government, or managed care organization if applicable, information requested to substantiate:

- a. Staff notes detailing a service that was rendered;
- b. The professional who rendered a service; and
- c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department or managed care organization.

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

Section 8. Medicaid Program Participation Compliance. (1) A Level I or Level II psychiatric residential treatment facility shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672; and
- (c) All applicable state and federal laws.

(2)(a) If a Level I or Level II psychiatric residential treatment facility receives any duplicate payment or overpayment from the department or a managed care organization, regardless of reason, the Level I or Level II psychiatric residential treatment facility shall

return the payment to the department or managed care organization that made the duplicate payment or overpayment in accordance with 907 KAR 1:671.

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

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the Level I or Level II psychiatric residential treatment facility accepts the payment:

1. The payment shall be considered payment in full;
2. A bill for the same service shall not be given to the recipient; and

3. Payment from the recipient for the same service shall not be accepted by the Level I or Level II psychiatric residential treatment facility.

(b)1. A Level I or Level II psychiatric residential treatment facility may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

- a. Recipient requests the service; and
- b. Level I or Level II psychiatric residential treatment facility makes the recipient aware in writing in advance of providing the service that the:

- (i) Recipient is liable for the payment; and
  - (ii) Department is not covering the service.
2. If a recipient makes payment for a service in accordance with subparagraph 1 of this paragraph, the:

- a. Level I or Level II psychiatric residential treatment facility shall not bill the department for the service; and
- b. Department shall not:

- (i) Be liable for any part of the payment associated with the service; and
- (ii) Make any payment to the Level I or Level II psychiatric residential treatment facility regarding the service.

(4)(a) A Level I or Level II psychiatric residential treatment facility attests by the Level I or Level II psychiatric residential treatment facility's staff's or representative's signature that any claim associated with a service is valid and submitted in good faith.

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

1. Department or its designee;
2. Cabinet for Health and Family Services, Office of Inspector General, or its designee;
3. Kentucky Office of Attorney General or its designee;
4. Kentucky Office of the Auditor for Public Accounts or its designee;
5. United States General Accounting Office or its designee; or
6. For an enrollee, managed care organization in which the enrollee is enrolled.

(c)1. If a Level I or Level II psychiatric residential treatment facility receives a request from the:

- a. Department to provide a claim, related information, related documentation, or record for auditing purposes, the Level I or Level II psychiatric residential treatment facility shall provide the requested information to the department within the timeframe requested by the department; or

b. Managed care organization in which an enrollee is enrolled to provide a claim, related information, related documentation, or record for auditing purposes, the Level I or Level II psychiatric residential treatment facility shall provide the requested information to the managed care organization within the timeframe requested by the managed care organization.

2.a. The timeframe requested by the department or managed care organization for a Level I or Level II psychiatric residential treatment facility to provide requested information shall be:

- (i) A reasonable amount of time given the nature of the request and the circumstances surrounding the request; and
- (ii) A minimum of one (1) business day.

b. A Level I or Level II psychiatric residential treatment facility may request a longer timeframe to provide information to the department or a managed care organization if the Level I or Level

II psychiatric residential treatment facility justifies the need for a longer timeframe.

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

2. Willful abuse by a Level I or Level II psychiatric residential treatment facility shall result in the suspension or termination of the Level I or Level II psychiatric residential treatment facility from Medicaid Program participation in accordance with 907 KAR 1:671.

Section 9. Third Party Liability. A Level I or Level II psychiatric residential treatment facility shall comply with KRS 205.622.

Section 10. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A Level I or Level II psychiatric residential treatment facility that chooses to use electronic signatures shall:

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

1. Be adhered to by each of the Level I or Level II psychiatric residential treatment facility's employees, officers, agents, or contractors;

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

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

(b) Develop a consent form that shall:

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

2. Attest to the signature's authenticity; and

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

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

1. A copy of the Level I or Level II psychiatric residential treatment facility's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 11. Auditing Authority. The department or managed care organization in which an enrollee is enrolled shall have the authority to audit any:

(1) Claim;

(2) Health record; or

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

Section 12. Federal Approval and Federal Financial Participation. (1) The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

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

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

(2) The coverage of services provided by a licensed clinical alcohol and drug counselor or licensed clinical alcohol and drug counselor associate shall be contingent and effective upon approval by the Centers for Medicare and Medicaid Services.

Section 13. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

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

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 7, 2015

FILED WITH LRC: July 9, 2015 at 11 a.m.

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

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program outpatient behavioral health services provided by Level I or Level II psychiatric residential treatment facilities (PRTFs). This administrative regulation is being promulgated in conjunction with 907 KAR 9:020, Reimbursement for outpatient behavioral health services provided by Level I or Level II psychiatric residential treatment facilities. To qualify as a provider, a Level I or Level II psychiatric residential treatment facility must be licensed in accordance with 902 KAR 20:320. Level I or Level II PRTFs are authorized to provide, to Medicaid recipients, behavioral health services related to a mental health disorder, substance use disorder, or co-occurring disorders. The array of services includes a screening; an assessment; psychological testing; crisis intervention; mobile crisis services; day treatment; peer support; intensive outpatient program services; individual outpatient therapy; group outpatient therapy; family outpatient therapy; collateral outpatient therapy; service planning; a screening, brief intervention, and referral to treatment for a substance use disorder; assertive community treatment; comprehensive community support services; and therapeutic rehabilitation program services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary - to comply with federal mandates. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment" for all recipients. 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base (to include Level I or Level II psychiatric residential treatment facilities) will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

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

(a) How the amendment will change this existing administrative regulation: The amendment after comments clarifies that a face-to-face encounter is not required for any component of service planning that doesn't require the presence of the recipient or recipient's representative; clarifies that if an individual is under eighteen (18) years of age or unable to direct the development of their service planning then a representative may do so; and also clarifies that an assessment, case management, individual outpatient therapy, group outpatient therapy, peer support services, and mobile crisis services will not be covered if provided during the same period of time as assertive community treatment; and contains miscellaneous wording changes for uniformity or clarity.

(b) The necessity of the amendment to this administrative regulation: The amendment regarding any component of service planning not requiring the presence of the recipient or recipient's representative is necessary for clarity. The amendment allowing for a representative of an individual under eighteen (18) or of an individual unable to direct their service planning is necessary to ensure that an appropriate person is involved in the recipient's service planning. The amendment regarding assertive community treatment is necessary as the above listed services would duplicate components of assertive community treatment. Other revisions are added for uniformity of terms or clarity.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment after comments will conform to the content of the authorizing statutes by clarifying requirements; ensuring appropriate involvement in the development of a recipient's service planning; and preventing the possibility of duplication (and waste of taxpayer money) of services.

(d) How the amendment will assist in the effective administration of the statutes: The amendment after comments will assist in the effective administration of the authorizing statutes by clarifying requirements; ensuring appropriate involvement in the development of a recipient's service planning; and preventing the possibility of duplication (and waste of taxpayer money) of services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Level I and Level II PRTFs, behavioral health professionals authorized to provide services in Level I or Level II PRTFs, and Medicaid recipients who receive services in Level I or Level II PRTFs will be affected by the administrative regulation. The following behavioral health professionals are authorized to provide services in a Level I or Level II psychiatric residential treatment facility: licensed psychologists, advanced practice registered nurses, licensed professional clinical counselors, licensed clinical social workers, licensed marriage and family therapists, licensed psychological practitioners, certified psychologists with autonomous functioning; licensed psychological associates, certified psychologists; certified social workers, licensed professional counselor associates, marriage and family therapy associates, licensed behavior analysts, licensed assistant behavior analysts, licensed professional art therapists, licensed professional art therapist associates, certified alcohol and drug counselors, peer support specialists, community support associates, licensed clinical and alcohol drug counselors (contingent and effective upon approval by the Centers for Medicare and Medicaid Services), and licensed clinical and alcohol drug counselor associates (contingent and effective upon approval by the Centers for Medicare and Medicaid Services). Currently there are twenty-three (23) Level I PRTFs enrolled in the Medicaid Program and zero (0) Level II PRTFs enrolled in the Medicaid Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Level I or Level II PRTFs that wish to expand their scope of care to provide outpatient behavioral health services will need to provide the services in accordance with the parameters/requirements established in this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Level I or Level II PRTFs that choose to expand their scope of care to include outpatient behavioral health services will benefit by receiving Medicaid Program reimbursement for the services. Behavioral health professionals authorized to provide outpatient behavioral health services in a Level I or Level II psychiatric residential treatment facility will benefit by having more employment opportunities in

Kentucky. Medicaid recipients in need of outpatient behavioral health services will benefit from an expanded base of providers from which to receive these services.

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

(a) Initially: DMS is unable to accurately estimate the costs of expanding the outpatient behavioral health services provider base due to the variables involved as DMS cannot estimate the utilization of these services in Level I or Level II PRTFs compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers. However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

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

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

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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

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

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

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its substance use disorder provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure

that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid.) Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

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

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

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

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

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

(c) How much will it cost to administer this program for the first year? DMS is unable to accurately estimate the costs of expanding the outpatient behavioral health services provider base due to the variables involved as DMS cannot estimate the utilization of these services in Level I or Level II PRTFs compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers. However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(d) How much will it cost to administer this program for subsequent years? The response to question (c) also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Medicaid Services

##### Division of Policy and Operations

##### (Amended After Comments)

#### 907 KAR 10:014. Outpatient hospital service coverage provisions and requirements.

RELATES TO: KRS 205.520, 42 C.F.R. 447.53

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.6310, 205.8453

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid Program service and coverage policies for outpatient hospital services.

Section 1. Definitions. (1) "Advanced practice registered nurse" is defined by KRS 314.011(7).

(2) "Approved behavioral health services provider" means

(a) A physician;

(b) A psychiatrist;

(c) An advanced practice registered nurse;

(d) A physician assistant

(e) A licensed psychologist;

(f) A licensed psychological practitioner;

(g) A certified psychologist with autonomous functioning;

(h) A licensed clinical social worker;

(i) A licensed professional clinical counselor;

(j) A licensed marriage and family therapist;

(k) A licensed psychological associate;

(l) A certified psychologist;

(m) A marriage and family therapy associate;

(n) A certified social worker;

(o) A licensed professional counselor associate;

(p) A licensed professional art therapist;

(q) A licensed professional art therapist associate;

(r) A licensed clinical alcohol and drug counselor in accordance with Section 14 of this administrative regulation;

(s) A licensed clinical alcohol and drug counselor associate in accordance with Section 14 of this administrative regulation; or

(t) A certified alcohol and drug counselor.

(3) "Behavioral health practitioner under supervision" means an individual who is:

(a)1. A licensed professional counselor associate;

2. A certified social worker;

3. A marriage and family therapy associate;

4. A licensed professional art therapist associate;

5. A licensed assistant behavior analyst;

6. A physician assistant;

7. A certified alcohol and drug counselor; or

8. A licensed clinical alcohol and drug counselor associate in accordance with Section 14 of this administrative regulation; and

(b) Employed by or under contract with the same billing provider as the billing supervisor.

(4) "Billing provider" means the individual who, group of individual providers that, or organization that:

(a) Is authorized to bill the department or a managed care organization for a service; and

(b) Is eligible to be reimbursed by the department or a managed care organization for a service.

(5) "Billing supervisor" means an individual who is:

(a)1. A physician;

2. A psychiatrist;

3. An advanced practice registered nurse;

4. A licensed psychologist;

5. A licensed clinical social worker;

6. A licensed professional clinical counselor;

7. A licensed psychological practitioner;

8. A certified psychologist with autonomous functioning;

9. A licensed marriage and family therapist;  
10. A licensed professional art therapist; or  
11. A licensed behavior analyst; and  
(b) Employed by or under contract with the same billing provider as the behavioral health practitioner under supervision who renders services under the supervision of the billing supervisor.  
(6) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).  
(7) "Certified psychologist" means an individual who is recognized as a certified psychologist in accordance with 201 KAR Chapter 26.  
(8) "Certified psychologist with autonomous functioning" means an individual who is a certified psychologist with autonomous functioning pursuant to KRS 319.056.  
(9)[(3)] "Certified social worker" means an individual who meets the requirements established in KRS 335.080.  
(10) "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.  
(11)[(4)] "Current procedural terminology code" or "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.  
(12)[(6)] "Department" means the Department for Medicaid Services or its designee.  
(13) "Electronic signature" is defined by KRS 369.102(8).  
(14)[(6)] "Emergency" means that a condition or situation requires an emergency service pursuant to 42 C.F.R. 447.53.  
(15)[(7)] "Emergency medical condition" is defined by 42 U.S.C. 1395dd(e)(1).  
(16)[(8)] "Enrollee" means a recipient who is enrolled with a managed care organization.  
(17) "Face-to-face" means occurring:  
(a) In person; or  
(b) If authorized by 907 KAR 3:170, via a real-time, electronic communication that involves two (2) way interactive video and audio communication.  
(18)[(9)] "Federal financial participation" is defined by 42 C.F.R. 400.203.  
(19)[(40)] "Individualized education program" is defined by 34 C.F.R. 300.320.  
(20)[(44)] "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).  
(21)[(42)] "Licensed behavior analyst" is defined by KRS 319C.010(6).  
(22) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).  
(23) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).  
(24)[(43)] "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.  
(25)[(44)] "Licensed marriage and family therapist" is defined by KRS 335.300(2).  
(26)[(45)] "Licensed professional art therapist" is defined by KRS 309.130(2).  
(27)[(46)] "Licensed professional art therapist associate" is defined by KRS 309.130(3).  
(28)[(47)] "Licensed professional clinical counselor" is defined by KRS 335.500(3).  
(29)[(48)] "Licensed professional counselor associate" is defined by KRS 335.500(4).  
(30)[(49)] "Licensed psychological associate" means an individual who:  
(a)[1-] Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and  
(b)[2-] Meets the licensed psychological associate requirements established in 201 KAR Chapter 26[; or (b) Is a certified psychologist].  
(27)[(20)] "Licensed psychological practitioner" means an individual who[; (a)] meets the requirements established in KRS

319.053[; or  
(b) Is a certified psychologist with autonomous functioning].  
(28)[(24)] "Licensed psychologist" means an individual who:  
(a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and  
(b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.  
(29)[(22)] "Lock-in recipient" means:  
(a) A recipient enrolled in the department's lock-in program pursuant to 907 KAR 1:677; or  
(b) An enrollee enrolled in a managed care organization's lock-in program pursuant to 907 KAR 17:020, Section 8.  
(30) "Marriage and family therapy associate" is defined by KRS 335.300(3).  
(31)[(23)] "Medical necessity" or "medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.  
(32)[(24)] "Nonemergency" means that a condition or situation does not require an emergency service pursuant to 42 C.F.R. 447.53.  
(33) "Peer support specialist" means an individual who meets the peer specialist qualifications established in:  
(a) 908 KAR 2:220;  
(b) 908 KAR 2:230; or  
(c) 908 KAR 2:240.  
(34) "Person-centered service plan" means a plan of services for a recipient that meets the requirements established in 42 C.F.R. 441.540.  
(35) "Physician" is defined by KRS 205.510(11).  
(36) "Physician assistant" is defined by KRS 311.840(3).  
(37)[(25)] "Provider" is defined by KRS 205.8451(7).  
(38) "Provider abuse" is defined by KRS 205.8451(8).  
(39)[(26)] "Recipient" is defined by KRS 205.8451(9).  
(40) "Recipient abuse" is defined by KRS 205.8451(10).  
(41) "Recipient's representative" means:  
(a) For a recipient who is authorized by Kentucky law to provide written consent, an individual acting on behalf of, and with written consent from, the recipient; or  
(b) A legal guardian.  
(42) "Section 504 plan" means a plan developed under the auspices of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (Section 504), to ensure that a child who has a disability identified under the law and is attending an elementary or secondary educational institution receives accommodations to ensure the child's academic success and access to the learning environment.  
(43)[(27)] "Unlisted procedure or service" means a procedure or service:  
(a) For which there is not a specific CPT code; and  
(b) Which is billed using a CPT code designated for reporting unlisted procedures or services.

Section 2. Coverage Criteria. (1)(a) To be covered by the department, the following shall be prior authorized and meet the requirements established in paragraph (b) of this subsection:

1. Magnetic resonance imaging;
  2. Magnetic resonance angiogram;
  3. Magnetic resonance spectroscopy;
  4. Positron emission tomography;
  5. Cineradiography or videoradiography;
  6. Xeroradiography;
  7. Ultrasound subsequent to second obstetric ultrasound;
  8. Myocardial imaging;
  9. Cardiac blood pool imaging;
  10. Radiopharmaceutical procedures;
  11. Gastric restrictive surgery or gastric bypass surgery;
  12. A procedure that is commonly performed for cosmetic purposes;
  13. A surgical procedure that requires completion of a federal consent form; or
  14. An unlisted procedure or service.
- (b) To be covered by the department, an outpatient hospital service, including a service identified in paragraph (a) of this

subsection, shall:

1. Be medically necessary;
  2. Except for a behavioral health service established in Section 5 of this administrative regulation, be clinically appropriate pursuant to the criteria established in 907 KAR 3:130; and
  3. If provided to a lock-in recipient or enrollee, meet the requirements established in paragraph (c) of this subsection.
- (c) If the lock-in recipient is:
1. Not an enrollee, the outpatient hospital service shall be:
    - a. Provided by the lock-in recipient's designated hospital pursuant to 907 KAR 1:677; or
    - b. A screening or emergency service that meets the requirements of subsection (6)(a) of this section; or
  2. An enrollee, the outpatient hospital service shall be:
    - a. Provided by the enrollee's designated hospital as established by the managed care organization in which the enrollee is enrolled; or
    - b. A screening or emergency service that meets the requirements of subsection (6)(a) of this section.
- (2)(a) The prior authorization requirements established in subsection (1) of this section shall not apply to:

1. ~~[(a)]~~ An emergency service;
  2. ~~[(b)]~~ A radiology procedure if the recipient has a cancer or transplant diagnosis code; or
  3. ~~[(c)]~~ A service provided to a recipient in an observation bed.
- (b) A behavioral health service established in Section 5 of this administrative regulation shall:

1. Be medically necessary; and
2. Not be subject to prior authorization.

(3) A referring physician, a physician who wishes to provide a given service, an advanced practice registered nurse, or a duly-licensed dentist may request prior authorization from the department.

(4) The following covered hospital outpatient services shall be furnished by or under the supervision of a duly licensed physician, or, if applicable, a duly-licensed dentist:

- (a) A diagnostic service ordered by a physician;
- (b) A therapeutic service;
- (c) An emergency room service provided in an emergency situation as determined by a physician; or
- (d) A drug, biological, or injection administered in the outpatient hospital setting.

(5) A covered hospital outpatient service for maternity care may be provided by:

(a) An advanced practice registered nurse who has been designated by the Kentucky Board of Nursing as a nurse midwife; or

(b) A registered nurse who holds a valid and effective permit to practice nurse midwifery issued by the Cabinet for Health and Family Services.

(6) The department shall cover:

- (a) A screening of a lock-in recipient to determine if the lock-in recipient has an emergency medical condition; or
- (b) An emergency service to a lock-in recipient if the department determines that the lock-in recipient had an emergency medical condition when the service was provided.

Section 3. Hospital Outpatient Services Not Covered by the Department. The following services shall not be considered a covered hospital outpatient service:

- (1) An item or service that does not meet the requirements established in Section 2(1) of this administrative regulation;
- (2) A service for which:
  - (a) An individual has no obligation to pay; and
  - (b) No other person has a legal obligation to pay;
- (3) A medical supply or appliance, unless it is incidental to the performance of a procedure or service in the hospital outpatient department and included in the rate of payment established by the Medicaid Program for hospital outpatient services;
- (4) A drug, biological, or injection purchased by or dispensed to a recipient;
- (5) A routine physical examination;
- (6) A nonemergency service, other than a screening in

accordance with Section 2(6)(a) of this administrative regulation, provided to a lock-in recipient:

- (a) In an emergency department of a hospital; or
  - (b) If provided by a hospital that is not the lock-in recipient's designated hospital:
1. Pursuant to 907 KAR 1:677, if the recipient is not an enrollee; or
  2. As established by the managed care organization in which the lock-in recipient is enrolled, if the lock-in recipient is an enrollee.

Section 4. Speech-language Pathology, Physical Therapy, and Occupational Therapy Limits. (1) Speech-language pathology services shall be limited to twenty (20) service visits per calendar year per recipient.

(2) Physical therapy services shall be limited to twenty (20) service visits per calendar year per recipient.

(3) Occupational therapy services shall be limited to twenty (20) service visits per calendar year per recipient.

(4) A service in excess of the limits established in subsection (1), (2), or (3) of this section shall be approved if the service in excess of the limits is determined to be medically necessary by the:

- (a) Department, if the recipient is not enrolled with a managed care organization; or
- (b) Managed care organization in which the enrollee is enrolled, if the recipient is an enrollee.

(5) Prior authorization by the department shall be required for each service visit that exceeds the limit established in subsection (1), (2), or (3) of this section for a recipient who is not enrolled with a managed care organization.

Section 5. Behavioral Health Services. (1) The following behavioral health services shall be covered under this administrative regulation in accordance with the following requirements:

(a) A screening, crisis intervention, or intensive outpatient program service provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
13. A licensed clinical alcohol and drug counselor in accordance with Section 14 of this administrative regulation; or
14. A behavioral health practitioner under supervision:
  - a. In accordance with Section 14 of this administrative regulation; and
  - b. Except for a licensed assistant behavior analyst;

(b) An assessment provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed behavior analyst;
12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
13. A certified psychologist working under the supervision of a



board-approved licensed psychologist;

14. A licensed clinical alcohol and drug counselor in accordance with Section 14 of this administrative regulation; or

15. A behavioral health practitioner under supervision in accordance with Section 14 of this administrative regulation;

(c) Psychological testing provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A certified psychologist with autonomous functioning;

4. A licensed psychological associate working under the supervision of a board-approved licensed psychologist; or

5. A certified psychologist working under the supervision of a board-approved licensed psychologist;

(d) Day treatment or mobile crisis services provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A certified psychologist with autonomous functioning;

4. A licensed clinical social worker;

5. A licensed professional clinical counselor;

6. A licensed professional art therapist;

7. A licensed marriage and family therapist;

8. A physician;

9. A psychiatrist;

10. An advanced practice registered nurse;

11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

12. A certified psychologist working under the supervision of a board-approved licensed psychologist;

13. A licensed clinical alcohol and drug counselor in accordance with Section 14 of this administrative regulation;

14. A behavioral health practitioner under supervision:

a. Except for a licensed assistant behavior analyst; and

b. In accordance with Section 14 of this administrative regulation; or

15. A peer support specialist working under the supervision of an approved behavioral health services provider in accordance with Section 14 of this administrative regulation;

(e) Peer support provided by a peer support specialist working under the supervision of an approved behavioral health services provider in accordance with Section 14 of this administrative regulation;

(f) Individual outpatient therapy, group outpatient therapy, or collateral outpatient therapy provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A certified psychologist with autonomous functioning;

4. A licensed clinical social worker;

5. A licensed professional clinical counselor;

6. A licensed professional art therapist;

7. A licensed marriage and family therapist;

8. A physician;

9. A psychiatrist;

10. An advanced practice registered nurse;

11. A licensed behavior analyst;

12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

13. A certified psychologist working under the supervision of a board-approved licensed psychologist;

14. A licensed clinical alcohol and drug counselor in accordance with Section 14 of this administrative regulation; or

15. A behavioral health practitioner under supervision in accordance with Section 14 of this administrative regulation;

(g) Family outpatient therapy provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A certified psychologist with autonomous functioning;

4. A licensed clinical social worker;

5. A licensed professional clinical counselor;

6. A licensed professional art therapist;

7. A licensed marriage and family therapist;

8. A physician;

9. A psychiatrist;

10. An advanced practice registered nurse;

11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

12. A certified psychologist working under the supervision of a board-approved licensed psychologist;

13. A licensed clinical alcohol and drug counselor in accordance with Section 14 of this administrative regulation; or

14. A behavioral health practitioner under supervision:

a. Except for a licensed assistant behavior analyst; and

b. In accordance with Section 14 of this administrative regulation;

(h) Service planning provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A certified psychologist with autonomous functioning;

4. A licensed clinical social worker;

5. A licensed professional clinical counselor;

6. A licensed professional art therapist;

7. A licensed marriage and family therapist;

8. A physician;

9. A psychiatrist;

10. An advanced practice registered nurse;

11. A licensed behavior analyst;

12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

13. A certified psychologist working under the supervision of a board-approved licensed psychologist; or

14. A behavioral health practitioner under supervision except for:

a. A certified alcohol and drug counselor; or

b. A licensed clinical alcohol and drug counselor associate;

(i) A screening, brief intervention, and referral to treatment for a substance use disorder or SBIRT provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A certified psychologist with autonomous functioning;

4. A licensed clinical social worker;

5. A licensed professional clinical counselor;

6. A licensed professional art therapist;

7. A licensed marriage and family therapist;

8. A physician;

9. A psychiatrist;

10. An advanced practice registered nurse;

11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

12. A certified psychologist working under the supervision of a board-approved licensed psychologist;

13. A licensed clinical alcohol and drug counselor in accordance with Section 14 of this administrative regulation; or

14. A behavioral health practitioner under supervision:

a. Except for a licensed assistant behavior analyst; and

b. In accordance with Section 14 of this administrative regulation;

(j) Assertive community treatment provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A certified psychologist with autonomous functioning;

4. A licensed clinical social worker;

5. A licensed professional clinical counselor;

6. A licensed professional art therapist;

7. A licensed marriage and family therapist;

8. A physician;

9. A psychiatrist;

10. An advanced practice registered nurse;

11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

12. A certified psychologist working under the supervision of a board-approved licensed psychologist;

13. A behavioral health practitioner under supervision except for a:

a. Licensed assistant behavior analyst;

b. Certified alcohol and drug counselor; or

c. Licensed clinical alcohol and drug counselor associate;

14. A peer support specialist working under the supervision of

an approved behavioral health services provider except for a:

- a. Licensed clinical alcohol and drug counselor;
- b. Licensed clinical alcohol and drug counselor associate; or
- c. Certified alcohol and drug counselor; or
- 15. A community support associate;

(k) Comprehensive community support services provided by:

- 1. A licensed psychologist;
- 2. A licensed psychological practitioner;
- 3. A certified psychologist with autonomous functioning;
- 4. A licensed clinical social worker;
- 5. A licensed professional clinical counselor;
- 6. A licensed professional art therapist;
- 7. A licensed marriage and family therapist;
- 8. A physician;
- 9. A psychiatrist;
- 10. An advanced practice registered nurse;
- 11. A licensed behavior analyst;

12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

13. A certified psychologist working under the supervision of a board-approved licensed psychologist;

14. A behavioral health practitioner under supervision except for a:

- a. Licensed clinical alcohol and drug counselor associate; or
- b. Certified alcohol and drug counselor; or
- 15. A community support associate;

(l) Therapeutic rehabilitation program services provided by:

- 1. A licensed psychologist;
- 2. A licensed psychological practitioner;
- 3. A certified psychologist with autonomous functioning;
- 4. A licensed clinical social worker;
- 5. A licensed professional clinical counselor;
- 6. A licensed professional art therapist;
- 7. A licensed marriage and family therapist;
- 8. A physician;
- 9. A psychiatrist;
- 10. An advanced practice registered nurse;
- 11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

12. A certified psychologist working under the supervision of a board-approved licensed psychologist;

13. A behavioral health practitioner under supervision except for a:

- a. Licensed assistant behavior analyst;
- b. Licensed clinical alcohol and drug counselor associate; or
- c. Certified alcohol and drug counselor; or
- 14. A peer support specialist working under the supervision of

an approved behavioral health services provider except for a:

- a. Licensed clinical alcohol and drug counselor;
- b. Licensed clinical alcohol and drug counselor associate; or
- c. Certified alcohol and drug counselor; or
- (m)[services; (b)] Partial hospitalization provided by:

- 1. A licensed psychologist;
- 2. A licensed professional clinical counselor;
- 3. A licensed clinical social worker;
- 4. A licensed marriage and family therapist;
- 5. A physician;
- 6. A psychiatrist;
- 7. An advanced practice registered nurse;
- 8. A licensed psychological practitioner;
- 9. A certified psychologist with autonomous functioning;
- 10. A licensed clinical alcohol and drug counselor in accordance with Section 14 of this administrative regulation;

11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

12. A certified psychologist working under the supervision of a board-approved licensed psychologist; or

13. A behavioral health practitioner under supervision:

a. Except for a licensed assistant behavioral analyst; and

b. In accordance with Section 14 of this administrative regulation[;

(c) Individual outpatient therapy; or

(d) Group outpatient therapy].

(2)(a) A screening shall:

- 1. Determine the likelihood that an individual has a mental health disorder, substance use disorder, or co-occurring disorders;
- 2. Not establish the presence or specific type of disorder; and
- 3. Establish the need for an in-depth assessment.

(b) An assessment shall:

- 1. Include gathering information and engaging in a process with the individual that enables the practitioner to:
  - a. Establish the presence or absence of a mental health disorder, substance use disorder, or co-occurring disorders;
  - b. Determine the individual's readiness for change;
  - c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and
  - d. Engage the individual in the development of an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the individual to develop a plan of care; and

4. Not include psychological or psychiatric evaluations or assessments.

(c) Psychological testing shall:

1. Include:

- a. A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and
- b. Interpretation and a written report of testing results; and
- 2. Be performed by an individual who has met the requirements of KRS Chapter 319 related to the necessary credentials to perform psychological testing.

(d) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:

- a. The recipient; or
- b. Another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals;

3. Shall be provided:

- a. On-site at the outpatient hospital;
- b. As an immediate relief to the presenting problem or threat;

and  
c. In a face-to-face, one-on-one encounter between the provider and the recipient;

4. Shall be followed by a referral to non-crisis services if applicable; and

5. May include:

a. Further service prevention planning that includes:

- (i) Lethal means reduction for suicide risk; or
- (ii) Substance use disorder relapse prevention; or
- b. Verbal de-escalation, risk assessment, or cognitive therapy.

(e) Mobile crisis services shall:

1. Be available twenty-four (24) hours per day, seven (7) days per week, every day of the year;

2. Ensure access to a board-certified or board-eligible psychiatrist, twenty-four (24) hours per day, seven (7) days per week, every day of the year;

3. Be provided for a duration of less than twenty-four (24) hours;

4. Not be an overnight service;

5. Be a multi-disciplinary team-based intervention in a home or community setting that ensures access to mental health and substance use disorder services and supports to:

(i) Reduce symptoms or harm; or

(ii) Safely transition an individual in an acute crisis to the appropriate least restrictive level of care;

6. Involve all services and supports necessary to provide:

- a. Integrated crisis prevention;
- b. Assessment and disposition;
- c. Intervention;
- d. Continuity of care recommendations; and
- e. Follow-up services; and

7. Be provided face-to-face in a home or community setting.

(f)1. Day treatment shall be a non-residential, intensive treatment program for an individual under the age of twenty-one (21) years who has:

- a. A mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders; and
- b. A high risk of out-of-home placement due to a behavioral health issue.

2. Day treatment shall:

a. Consist of an organized behavioral health program of treatment and rehabilitative services;

b. Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skills training;

(iii) Independent living skills that correlate to the age and developmental stage of the recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

c. Be provided:

(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

(ii) On school days and on non-instructional weekdays during the school year including scheduled school breaks;

(iii) In coordination with the recipient's individualized educational plan or Section 504 plan if the recipient has an individualized educational plan or Section 504 plan;

(iv) Under the supervision of a licensed or certified approved behavioral health services provider in accordance with Section 14 of this administrative regulation or a behavioral health practitioner working under clinical supervision in accordance with Section 14 of this administrative regulation; and

(v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider.

3. To provide day treatment services, an outpatient hospital shall have:

a. The capacity to employ staff authorized to provide day treatment services in accordance with this section and to coordinate the provision of services among team members; and

b. Knowledge of substance use disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education plan.

(g)1. Peer support services shall:

a. Be emotional support that is provided by:

(i) An individual who has been trained and certified in accordance with 908 KAR 2:220 and who is experiencing or has experienced a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a recipient by sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change;

(ii) A parent who has been trained and certified in accordance with 908 KAR 2:230 of a child having or who has had a mental health, substance use, or co-occurring mental health and substance use disorder to a parent or family member of a child sharing a similar mental health, substance use, or co-occurring mental health and substance use disorder in order to bring about a desired social or personal change; or

(iii) A family member who has been trained and certified in accordance with 908 KAR 2:230 of a child having or who has had a mental health, substance use, or co-occurring mental health and substance use disorder to a parent or family member of a child sharing a similar mental health, substance use, or co-occurring mental health and substance use disorder in order to bring about a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;

d. Promote socialization, recovery, self-advocacy,

preservation, and enhancement of community living skills for the recipient;

e. Be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

f. Be identified in each recipient's plan of care; and

g. Be designed to contribute directly to the recipient's individualized goals as specified in the recipient's plan of care.

2. To provide peer support services, an outpatient hospital shall:

a. Have demonstrated:

(i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240;

c. Use an approved behavioral health services provider in accordance with Section 14 of this administrative regulation to supervise peer support specialists;

d. Have the capacity to coordinate the provision of services among team members; and

e. Have the capacity to provide on-going continuing education and technical assistance to peer support specialists.

(h)1. [(2)(a)] Intensive outpatient program services shall [be provided by a team]:

a. Be an alternative to or transition from inpatient hospitalization or partial hospitalization for a mental health disorder, substance use disorder, or co-occurring disorders;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Be provided at least three (3) hours per day at least three (3) days per week; and

d. Include:

(i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

(ii) Crisis intervention; or

(iii) Psycho-education.

2. During psycho-education the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, an outpatient hospital shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, physician, or advanced practice registered nurse for medication prescribing and monitoring;

c. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) recipients to one (1) staff person;

d. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles; and

e. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members.

(i) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and well-being of the **recipient[individual]**; and

b. **Recipient's** recovery from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders;

2. Consist of:

- A face-to-face, one-on-one encounter between the provider and recipient; and
- A behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

3. Be aimed at:

- Reducing adverse symptoms;
- Reducing or eliminating the presenting problem of the recipient; and
- Improving functioning; and

4. Not exceed three (3) hours per day unless additional time is medically necessary.

(j)1. Group outpatient therapy shall:

- Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;
- Be provided to promote the:
  - Health and well-being of the **recipient[individual]**; and
  - Recipient's** recovery from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders;
- Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;
- Be provided to a recipient in a group setting:
  - Of nonrelated individuals except for multi-family group therapy; and
  - Not to exceed twelve (12) individuals;
- Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;
- Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;
- Not include physical exercise, a recreational activity, an educational activity, or a social activity; and
- Not exceed three (3) hours per day per recipient unless additional time is medically necessary.

2. The group shall have a:

- Deliberate focus; and
- Defined course of treatment.

3. The subject of group outpatient therapy shall relate to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient of the group and within each recipient's health record.

(k)1. Family outpatient therapy shall consist of a face-to-face behavioral health therapeutic intervention provided:

- Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and
- To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.

3. Family outpatient therapy shall:

- Be provided to promote the:
  - Health and well-being of the **recipient[individual]**; or
  - Recipient's** recovery from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders; and
- Not exceed three (3) hours per day per individual unless additional time is medically necessary.

(l)1. Collateral outpatient therapy shall:

- Consist of a face-to-face behavioral health consultation:
  - With a parent or caregiver of a recipient, household member of a recipient, a recipient's representative, school staff person, treating professional, or other person with custodial control or supervision of the recipient; and
  - That is provided in accordance with the recipient's plan of care; and
- Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age.

2. Consent given to discuss a recipient's treatment with any

person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

(m)1. Service planning shall:

- Involve assisting a recipient in creating an individualized plan for services needed for maximum reduction of the effects of a mental health disorder;
- Involve restoring a recipient's functional level to the recipient's best possible functional level; and
- Be performed using a person-centered planning process.

2. A service plan:

- Shall be directed by the:
  - Recipient; or**
  - Recipient's representative if the recipient is under the age of eighteen (18) years or is unable to provide direction;**
- Shall include practitioners of the recipient's choosing; and
- May include:
  - A mental health advance directive being filed with a local hospital;
  - A crisis plan; or
  - A relapse prevention strategy or plan.

(n) Screening, brief intervention, and referral to treatment for a substance use disorder shall:

- Be an evidence-based early intervention approach for an individual with non-dependent substance use in order to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; and

2. Consist of:

- Using a standardized screening tool to assess an individual for risky substance use behavior;
- Engaging a recipient, who demonstrates risky substance use behavior, in a short conversation and providing feedback and advice to the recipient; and
- Referring a recipient to additional mental health disorder, substance use disorder, or co-occurring disorders services if the recipient is determined to need additional services to address **the recipient's** substance use.

(o)1. Assertive community treatment shall:

- Be an evidence-based psychiatric rehabilitation practice which provides a comprehensive approach to service delivery for individuals with a severe mental illness; and
- Include:
  - Assessment;
  - Treatment planning;
  - Case management;
  - Psychiatric services;
  - Medication prescribing and monitoring;
  - Individual outpatient therapy;
  - Group outpatient therapy;
  - Mobile crisis services;
  - Mental health consultation;
  - Family support and basic living skills; or
  - Peer support.

2.a. Mental health consultation shall involve brief, collateral interactions with other treating professionals who may have information for the purpose of treatment planning and service delivery.

- Family support shall involve the assertive community treatment team's working with the recipient's natural support systems to improve family relations in order to:
  - Reduce conflict; and
  - Increase the recipient's autonomy and independent functioning.
- Basic living skills shall be rehabilitative services focused on teaching activities of daily living necessary to maintain independent functioning and community living.

3. To provide assertive community treatment services, an outpatient hospital shall:

- Employ at least one (1) team of multidisciplinary professionals:
  - Led by an approved behavioral health services provider except for a licensed clinical alcohol and drug counselor, a licensed clinical alcohol and drug counselor associate, or a certified alcohol and drug counselor; and

(ii) Comprised of at least four (4) full-time equivalents including a psychiatrist, a nurse, a case manager, a peer support specialist, or an approved behavioral health services provider except for a licensed clinical alcohol and drug counselor, a licensed clinical alcohol and drug counselor associate, or a certified alcohol and drug counselor;

b. Have adequate staffing to ensure that no team's caseload size exceeds ten (10) participants per team member (for example, if the team includes five (5) individuals, the caseload for the team shall not exceed fifty (50) recipients);

c. Have the capacity to:

(i) Employ staff authorized to provide assertive community treatment services in accordance with this paragraph;

(ii) Coordinate the provision of services among team members;

(iii) Provide the full range of assertive community treatment services as stated in this paragraph; and

(iv) Document and maintain individual health records; and

d. Demonstrate experience in serving individuals with persistent and severe mental illness who have difficulty living independently in the community.

(p)1. Comprehensive community support services shall:

a. Be activities necessary to allow an individual to live with maximum independence in the community;

b. Be intended to ensure successful community living through the utilization of skills training as identified in the recipient's plan of care; and

c. Consist of using a variety of psychiatric rehabilitation techniques to:

(i) Improve daily living skills;

(ii) Improve self-monitoring of symptoms and side effects;

(iii) Improve emotional regulation skills;

(iv) Improve crisis coping skills; and

(v) Develop and enhance interpersonal skills.

2. To provide comprehensive community support services, an outpatient hospital shall:

a. Have the capacity to employ staff authorized pursuant to 908 KAR 2:250 to provide comprehensive community support services in accordance with subsection (1)(k) of this section and to coordinate the provision of services among team members; and

b. Meet the requirements for comprehensive community support services established in 908 KAR 2:250.

(q)1. Therapeutic rehabilitation program services shall be:

a. A rehabilitative service for an:

(i) Adult with a severe mental illness; or

(ii) Individual under the age of twenty-one (21) years who has a severe emotional disability; and

b. Designed to maximize the reduction of the effects of a mental health disorder and the restoration of the individual's functional level to the individual's best possible functional level.

2. A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the person-centered service plan.

3. A therapeutic rehabilitation program shall:

a. Be delivered using a variety of psychiatric rehabilitation techniques;

b. Focus on:

(i) Improving daily living skills;

(ii) Self-monitoring of symptoms and side effects;

(iii) Emotional regulation skills;

(iv) Crisis coping skill; and

(v) Interpersonal skills; and

c. Be delivered individually or in a group.

(r)1. [A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist;

10. A licensed professional counselor associate working under

the supervision of a licensed professional clinical counselor;

11. A certified social worker working under the supervision of a licensed clinical social worker;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;

13. A physician assistant working under the supervision of a physician;

14. A licensed professional art therapist;

15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist; or

16. A certified alcohol and drug counselor.

(b) Intensive outpatient program services shall:

1. Be an alternative to or transition from inpatient hospitalization or partial hospitalization for a mental health or substance use disorder;

2. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

3. Be provided at least three (3) hours per day at least three (3) days per week; and

4. Include:

a. Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

b. Crisis intervention; or

c. Psycho-education.

(c) During psycho-education the recipient or recipient's family member shall be:

1. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

2. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

(d) An intensive outpatient program services treatment plan shall:

1. Be individualized; and

2. Focus on stabilization and transition to a lesser level of care.

(e) To provide intensive outpatient program services, an outpatient hospital shall have:

1. Access to a board-certified or board-eligible psychiatrist for consultation;

2. Access to a psychiatrist, other physician, or advanced practiced registered nurse for medication prescribing and monitoring;

3. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) recipients to one (1) staff person;

4. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;

5. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members;

6. The capacity to provide the full range of intensive outpatient program services as stated in this paragraph;

7. Demonstrated experience in serving individuals with behavioral health disorders;

8. The administrative capacity to ensure quality of services;

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

10. The capacity to document and maintain individual case records.

(3)(a) Partial hospitalization shall be provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist;

10. A licensed professional counselor associate working under

the supervision of a licensed professional clinical counselor;

11. A certified social worker working under the supervision of a licensed clinical social worker;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;

13. A physician assistant working under the supervision of a physician;

14. A licensed professional art therapist;

15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist; or

16. A certified alcohol and drug counselor.

(b) Partial hospitalization shall be a short-term (average of four (4) to six (6) weeks), less than twenty-four (24)-hour, intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to a substance use disorder, a mental health disorder, or co-occurring mental health and substance use disorders.

2.[(e)] Partial hospitalization may be provided to an adult or a child.

3.[(d)] Admission criteria for partial hospitalization shall be based on an inability to adequately treat the recipient through community-based therapies or intensive outpatient services.

4.[(e)] A partial hospitalization program shall consist of individual outpatient therapy, group outpatient therapy, family outpatient therapy, or medication management.

5.a.[(f)1-] The department shall not reimburse for educational, vocational, or job training services provided as part of partial hospitalization.

b.[(2-)] An outpatient hospital's partial hospitalization program shall have an agreement with the local educational authority to come into the program to provide all educational components and instruction which are not Medicaid billable or reimbursable.

c.[(3-)] The department shall not reimburse for services identified in a Medicaid-eligible child's individualized education program.

6.[(g)] Partial hospitalization shall typically be:

a.[(1-)] Provided for at least four (4) hours per day; and

b.[(2-)] Focused on one (1) primary presenting problem (i.e. substance use, sexual reactivity, or another problem).

7.[(h)] An outpatient hospital's partial hospitalization program shall:

a.[(1-)] Include the following personnel for the purpose of providing medical care if necessary:

(i)[a-] An advanced practice registered nurse;

(ii)[b-] A physician assistant or physician available on site; and

(iii)[c-] A board-certified or board-eligible psychiatrist available for consultation; and

b.[(2-)] Have the capacity to:

(i)[a-] Provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;

(ii)[b-] Employ required practitioners and coordinate service provision among rendering practitioners; and

(iii)[c-] Provide the full range of services included in the scope of partial hospitalization established in this subsection.

(3) The extent and type of a screening shall depend upon the nature of the problem of the individual seeking or being referred for services.

(4) A diagnosis or clinical impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders™.

(5) The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.

(6) A behavioral health service shall be:

(a) Stated in the recipient's plan of care; and

(b) Provided in accordance with the recipient's plan of care.

(7)(a) An outpatient hospital shall establish a plan of care for each recipient receiving behavioral health services from the outpatient hospital.

(b)1. For a recipient receiving intensive outpatient program services, the recipient's plan of care shall be:

a. Reviewed every thirty (30) days; and

b. Updated every sixty (60) days or earlier if clinically indicated.

2. For a recipient receiving behavioral health services other

than intensive outpatient program services, the recipient's plan of care shall be reviewed and updated every six (6) months or earlier if clinically indicated[(4)(a) Individual outpatient therapy shall be provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;

11. A certified social worker working under the supervision of a licensed clinical social worker;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;

13. A physician assistant working under the supervision of a physician;

14. A licensed professional art therapist;

15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;

16. A licensed behavior analyst; or

17. A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst.

(b) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the individual; or

b. Recovery from a substance related disorder;

2. Consist of:

a. A face-to-face, one-on-one encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning; and

4. Not exceed three (3) hours per day.

(5)(a) Group outpatient therapy provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;

11. A certified social worker working under the supervision of a licensed clinical social worker;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;

13. A physician assistant working under the supervision of a physician;

14. A licensed professional art therapist;

15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;

16. A licensed behavior analyst; or

17. A licensed assistant behavior analyst.

(b)1. Group outpatient therapy shall:

a. Be provided to promote the:

(i) Health and wellbeing of the individual; or

(ii) Recovery from a substance use disorder, mental health disorder, or co-occurring disorders;

b. Consist of a face-to-face behavioral health therapeutic

intervention provided in accordance with the recipient's identified treatment plan;

- c. Be provided to a recipient in a group setting:
    - (i) Of nonrelated individuals; and
    - (ii) Not to exceed twelve (12) individuals in size;
  - d. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;
  - e. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and
  - f. Not exceed three (3) hours per day.
2. The group shall have a:
- a. Deliberate focus; and
  - b. Defined course of treatment.
3. The subject of a group receiving group outpatient therapy shall be related to each recipient participating in the group.
4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record].

Section 6. Additional Behavioral Health Service Limits and Non-covered Behavioral Health Services or Activities. (1)(a) Except as established in paragraph (b) of this subsection, unless a diagnosis is made and documented in the recipient's health record within three (3) visits, the service shall not be covered.

(b) The requirement established in paragraph (a) of this subsection shall not apply to:

- 1. Mobile crisis services;
- 2. Crisis intervention;
- 3. A screening; or
- 4. An assessment.

(2) For a recipient who is receiving assertive community treatment, the following shall not be billed or reimbursed for the same **period of time in which the recipient receives assertive community treatment**[date of service for the recipient]:

- (a) An assessment;
- (b) Case management;
- (c) Individual outpatient therapy;
- (d) Group outpatient therapy;
- (e) Peer support services; or
- (f) Mobile crisis services.

(3) The department shall not reimburse for both a screening and an SBIRT provided to a recipient on the same date of service.

(4) The following services or activities shall not be covered under this administrative regulation:

(a) A service provided to:

- 1. A resident of:
  - a. A nursing facility; or
  - b. An intermediate care facility for individuals with an intellectual disability;

2. An inmate of a federal, local, or state:

- a. Jail;
- b. Detention center; or
- c. Prison; or

3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the outpatient hospital;

(c) A consultation or educational service provided to a recipient or to others;

(d) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of "face-to-face" established in Section 1(17) of this administrative regulation;

(e) Travel time;

(f) A field trip;

(g) A recreational activity;

(h) A social activity; or

(i) A physical exercise activity group.

(5)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation

except as established in Section 5(2)(l)1 of this administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

(6) A billing supervisor arrangement between a billing supervisor and a behavioral health practitioner under supervision shall not:

(a) Violate the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision; or

(b) Substitute for the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision.

(7)(a) Face-to-face contact between a practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a recipient under the age of twenty-one (21) years if the collateral outpatient therapy is in the recipient's plan of care;

2. A family outpatient therapy service in which the corresponding current procedural terminology code establishes that the recipient is not present;

3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or others in which the corresponding current procedural terminology code establishes that the recipient is not present; or

4. A service planning activity in which the corresponding current procedural terminology code establishes that the recipient is not present.

(b) A behavioral health service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

Section 7. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving speech-language pathology services from a speech-language pathologist enrolled with the Medicaid Program, the department shall not reimburse for speech-language pathology services provided to the same recipient during the same time period via the outpatient hospital services program.

Section 8. General[7.] Records Maintenance, Protection, and Security. (1)(a) A provider shall maintain a current health record for each recipient.

(b)1. A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

2. The individual who provided the service shall date and sign the health record within forty-eight (48) hours of[on] the date that the individual provided the service.

(2)(a) Except as established in paragraph (b) or (c) of this subsection, an outpatient hospital[a provider] shall maintain a health record regarding a recipient for at least six (6)[five-(5)] years from the last date of the service or until any audit dispute or issue is resolved beyond six (6)[five-(5)] years.

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

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

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

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

(3)(a) A provider shall comply with 45 C.F.R. Part 164.

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

1. Be treated as confidential;

2. Not be disclosed to an unauthorized individual; and  
 3. Be disclosed to an authorized representative of:  
 a. The department;  
 b. Federal government; or  
 c. For an enrollee, **the** managed care organization in which the enrollee is enrolled.

(c)1. Upon request, an outpatient hospital shall provide to an authorized representative of the department, federal government, or managed care organization if applicable, information requested to substantiate:

a. Staff notes detailing a service that was rendered;  
 b. The professional who rendered a service; and  
 c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department or managed care organization.

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

(4)(a) If an outpatient hospital's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of an owner or deaths of owners, the health records of the outpatient hospital shall:

1. Remain the property of the outpatient hospital; and  
 2. Be subject to the retention requirements established in this section.

(b) An outpatient hospital shall have a written plan addressing how to maintain health records in the event of death of an owner or deaths of owners.

Section 9. Additional Requirements Regarding Behavioral Health Services Health Records. (1) The requirements established in this section shall apply to a health record regarding a behavioral health service.

(2) A health record regarding a recipient who received a behavioral health service shall:

(a) Include:  
 1. An identification and intake record including:  
 a. Name;  
 b. Social Security number;  
 c. Date of intake;  
 d. Home (legal) address;  
 e. Health insurance or Medicaid participation information;  
 f. **If applicable, the** referral source's name and address;  
 g. Primary care physician's name and address;  
 h. The reason the individual is seeking help including the presenting problem and diagnosis;

i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The physical health provider's name; and  
 j. The name of the informant and any other information deemed necessary by the outpatient hospital in order to comply with the requirements of;

(i) This administrative regulation;  
 (ii) The outpatient hospital's licensure board;  
 (iii) State law; or  
 (iv) Federal law;

2. Documentation of the:  
 a. Screening;  
 b. Assessment if an assessment was performed; and  
 c. Disposition if a disposition was performed;  
 3. A complete history including mental status and previous treatment;

4. An identification sheet;  
 5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services; and  
 (b) Be:  
 1. Maintained in an organized central file;  
 2. Furnished upon request;

a. To the Cabinet for Health and Family Services; or  
 b. For an enrollee, to the managed care organization in which the recipient is enrolled or has been enrolled in the past;

3. Made available for inspection and copying by:  
 a. Cabinet for Health and Family Services' personnel; or  
 b. Personnel of the managed care organization in which the recipient is enrolled if applicable;

4. Readily accessible; and  
 5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.

(3) Documentation of a screening shall include:  
 (a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(4)(a) An outpatient hospital's notes regarding a recipient shall:  
 1. Be made within forty-eight (48) hours of each service visit; and

2. Describe the:  
 a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. **Behavioral health practitioner's**[**Therapist's**] intervention;  
 c. Changes in the plan of care if changes are made; and  
 d. Need for continued treatment if deemed necessary.

(b)1. Any edit to notes shall:  
 a. Clearly display the changes; and  
 b. Be initialed and dated by the person who edited the notes.

2. Notes shall not be erased or illegibly marked out.  
 (c)1. Notes recorded by a behavioral health practitioner working under supervision shall be co-signed and dated by the supervising professional within thirty (30) days.

2. If services are provided by a behavioral health practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervising professional which reflects consultations with the behavioral health practitioner working under supervision concerning the:

a. Case; and  
 b. Supervising professional's evaluation of the services being provided to the recipient.

(5) Immediately following a screening of a recipient, the practitioner shall perform a disposition related to:

(a) A provisional diagnosis;  
 (b) A referral for further consultation and disposition, if applicable; or

(c)1. If applicable, termination of services and referral to an outside source for further services; or

2. If applicable, termination of services without a referral to further services.

(6) Any change to a recipient's plan of care shall be documented, signed, and dated by the rendering practitioner and by the recipient or recipient's representative.

(7)(a) Notes regarding services to a recipient shall:  
 1. Be organized in chronological order;

2. Be dated;  
 3. Be titled to indicate the service rendered;

4. State a starting and ending time for the service; and  
 5. Be recorded and signed by the rendering practitioner and include the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not covered under this administrative regulation, or other non-reimbursable contacts shall:

1. Be recorded in the notes; and  
 2. Not be reimbursable.

(8)(a) A termination summary shall:

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

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

a. Final assessment regarding the progress of the individual



toward reaching goals and objectives established in the individual's plan of care:

- b. Final diagnosis of clinical impression; and
- c. Individual's condition upon termination and disposition.

(b) A health record relating to an individual who has been terminated from receiving services shall be fully completed within ten (10) days following termination.

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

(10)(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring outpatient hospital shall, within ten (10) business days of awareness of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

- 1.a. The Health Insurance Portability and Accountability Act;
- b. 42 U.S.C. 1320d-2 to 1320d-8; and
- c. 45 C.F.R. Parts 160 and 164; or
- 2.a. 42 U.S.C. 290ee-3; and
- b. 42 C.F.R. Part 2.

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, or an acute care hospital for care or treatment, the transferring outpatient hospital shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

- 1.a. The Health Insurance Portability and Accountability Act;
- b. 42 U.S.C. 1320d-2 to 1320d-8; and
- c. 45 C.F.R. Parts 160 and 164; or
- 2.a. 42 U.S.C. 290ee-3; and
- b. 42 C.F.R. Part 2.

Section 10.[8-] Medicaid Program Participation Compliance. (1) A provider shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672; and
- (c) All applicable state and federal laws.

(2)(a) If a provider receives any duplicate payment or overpayment from the department or managed care organization, regardless of reason, the provider shall return the payment to the department or managed care organization in accordance with 907 KAR 1:671.

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

- 1. Interpreted to be fraud or abuse; and
- 2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department or a managed care organization makes payment for a covered service and the outpatient hospital accepts the payment:

- 1. The payment shall be considered payment in full;
- 2. A bill for the same service shall not be given to the recipient; and

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

(b)1. An outpatient hospital may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

- a. Recipient requests the service; and
- b. Outpatient hospital makes the recipient aware in writing in advance of providing the service that the:

- (i) Recipient is liable for the payment; and
- (ii) Department is not covering the service.

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

a. Outpatient hospital shall not bill the department for the service; and

b. Department or managed care organization shall not:

- (i) Be liable for any part of the payment associated with the

service; and

(ii) Make any payment to the outpatient hospital regarding the service.

**(c) Except as established in paragraph (b) of this subsection or except for a cost sharing obligation owed by a recipient, a provider shall not bill a recipient for any part of a service provided to the recipient.**

(4)(a) An outpatient hospital attests by the outpatient hospital's staff's or representative's signature that any claim associated with a service is valid and submitted in good faith.

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

- 1. Department or its designee;
- 2. Cabinet for Health and Family Services, Office of Inspector General, or its designee;
- 3. Kentucky Office of Attorney General or its designee;
- 4. Kentucky Office of the Auditor for Public Accounts or its designee;

5. United States General Accounting Office or its designee; or

6. For an enrollee, managed care organization in which the enrollee is enrolled.

(c)1. If an outpatient hospital receives a request from the:

a. Department to provide a claim, related information, related documentation, or record for auditing purposes, the outpatient hospital shall provide the requested information to the department within the timeframe requested by the department; or

b. Managed care organization in which an enrollee is enrolled to provide a claim, related information, related documentation, or record for auditing purposes, the outpatient hospital shall provide the requested information to the managed care organization within the timeframe requested by the managed care organization.

2.a. The timeframe requested by the department or managed care organization for an outpatient hospital to provide requested information shall be:

(i) A reasonable amount of time given the nature of the request and the circumstances surrounding the request; and

(ii) A minimum of one (1) business day.

b. A Level I or Level II psychiatric residential treatment facility may request a longer timeframe to provide information to the department or a managed care organization if the Level I or Level II psychiatric residential treatment facility justifies the need for a longer timeframe.

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

2. Willful abuse by an outpatient hospital shall result in the suspension or termination of the outpatient hospital from Medicaid Program participation.

Section 11.[9-] Third Party Liability. A provider shall comply with KRS 205.622.

Section 12.[10-] Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

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

- 1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

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

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

(b) Develop a consent form that shall:

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

2. Attest to the signature's authenticity; and

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

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

- 1. A copy of the provider's electronic signature policy;
- 2. The signed consent form; and

3. The original filed signature.

Section 13.[14:] Auditing Authority. The department or the managed care organization in which an enrollee is enrolled shall have the authority to audit any:

- (1) Claim;
- (2) Health[,-Medical] record[,-] or
- (3) Documentation associated with any claim or health[medical] record.

Section 14.[12] Federal Approval and Federal Financial Participation. (1) The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(a) (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 15.[13:] Appeal Rights. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

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

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 7, 2015

FILED WITH LRC: July 9, 2015 at 11 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program outpatient hospital services.

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to establish the coverage provisions and requirements regarding Medicaid Program outpatient hospital services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the coverage provisions and requirements regarding Medicaid Program outpatient hospital services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the coverage provisions and requirements regarding Medicaid Program outpatient hospital services.

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

(a) How the amendment will change this existing administrative regulation: The amendment expands the scope of Medicaid covered behavioral health services in an outpatient hospital setting to include screenings; an assessments; psychological testing; crisis intervention; mobile crisis services; day treatment; peer support; family outpatient therapy; collateral outpatient therapy; service planning; a screening, brief intervention, and referral to treatment for a substance use disorder (SBIRT); assertive community treatment; comprehensive community support services; and therapeutic rehabilitation program services. Additional

amendments include inserting definitions necessary for clarity and inserting various program integrity requirements (such as health records requirements.) The amendment after comments clarifies that if an individual is under eighteen (18) years of age or unable to direct the development of their service planning then a representative may do so and also clarifies that an assessment, case management, individual outpatient therapy, group outpatient therapy, peer support services, and mobile crisis services will not be covered if provided during the same period of time as assertive community treatment. The amendment after comments also contains miscellaneous wording changes for uniformity or clarity.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary - to comply with federal mandates. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment" for all recipients. 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the scope of behavioral health services covered in outpatient hospitals will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. The amendment after comments allowing for a representative of an individual under eighteen (18) or of an individual unable to direct their service planning is necessary to ensure that an appropriate person is involved in the recipient's service planning. The amendment after comments regarding assertive community treatment is necessary as the above listed services would duplicate components of assertive community treatment. Other revisions are added for uniformity of terms or clarity.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by complying with a federal mandate to help ensure Medicaid recipient access to behavioral health services. Additionally, it conforms by enhancing program integrity requirements. The amendment after comments will conform to the content of the authorizing statutes by clarifying requirements; ensuring appropriate involvement in the development of a recipient's service planning; and preventing the possibility of duplication (and waste of taxpayer money) of 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 complying with a federal mandate to help ensure Medicaid recipient access to behavioral health services. Additionally, it will assist by enhancing program integrity requirements. The amendment after comments will assist in the effective administration of the authorizing statutes by clarifying requirements; ensuring appropriate involvement in the development of a recipient's service planning; and preventing the possibility of duplication (and waste of taxpayer money) of services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Outpatient hospitals, behavioral health professionals authorized to provide outpatient behavioral health services in outpatient hospitals, and Medicaid recipients in need of outpatient behavioral health services will be affected by the administrative regulation. Currently, there are 107 hospitals with an outpatient department enrolled in the Medicaid Program. The following behavioral health professionals are authorized to provide outpatient behavioral health services in an outpatient hospital: licensed psychologists, advanced practice registered nurses, licensed professional clinical counselors, licensed clinical social

workers, licensed marriage and family therapists, licensed psychological practitioners, licensed psychological associates, certified social workers, licensed professional counselor associates, marriage and family therapy associates, licensed behavior analysts, licensed assistant behavior analysts, licensed professional art therapists, licensed professional art therapist associates, certified alcohol and drug counselors, peer support specialists, and community support associates.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Outpatient hospitals who wish to provide outpatient behavioral health services will need to do so within the parameters established in this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Outpatient hospitals will benefit by receiving Medicaid Program reimbursement for more outpatient behavioral health services than currently covered under the Medicaid Program in an outpatient hospital setting. Behavioral health professionals authorized to provide outpatient behavioral health services will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of outpatient behavioral health services will benefit from an expanded base of providers from which to receive these services.

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

(a) Initially: DMS is unable to accurately estimate the costs of further expanding the behavioral health services covered in the outpatient hospital setting due to the variables involved as DMS cannot estimate the utilization of these services in outpatient hospitals compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers.) However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

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

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

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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

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

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To

qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its substance use disorder provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid.) Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

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

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

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

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

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

(c) How much will it cost to administer this program for the first year? DMS is unable to accurately estimate the costs of further expanding the behavioral health services covered in the outpatient hospital setting due to the variables involved as DMS cannot estimate the utilization of these services in outpatient hospitals

compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers.) However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(d) How much will it cost to administer this program for subsequent years? The response to question (c) also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Policy and Operations**  
**(Amended After Comments)**

**907 KAR 10:016. Coverage provisions and requirements regarding inpatient psychiatric hospital services.**

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 441 Subparts C, D, 456 Subparts G, H, I, 42 U.S.C. 1396a-d[-, EO-2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program [of Medical Assistance]. KRS 205.520(3) authorizes[empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes[sets forth] the Medicaid Program coverage provisions and requirements regarding inpatient[relating to] services provided by[in] psychiatric hospitals[for which payment shall be made by the Medicaid Program in behalf of both the categorically needy and the medically needy].

Section 1. Definitions. (1) "Active treatment" means a covered psychiatric hospital service provided:

(a) In accordance with 42 C.F.R. 441.154; and

(b) By professional staff employed or contracted by a psychiatric hospital.

(2) "Chronic" is defined by KRS 210.005(3).

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Enrollee" means a recipient who is enrolled with a managed care organization.

(5) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(6) "Interdisciplinary team" means:

(a) For a recipient who is under the age of eighteen (18) years:

1. A parent, legal guardian, or caregiver of the recipient;

2. The recipient;

3. Professional staff; and

4. A staff person, if available, who worked with the recipient during the recipient's most recent placement if the recipient has previously been in a psychiatric hospital; or

(b) For a recipient who is eighteen (18) years of age or older:

1. The recipient;

2. Professional staff; and

3. A staff person, if available, who worked with the recipient during the recipient's most recent placement if the recipient has

previously been in a psychiatric hospital.

(7) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(8) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(9) "Mental illness" is defined by KRS 210.005(2).

(10) "Professional staff" means psychiatrists and other physicians, **physician assistants**, psychologists, psychiatric nurses and other nurses, social workers, and other professionals with special education or experience in the care of persons with mental illness and who are involved in the diagnosis and treatment of patients with mental illness.

(11) "Recipient" is defined by KRS 205.8451(9).

Section 2. General Provider Participation Requirements. (1) To be eligible to provide services covered under this administrative regulation, a psychiatric hospital shall:

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

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

(c) Be licensed as a psychiatric hospital in accordance with 902 KAR 20:180;

(d) Meet the facility specification requirements established in 902 KAR 20:170;

(e) Have a utilization review plan for each recipient;

(f) Establish a utilization review process which shall evaluate each Medicaid admission and continued stay prior to the expiration of the Medicaid certification period to determine if the admission or stay is or remains medically necessary;

(g) Be located within the Commonwealth of Kentucky;

(h) Perform and place in each recipient's record a:

1. Medical evaluation;

2. Social evaluation; and

3. Psychiatric evaluation;

(i) Establish a plan of care for each recipient which shall:

1. Address in detail the intensive treatment services to be provided to the recipient;

2. Be placed in the recipient's record; and

3. Meet the master treatment plan requirements established in 902 KAR 20:180; and

(j) If providing services to an individual who is at least sixty-five (65) years of age, be currently certified for participation in the Medicare program.

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

(3) A psychiatric hospital shall:

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

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

(c) Comply with:

1. 907 KAR 1:671;

2. 907 KAR 1:672; and

3. All applicable state and federal laws.

(4)(a) A psychiatric hospital attests by the psychiatric hospital's staff's or representative's signature that any claim associated with a service is valid and submitted in good faith.

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

1. Department or its designee;

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

3. Kentucky Office of Attorney General or its designee;

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

5. United States General Accounting Office or its designee; or

6. For an enrollee, managed care organization in which the enrollee is enrolled.

(c) If a psychiatric hospital receives a request from the:

1. Department to provide a claim, related information, related documentation, or record for auditing purposes, the psychiatric hospital shall provide the requested information to the department within the timeframe requested by the department; or

2. Managed care organization in which an enrollee is enrolled to provide a claim, related information, related documentation, or record for auditing purposes, the psychiatric hospital shall provide the requested information to the managed care organization within the timeframe requested by the managed care organization.

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

2. Willful abuse by a psychiatric hospital provider shall result in the suspension or termination of the psychiatric hospital from Medicaid Program participation.

Section 3. Coverage Requirements. (1) For the department or managed care organization to reimburse for a service covered under this administrative regulation, the service shall be:

(a) Medically necessary; and

(b) Provided:

1. To a recipient:

a. (i) Who is at least sixty-five (65) years of age and requires inpatient psychiatric services; or

(ii) Who is under twenty-one (21) years of age and requires inpatient psychiatric services; and

b. Whose needs require inpatient psychiatric hospital services:

(i) On a daily basis; and

(ii) Under the direction of a physician; and

2. By professional staff of a psychiatric hospital that meets the requirements established in this administrative regulation.

(2) Inpatient psychiatric hospital services shall involve active treatment that shall be reasonably expected to:

(a) Improve the recipient's condition; or

(b) Prevent further regression.

(3) If a recipient is receiving inpatient psychiatric hospital services on the recipient's twenty-first (21st) birthday, the Medicaid Program shall continue to cover the recipient's admission:

(a) As long as the services continue to be medically necessary for the recipient; and

(b) Through the birth month in which the child becomes ~~twenty-two (22)~~~~[twenty-one (21)]~~ years of age.

(4) (a) If a recipient is eligible for Medicare coverage of inpatient psychiatric services, the recipient shall exhaust all Medicare coverage of inpatient psychiatric services prior to being eligible for Medicaid coverage of inpatient psychiatric services.

(b) After exhausting Medicare coverage of inpatient psychiatric services, the department, or managed care organization for an enrollee, shall determine if a continued stay in a psychiatric hospital:

1. Is medically necessary for the recipient; and

2. Can be reasonably expected to:

a. Improve the recipient's condition; or

b. Prevent further regression.

(5) The requirements established in 42 C.F.R. 456, Subpart D, shall apply regarding Medicaid program coverage of inpatient psychiatric hospital services.

Section 4. KRS 202A Related Admission. (1) ~~[Provision of Service. Inpatient services provided in an appropriately licensed psychiatric hospital participating in the Medicaid program shall be limited to recipients of medical assistance age sixty-five (65) or over or under age twenty-one (21) meeting patient status criteria. Services shall be provided in accordance with the federal Medicaid requirements and with Medicaid policies shown in the Psychiatric Inpatient Facility Utilization and Placement Review Manual, revised December 28, 1994 which is hereby incorporated by reference and referred to hereafter as "the manual". The manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also~~

be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

~~Section 2. Durational Limitation. Durational limitation on payment in respect to the aged recipient and children under age twenty-one (21) shall be subject to the utilization review mechanism established by the cabinet and shown in the manual. Notwithstanding a continuing need for psychiatric care, payment for services shall not be continued past the 22nd birthday for patients admitted prior to the 21st birthday.~~

~~Section 3. Condition of Eligibility for Participation. An appropriately accredited psychiatric hospital desiring to participate in the Medicaid program shall be required as a condition of eligibility to participate in the Medicare program when the hospital serves patients eligible for payments under the Medicare program.~~

~~Section 4. Determining Patient Status. Professional staff of the cabinet or an agency operating under its lawful authority pursuant to the terms of its agreement with the cabinet shall review and evaluate the health status and care needs of the recipient in need of psychiatric hospital care giving consideration to the medical diagnosis, care needs, services and health personnel required to meet the needs, and ambulatory care services available in the community to meet those needs.~~

~~(1) The patient shall not qualify for Medicaid patient status unless:~~

~~(a) The person is qualified for admission, and continued stay as appropriate;~~

~~(b) Their needs mandate psychiatric hospital care on a daily basis; and~~

~~(c) As a practical matter, the necessary care can only be provided on an inpatient basis.~~

~~(2) The placement and continued stay criteria shown in Parts II, III and IV of the manual shall be used to:~~

~~(a) Determine patient status;~~

~~(b) Ensure that proper treatment of the individual's psychiatric conditions requires services on an inpatient basis under the direction of a physician;~~

~~(c) Ensure that psychiatric hospital services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services will no longer be needed, or,] For an adult who is at least [chronically mentally ill adults age] sixty-five (65) years of age, has chronic mental illness, and is [and above as described in KRS 210.005, who are] admitted to a psychiatric [the] hospital under a KRS Chapter 202A commitment, the psychiatric hospital shall maintain the recipient at, or restore him to, the greatest possible degree of health and independent functioning.~~

~~(2) [;] For a recipient who was at least [individuals age] sixty-five (65) years of age and [or over] residing in a psychiatric hospital on December 28, 1994, the requirement for admission under a commitment pursuant to KRS Chapter 202A shall not apply [be applicable] if;~~

~~(a) The recipient [individual] continues to reside in the same psychiatric hospital; and~~

~~(b) [(d) Ensure that] Ambulatory care or alternative services available in the community are not sufficient to meet the treatment needs of the recipient.~~

Section 5. Reevaluation of Need for Services. (1) (a) A ~~psychiatric~~~~[All mental]~~ hospital ~~stay~~~~[stays]~~ shall be certified for a specific length of time [;] as deemed medically appropriate by the:

1. Department for a recipient who is not an enrollee; or

2. Managed care organization in which an enrollee is enrolled, if applicable.

(b) In determining the appropriate length of time for a stay, the department or a managed care organization shall consider [utilization review organization considering] the health status and care needs of the individual [applicant or recipient].

(2) (a) A recipient's continued eligibility for inpatient psychiatric hospital services [Patient status] shall be reevaluated at least once every thirty (30) days.

(b) Upon the expiration of a [the] certified length of stay, the Medicaid Program shall not be responsible for the cost of care of a continuing stay unless the recipient or the recipient's [his] authorized representative;

1. Requests a continuing stay; and
2. The:
  - a. Department approves the continued stay; or
  - b. For an enrollee, managed care organization in which the enrollee is enrolled approves the continued stay[the utilization review-organization-certifies additional days].

Section 6. Other Limitations and Exclusions. (1) An admission for diagnostic purposes shall only be covered if the diagnostic procedure cannot be performed on an outpatient basis.

(2) The Medicaid Program shall not reimburse for any day in which a recipient is not present in the psychiatric hospital.

(3) The Medicaid Program shall not reimburse for a court-ordered psychiatric hospital admission unless the department determines that the admission meets the criteria established in Section 3(1) of this administrative regulation.

(4) The Medicaid Program shall not reimburse for:

- (a) An elective admission; or
- (b) An admission for substance use treatment.

Section 7. Records Maintenance. (1)(a) For each recipient, a psychiatric hospital shall maintain a health record that shall:

1. Be:
  - a. Current;
  - b. Readily retrievable;
  - c. Organized;
  - d. Complete; and
  - e. Legible;
2. Meet the record requirements established in
  - a. 902 KAR 20:180;
  - b. KRS 194A.060;
  - c. KRS 434.840 through 434.860;
  - d. KRS 422.317; and
  - e. 42 C.F.R. 431 Subpart F;
3. Document the need for admission and appropriate utilization of services;
  4. Be maintained, including information regarding payments claimed, for a minimum of six (6) years or until an audit dispute or issue is resolved, whichever is longer;
  5. Be made available for inspection or copying or provided to the following upon request:
    - a. A representative of the United States Department for Health and Human Services or its designee;
    - b. The United States Office of the Attorney General or its designee;
    - c. The Commonwealth of Kentucky, Office of the Attorney General or its designee;
    - d. The Commonwealth of Kentucky, Office of the Auditor of Public Accounts or its designee;
    - e. The Commonwealth of Kentucky, Cabinet for Health and Family Services, Office of the Inspector General or its designee;
    - f. The department; or
    - g. Personnel of the managed care organization in which the recipient is enrolled if applicable; and
  6. Contain a:
    - a. Physician's certification statement documenting the medical necessity of the recipient's:
      - (i) Admission to the psychiatric hospital; and
      - (ii) If applicable, continued stay in the psychiatric hospital;
    - b. Copy of the recipient's most recent plan of care that:
      - (i) Has been established and approved by the recipient's physician; and
      - (ii) Shall include the date of the most recent interdisciplinary team review or revision of the plan of care;
    - c. Copy of the Medicare remittance advice of explanation of Medicare benefits if the recipient has Medicare coverage for inpatient psychiatric services; and
    - d. Copy of any Medicare denial letters if applicable.
- (b) A physician's certification statement shall:
  1. Be made no earlier than sixty (60) days prior to the recipient's admission to the psychiatric hospital; or
  2. Not be made prior to the individual applying for Medicaid benefits while in an institutional setting.

(c) A licensed staff or consulting physician shall sign and date a certification statement.

(d) Failure to provide information in accordance with paragraph (a) of this subsection shall result in denial of payment for any service associated with the requested information.

(2) For each recipient, a psychiatric hospital shall have a physician's certification statement documenting the necessity of the psychiatric hospital admission.

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

- (a) 1. The Health Insurance Portability and Accountability Act;
2. 42 U.S.C. 1320d-2 to 1320d-8; and
3. 45 C.F.R. Parts 160 and 164; or
- (b) 1. 42 U.S.C. 290ee-3; and
2. 42 C.F.R. Part 2.

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

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

1. Six (6) years unless the recipient is a minor; or
2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

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

(5)(a) A psychiatric hospital shall comply with 45 C.F.R. Part 164.

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

1. Be treated as confidential; and
2. Not be disclosed to an unauthorized individual.

Section 8. Auditing Authority. The department or the managed care organization in which an enrollee is enrolled shall have the authority to audit any:

- (1) Claim;
- (2) Medical record; or
- (3) Documentation associated with any claim or medical record.

Section 9. Federal Approval and Federal Financial Participation. The Medicaid Program's coverage of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 10.~~[Reconsideration and]~~ Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010~~[When an adverse determination is appealed by the applicant or recipient, the decision shall be reviewed by the cabinet (or its representative) using time frames specified in the manual to determine whether the decision should be reversed.~~

Section 7. Implementation Date. The amendments to this administrative regulation shall be effective with regard to services provided on or after December 28, 1994].

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 7, 2015

FILED WITH LRC: July 9, 2015 at 11 a.m.

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

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) coverage provisions and requirements regarding inpatient services provided in a psychiatric hospital.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's coverage provisions and requirements regarding inpatient services provided in a psychiatric hospital.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's coverage provisions and requirements regarding inpatient services provided in a psychiatric hospital.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing DMS's coverage provisions and requirements regarding inpatient services provided in a psychiatric hospital.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies that this administrative regulation applies to inpatient services provided by a psychiatric hospital; inserts provisions previously stated in material that was incorporated by reference; inserts records maintenance requirements; establishes that DMS's coverage of psychiatric hospital services pursuant to this administrative regulation is contingent upon federal funding and federal approval; eliminates the incorporated material; and contains language and formatting revisions to comply with current KRS Chapter 13A standards. The amendment after comments revises the definition of "professional staff" to include physician assistants and corrects a typographical error regarding the eligibility age of individuals.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify that the requirements of the administrative regulation only apply to inpatient psychiatric hospital services as DMS is concurrently promulgating two (2) new administrative regulations that establish Medicaid program coverage of outpatient psychiatric hospital services. Additionally, the amendment is necessary to eliminate old incorporated material that contained archaic language; insert records maintenance requirements; and insert language ensuring that coverage of services is contingent upon federal funding and federal approval. The amendment after comments is necessary to clarify that physician assistants are considered professional staff and to correct a typographical error.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying the scope of the administrative regulation's applicability as well as ensuring that coverage of the services is contingent upon federal funding and approval. The amendment after comments will conform to the content of the authorizing statutes by clarifying that professional staff includes physician assistants and by correcting a typographical error.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by clarifying the scope of the administrative regulation's applicability as well as ensuring that coverage of the services is contingent upon federal funding and approval. The amendment after comments will assist in the effective administration of the authorizing statutes by

clarifying that professional staff includes physician assistants and by correcting a typographical error.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Psychiatric hospitals will be affected by the amendment. Currently, there are twelve (12) psychiatric hospitals enrolled in the Medicaid Program.

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

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit due to clarify.

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

(a) Initially: DMS will incur no initial costs as a result of the amendment.

(b) On a continuing basis: DMS will incur no continuing cost as a result of the amendment.

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

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

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

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

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10), 42 U.S.C. 1396d(a)(16), 42 U.S.C. 1396d(h), 42 C.F.R. 441.151 and 42 C.F.R. 440.160.

2. State compliance standards. To qualify as a psychiatric hospital, a facility must meet the licensure requirements established in 902 KAR 20:180.

3. Minimum or uniform standards contained in the federal mandate. Per federal Medicaid law, inpatient psychiatric facility services for individuals under twenty-one (21) is not a mandatory Medicaid benefit, but if a state's state plan includes intermediate care facility services for individuals with mental retardation, it must also cover inpatient psychiatric facility services for individuals under twenty-one (21). Additionally, states may be required to provide inpatient psychiatric care under the early and periodic screening, diagnosis and treatment program (EPSDT). Pursuant to 42 C.F.R. 440.160, "Inpatient psychiatric services for individuals under age 21" means services that—

(a) Are provided under the direction of a physician;

(b) Are provided by—

(1) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations, or

(2) A psychiatric facility which is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Council on Accreditation of Services for Families and Children, the Commission on Accreditation of Rehabilitation Facilities, or by any other accrediting organization, with comparable standards, that is

recognized by the State.

(c) Meet the requirements in § 441.151 of this subchapter." Additionally, 42 C.F.R. 441.151 states, "(a) Inpatient psychiatric services for individuals under age 21 must be:

(1) Provided under the direction of a physician;

(2) Provided by—

(i) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations; or

(ii) A psychiatric facility that is not a hospital and is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards that is recognized by the State.

(3) Provided before the individual reaches age 21, or, if the individual was receiving the services immediately before he or she reached age 21, before the earlier of the following—

(i) The date the individual no longer requires the services; or

(ii) The date the individual reaches 22; and

(4) Certified in writing to be necessary in the setting in which the services will be provided (or are being provided in emergency circumstances) in accordance with §441.152.

(b) Inpatient psychiatric services furnished in a psychiatric residential treatment facility as defined in §483.352 of this chapter, must satisfy all requirements in subpart G of part 483 of this chapter governing the use of restraint and seclusion."

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

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

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

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

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

(c) How much will it cost to administer this program for the first year? DMS will incur no costs for the first year as a result of the amendment.

(d) How much will it cost to administer this program for subsequent years? DMS will incur no costs for subsequent years as a result of the amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Medicaid Services

##### Division of Policy and Operations

##### (Amended After Comments)

#### 907 KAR 10:020. Coverage provisions and requirements regarding outpatient psychiatric hospital services.

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

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

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

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Approved behavioral health services provider" means:

(a) A physician;

(b) A psychiatrist;

(c) An advanced practice registered nurse;

(d) A physician assistant;

(e) A licensed psychologist;

(f) A licensed psychological practitioner;

(g) A certified psychologist with autonomous functioning;

(h) A licensed clinical social worker;

(i) A licensed professional clinical counselor;

(j) A licensed marriage and family therapist;

(k) A licensed psychological associate;

(l) A certified psychologist;

(m) A marriage and family therapy associate;

(n) A certified social worker;

(o) A licensed professional counselor associate;

(p) A licensed professional art therapist;

(q) A licensed professional art therapist associate;

(r) A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation;

(s) A licensed clinical alcohol and drug counselor associate in accordance with Section 12 of this administrative regulation; or

(t) A certified alcohol and drug counselor.

(3) "Behavioral health practitioner under supervision" means an individual who is:

(a) 1. A licensed professional counselor associate;

2. A certified social worker;

3. A marriage and family therapy associate;

4. A licensed professional art therapist associate;

5. A licensed assistant behavior analyst;

6. A physician assistant;

7. A certified alcohol and drug counselor; or

8. A licensed clinical alcohol and drug counselor associate in accordance with Section 12 of this administrative regulation; and

(b) Employed by or under contract with the same billing provider as the billing supervisor.

(4) "Billing provider" means the individual who, group of individual providers that, or organization that:

(a) Is authorized to bill the department or a managed care organization for a service; and

(b) Is eligible to be reimbursed by the department or a managed care organization for a service.

(5) "Billing supervisor" means an individual who is:

(a) 1. A physician;

2. A psychiatrist;

3. An advanced practice registered nurse;

4. A licensed psychologist;

5. A licensed clinical social worker;

6. A licensed professional clinical counselor;



7. A licensed psychological practitioner;
8. A certified psychologist with autonomous functioning;
9. A licensed marriage and family therapist;
10. A licensed professional art therapist; or
11. A licensed behavior analyst; and
- (b) Employed by or under contract with the same billing provider as the behavioral health practitioner under supervision who renders services under the supervision of the billing supervisor.
- (6) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).
- (7) "Certified psychologist" means an individual who is recognized as a certified psychologist in accordance with 201 KAR Chapter 26.
- (8) "Certified psychologist with autonomous functioning" means an individual who is a certified psychologist with autonomous functioning pursuant to KRS 319.056.
- (9) "Certified social worker" means an individual who meets the requirements established in KRS 335.080.
- (10) "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.
- (11) "Department" means the Department for Medicaid Services or its designee.
- (12) "Electronic signature" is defined by KRS 369.102(8).
- (13) "Enrollee" means a recipient who is enrolled with a managed care organization.
- (14) "Face-to-face" means occurring:
  - (a) In person; or
  - (b) If authorized by 907 KAR 3:170, via a real-time, electronic communication that involves two (2) way interactive video and audio communication.
- (15) "Federal financial participation" is defined by 42 C.F.R. 400.203.
- (16) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).
- (17) "Licensed behavior analyst" is defined by KRS 319C.010(6).
- (18) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).
- (19) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).
- (20) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.
- (21) "Licensed marriage and family therapist" is defined by KRS 335.300(2).
- (22) "Licensed professional art therapist" is defined by KRS 309.130(2).
- (23) "Licensed professional art therapist associate" is defined by KRS 309.130(3).
- (24) "Licensed professional clinical counselor" is defined by KRS 335.500(3).
- (25) "Licensed professional counselor associate" is defined by KRS 335.500(4).
- (26) "Licensed psychological associate" means an individual who:
  - (a) Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and
  - (b) Meets the licensed psychological associate requirements established in 201 KAR Chapter 26.
- (27) "Licensed psychological practitioner" means an individual who meets the requirements established in KRS 319.053.
- (28) "Licensed psychologist" means an individual who:
  - (a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and
  - (b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.
- (29) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.
- (30) "Marriage and family therapy associate" is defined by KRS 335.300(3).

(31) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(32) "Peer support specialist" means an individual who meets the peer specialist qualifications established in:

- (a) 908 KAR 2:220;
- (b) 908 KAR 2:230; or
- (c) 908 KAR 2:240.

(33) "Person-centered service plan" means a plan of services for a recipient that meets the requirements established in 42 C.F.R. 441.540.

(34) "Physician" is defined by KRS 205.510(11).

(35) "Physician assistant" is defined by KRS 311.840(3).

(36) "Provider" is defined by KRS 205.8451(7).

(37) "Provider abuse" is defined by KRS 205.8451(8).

(38) "Recipient" is defined by KRS 205.8451(9).

(39) "Recipient abuse" is defined by KRS 205.8451(10).

(40) "Recipient's representative" means:

(a) For a recipient who is authorized by Kentucky law to provide written consent, an individual acting on behalf of, and with written consent from, the recipient; or

(b) A legal guardian.

(41) "Section 504 plan" means a plan developed under the auspices of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (Section 504), to ensure that a child who has a disability identified under the law and is attending an elementary or secondary educational institution receives accommodations to ensure the child's academic success and access to the learning environment.

Section 2. General Coverage Requirements. (1) For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(a) Medically necessary; and

(b) Provided:

1. To a recipient; and

2. By a psychiatric hospital that meets the provider participation requirements established in Section 3 of this administrative regulation.

(2)(a) Face-to-face contact between a practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a recipient under the age of twenty-one (21) years if the collateral outpatient therapy is in the recipient's plan of care;

2. A family outpatient therapy service in which the corresponding current procedural terminology code establishes that the recipient is not present;

3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or others in which the corresponding current procedural terminology code establishes that the recipient is not present; or

4. A service planning activity in which the corresponding current procedural terminology code establishes that the recipient is not present.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A billable unit of service shall be actual time spent delivering a service in a face-to-face encounter **except for any component of service planning that does not require the presence of the recipient or recipient's representative.**

(4) A service shall be:

(a) Stated in the recipient's plan of care; and

(b) Provided in accordance with the recipient's plan of care.

(5)(a) A psychiatric hospital shall establish a plan of care for each recipient receiving outpatient services from the psychiatric hospital.

(b) A plan of care shall meet the master treatment plan requirements established in 902 KAR 20:180.

Section 3. Provider Participation. (1)(a) To be eligible to provide services under this administrative regulation, a psychiatric hospital shall:

1. Be currently enrolled as a provider in the Kentucky Medicaid

Program in accordance with 907 KAR 1:672;

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

3. Be licensed as a psychiatric hospital to provide outpatient behavioral health services in accordance with 902 KAR 20:180; and

4. Have:

- a. For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;
- b. Documented experience in serving individuals with behavioral health disorders;
- c. The administrative capacity to ensure quality of services;
- d. A financial management system that provides documentation of services and costs; and
- e. The capacity to document and maintain individual health records.

(b) The documentation referenced in paragraph (a)4.b. of this subsection shall be subject to audit by:

1. The department;
2. The Cabinet for Health and Family Services, Office of Inspector General;
3. A managed care organization, if the psychiatric hospital is enrolled in its network;
4. The Centers for Medicare and Medicaid Services;
5. The Kentucky Office of the Auditor of Public Accounts; or
6. The United States Department of Health and Human Services, Office of the Inspector General.

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

(3) A psychiatric hospital shall:

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

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

Section 4. Covered Services. (1) Except as specified in the requirements stated for a given service, the services covered may be provided for a:

- (a) Mental health disorder;
- (b) Substance use disorder; or
- (c) Co-occurring mental health and substance use disorders.

(2) The following services shall be covered under this administrative regulation in accordance with the following requirements:

(a) A screening, crisis intervention, or intensive outpatient program service provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
13. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation; or
14. A behavioral health practitioner under supervision:

- a. In accordance with Section 12 of this administrative regulation; and
- b. Except for a licensed assistant behavior analyst;
- (b) An assessment provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;

3. A certified psychologist with autonomous functioning;
  4. A licensed clinical social worker;
  5. A licensed professional clinical counselor;
  6. A licensed professional art therapist;
  7. A licensed marriage and family therapist;
  8. A physician;
  9. A psychiatrist;
  10. An advanced practice registered nurse;
  11. A licensed behavior analyst;
  12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
  13. A certified psychologist working under the supervision of a board-approved licensed psychologist;
  14. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation; or
  15. A behavioral health practitioner under supervision in accordance with Section 12 of this administrative regulation;
  - (c) Psychological testing provided by:
1. A licensed psychologist;
  2. A licensed psychological practitioner;
  3. A certified psychologist with autonomous functioning;
  4. A licensed psychological associate working under the supervision of a board-approved licensed psychologist; or
  5. A certified psychologist working under the supervision of a board-approved licensed psychologist;
  - (d) Day treatment or mobile crisis services provided by:
1. A licensed psychologist;
  2. A licensed psychological practitioner;
  3. A certified psychologist with autonomous functioning;
  4. A licensed clinical social worker;
  5. A licensed professional clinical counselor;
  6. A licensed professional art therapist;
  7. A licensed marriage and family therapist;
  8. A physician;
  9. A psychiatrist;
  10. An advanced practice registered nurse;
  11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
  12. A certified psychologist working under the supervision of a board-approved licensed psychologist;
  13. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation;
  14. A behavioral health practitioner under supervision:
- a. Except for a licensed assistant behavior analyst; and
  - b. In accordance with Section 12 of this administrative regulation; or
  15. A peer support specialist working under the supervision of an approved behavioral health services provider in accordance with Section 12 of this administrative regulation;
  - (e) Peer support provided by a peer support specialist working under the supervision of an approved behavioral health services provider in accordance with Section 12 of this administrative regulation;
  - (f) Individual outpatient therapy, group outpatient therapy, or collateral outpatient therapy provided by:
1. A licensed psychologist;
  2. A licensed psychological practitioner;
  3. A certified psychologist with autonomous functioning;
  4. A licensed clinical social worker;
  5. A licensed professional clinical counselor;
  6. A licensed professional art therapist;
  7. A licensed marriage and family therapist;
  8. A physician;
  9. A psychiatrist;
  10. An advanced practice registered nurse;
  11. A licensed behavior analyst;
  12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
  13. A certified psychologist working under the supervision of a board-approved licensed psychologist;
  14. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation; or
  15. A behavioral health practitioner under supervision in

**VOLUME 42, NUMBER 2 – AUGUST 1, 2015**

accordance with Section 12 of this administrative regulation;

(g) Family outpatient therapy provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;

11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

12. A certified psychologist working under the supervision of a board-approved licensed psychologist:

13. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation; or

14. A behavioral health practitioner under supervision:

- a. Except for a licensed assistant behavior analyst; and
- b. In accordance with Section 12 of this administrative

b. in accordance with Section 12 of this administrative regulation:

(h) Service planning provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed behavior analyst;

12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist:

13. A certified psychologist working under the supervision of a board-approved licensed psychologist; or

14. A behavioral health practitioner under supervision except for:

- a. A certified alcohol and drug counselor; or
- b. A licensed clinical alcohol and drug counselor associate:

(i) A screening, brief intervention, and referral to treatment for a substance use disorder or SBIRT provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;

11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist:

12. A certified psychologist working under the supervision of a board-approved licensed psychologist:

13. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation: or

14. A behavioral health practitioner under supervision:

- a. Except for a licensed assistant behavior analyst; and
- b. In accordance with Section 12 of this administrative

b. in accordance with Section 12 of this administrative regulation:

(j) Assertive community treatment provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;

9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
12. A certified psychologist working under the supervision of a board-approved licensed psychologist;

13. A behavioral health practitioner under supervision except for a:

- a. Licensed assistant behavior analyst;
  - b. Certified alcohol and drug counselor; or
  - c. Licensed clinical alcohol and drug counselor associate;
14. A peer support specialist working under the supervision of:

14. A peer support specialist working under the supervision of an approved behavioral health services provider except for a:

- a. Licensed clinical alcohol and drug counselor;
  - b. Licensed clinical alcohol and drug counselor associate; or
  - c. Certified alcohol and drug counselor; or
15. A community support associate:

(k) Comprehensive community support services provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;

10. An advanced practice registered nurse;
11. A licensed behavior analyst;
12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
13. A certified psychologist working under the supervision of a board-approved licensed psychologist;
14. A behavioral health practitioner under supervision except

for a:

- a. Licensed clinical alcohol and drug counselor associate; or  
b. Certified alcohol and drug counselor; or  
15. A community support associate:

(I) Therapeutic rehabilitation program services provided by:

1. A licensed psychologist;
2. A licensed psychological practitioner;
3. A certified psychologist with autonomous functioning;
4. A licensed clinical social worker;
5. A licensed professional clinical counselor;
6. A licensed professional art therapist;
7. A licensed marriage and family therapist;
8. A physician;
9. A psychiatrist;
10. An advanced practice registered nurse;
11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

12. A certified psychologist working under the supervision of a board-approved licensed psychologist;

13. A behavioral health practitioner under supervision except for a:

- a. Licensed assistant behavior analyst;
- b. Licensed clinical alcohol and drug counselor associate; or
- c. Certified alcohol and drug counselor; or
14. A peer support specialist working under the supervision of approved behavioral health services provider except for a:

- (m) Partial hospitalization provided by:

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;
6. A psychiatrist;
7. An advanced practice registered nurse;
8. A licensed psychological practitioner;
9. A certified psychologist with autonomous functioning;

10. A licensed clinical alcohol and drug counselor in accordance with Section 12 of this administrative regulation;

11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

12. A certified psychologist working under the supervision of a board-approved licensed psychologist; or

13. A behavioral health practitioner under supervision:

a. Except for a licensed assistant behavioral analyst; and

b. In accordance with Section 12 of this administrative regulation.

(3)(a) A screening shall:

1. Determine the likelihood that an individual has a mental health disorder, substance use disorder, or co-occurring disorders;

2. Not establish the presence or specific type of disorder; and

3. Establish the need for an in-depth assessment.

(b) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the practitioner to:

a. Establish the presence or absence of a mental health disorder, substance use disorder, or co-occurring disorders;

b. Determine the individual's readiness for change;

c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and

d. Engage the individual in the development of an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the individual to develop a plan of care; and

4. Not include psychological or psychiatric evaluations or assessments.

(c) Psychological testing shall:

1. Include:

a. A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and

b. Interpretation and a written report of testing results; and

2. Be performed by an individual who has met the requirements of KRS Chapter 319 related to the necessary credentials to perform psychological testing.

(d) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:

a. The recipient; or

b. Another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals;

3. Shall be provided:

a. On-site at the psychiatric hospital;

b. As an immediate relief to the presenting problem or threat; and

c. In a face-to-face, one-on-one encounter between the provider and the recipient;

4. Shall be followed by a referral to non-crisis services if applicable; and

5. May include:

a. Further service prevention planning that includes:

(i) Lethal means reduction for suicide risk; or

(ii) Substance use disorder relapse prevention; or

b. Verbal de-escalation, risk assessment, or cognitive therapy.

(e) Mobile crisis services shall:

1. Be available twenty-four (24) hours per day, seven (7) days per week, every day of the year;

2. Ensure access to a board-certified or board-eligible psychiatrist twenty-four (24) hours per day, seven (7) days per week, every day of the year;

3. Be provided for a duration of less than twenty-four (24) hours;

4. Not be an overnight service;

5. Be a multi-disciplinary team-based intervention in a home or community setting that ensures access to mental health and substance use disorder services and supports to:

(i) Reduce symptoms or harm; or

(ii) Safely transition an individual in an acute crisis to the appropriate least restrictive level of care;

6. Involve all services and supports necessary to provide:

a. Integrated crisis prevention;

b. Assessment and disposition;

c. Intervention;

d. Continuity of care recommendations; and

e. Follow-up services; and

7. Be provided face-to-face in a home or community setting.

(f)1. Day treatment shall be a non-residential, intensive treatment program for an individual under the age of twenty-one (21) years who has:

a. A mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders; and

b. A high risk of out-of-home placement due to a behavioral health issue.

2. Day treatment shall:

a. Consist of an organized, behavioral health program of treatment and rehabilitative services;

b. Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skills training;

(iii) Independent living skills that correlate to the age and developmental stage of the recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

c. Be provided:

(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

(ii) On school days and on non-instructional weekdays during the school year including scheduled school breaks;

(iii) In coordination with the recipient's individualized educational plan or Section 504 plan if the recipient has an individualized educational plan or Section 504 plan;

(iv) Under the supervision of a licensed or certified approved behavioral health services provider in accordance with Section 12 of this administrative regulation or a behavioral health practitioner working under clinical supervision in accordance with Section 12 of this administrative regulation; and

(v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider.

3. To provide day treatment services, a psychiatric hospital shall have:

a. The capacity to employ staff authorized to provide day treatment services in accordance with this section and to coordinate the provision of services among team members; and

b. Knowledge of substance use disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education plan.

(g)1. Peer support services shall:

a. Be emotional support that is provided by:

(i) An individual who has been trained and certified in accordance with 908 KAR 2:220 and who is experiencing or has experienced a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a recipient by sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change;

(ii) A parent who has been trained and certified in accordance with 908 KAR 2:230 of a child having or who has had a mental health, substance use, or co-occurring mental health and substance use disorder to a parent or family member of a child sharing a similar mental health, substance use, or co-occurring mental health and substance use disorder in order to bring about a desired social or personal change; or

(iii) A family member who has been trained and certified in

accordance with 908 KAR 2:230 of a child having or who has had a mental health, substance use, or co-occurring mental health and substance use disorder to a parent or family member of a child sharing a similar mental health, substance use, or co-occurring mental health and substance use disorder in order to bring about a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;

d. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

e. Be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

f. Be identified in each recipient's plan of care; and

g. Be designed to contribute directly to the recipient's individualized goals as specified in the recipient's plan of care.

2. To provide peer support services, a psychiatric hospital shall:

a. Have demonstrated:

(i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240;

c. Use an approved behavioral health services provider in accordance with Section 12 of this administrative regulation to supervise peer support specialists;

d. Have the capacity to coordinate the provision of services among team members; and

e. Have the capacity to provide on-going continuing education and technical assistance to peer support specialists.

(h)1. Intensive outpatient program services shall:

a. Be an alternative to or transition from inpatient hospitalization or partial hospitalization for a mental health disorder, substance use disorder, or co-occurring disorders;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Be provided at least three (3) hours per day at least three (3) days per week; and

d. Include:

(i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

(ii) Crisis intervention; or

(iii) Psycho-education.

2. During psycho-education the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a psychiatric hospital shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, physician, or advanced practice registered nurse for medication prescribing and monitoring;

c. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) recipients to one (1) staff person;

d. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles; and

e. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members.

(i) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and well-being of the recipient[individual]; and

b. Recipient's recovery from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders;

2. Consist of:

a. A face-to-face, one-on-one encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning; and

4. Not exceed three (3) hours per day unless additional time is medically necessary.

(j)1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;

b. Be provided to promote the:

(i) Health and well-being of the recipient[individual]; and

(ii) Recipient's recovery from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders;

c. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

d. Be provided to a recipient in a group setting:

(i) Of nonrelated individuals except for multi-family group therapy; and

(ii) Not to exceed twelve (12) individuals;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;

f. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h. Not exceed three (3) hours per day per recipient unless additional time is medically necessary.

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of group outpatient therapy shall relate to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

(k)1. Family outpatient therapy shall consist of a face-to-face behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.

3. Family outpatient therapy shall:

a. Be provided to promote the:

(i) Health and well-being of the recipient[individual]; or

(ii) Recipient's recovery from a substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders; and

b. Not exceed three (3) hours per day per individual unless additional time is medically necessary.

(l)1. Collateral outpatient therapy shall:

a. Consist of a face-to-face behavioral health consultation:

(i) With a parent or caregiver of a recipient, household member of a recipient, recipient's representative, school staff person, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's plan of care; and

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age.

2. Consent to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

(m)1. Service planning shall:

a. Involve assisting a recipient in creating an individualized plan for services needed for maximum reduction of the effects of a mental health disorder;

b. Involve restoring a recipient's functional level to the recipient's best possible functional level; and

c. Be performed using a person-centered planning process.

2. A service plan:

a. Shall be directed by the;

**(i) Recipient; or**

**(ii) Recipient's representative if the recipient is under the age of eighteen (18) years or is unable to provide direction;**

b. Shall include practitioners of the recipient's choosing; and

c. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan.

(n) Screening, brief intervention, and referral to treatment for a substance use disorder shall:

1. Be an evidence-based early intervention approach for an individual with non-dependent substance use in order to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; and

2. Consist of:

a. Using a standardized screening tool to assess an individual for risky substance use behavior;

b. Engaging a recipient who demonstrates risky substance use behavior in a short conversation and providing feedback and advice to the recipient; and

c. Referring a recipient to additional mental health disorder, substance use disorder, or co-occurring disorders services if the recipient is determined to need additional services to address **the recipient's** substance use.

(o)1. Assertive community treatment shall:

a. Be an evidence-based psychiatric rehabilitation practice which provides a comprehensive approach to service delivery for individuals with a severe mental illness; and

b. Include:

(i) Assessment;

(ii) Treatment planning;

(iii) Case management;

(iv) Psychiatric services;

(v) Medication prescribing and monitoring;

(vi) Individual outpatient therapy;

(vii) Group outpatient therapy;

(viii) Mobile crisis services;

(ix) Mental health consultation;

(x) Family support and basic living skills; or

(xi) Peer support.

2.a. Mental health consultation shall involve brief, collateral interactions with other treating professionals who may have information for the purpose of treatment planning and service delivery.

b. Family support shall involve the assertive community treatment team's working with the recipient's natural support systems to improve family relations in order to:

(i) Reduce conflict; and

(ii) Increase the recipient's autonomy and independent functioning.

c. Basic living skills shall be rehabilitative services focused on teaching activities of daily living necessary to maintain independent

functioning and community living.

3. To provide assertive community treatment services, a psychiatric hospital shall:

a. Employ at least one (1) team of multidisciplinary professionals:

(i) Led by an approved behavioral health services provider except for a licensed clinical alcohol and drug counselor, a licensed clinical alcohol and drug counselor associate, or a certified alcohol and drug counselor; and

(ii) Comprised of at least four (4) full-time equivalents including a psychiatrist, a nurse, a case manager, a peer support specialist, or an approved behavioral health services provider except for a licensed clinical alcohol and drug counselor, a licensed clinical alcohol and drug counselor associate, or a certified alcohol and drug counselor;

b. Have adequate staffing to ensure that no team's caseload size exceeds ten (10) participants per team member (for example, if the team includes five (5) individuals, the caseload for the team shall not exceed fifty (50) recipients);

c. Have the capacity to:

(i) Employ staff authorized to provide assertive community treatment services in accordance with this paragraph;

(ii) Coordinate the provision of services among team members;

(iii) Provide the full range of assertive community treatment services as stated in this paragraph; and

(iv) Document and maintain individual health records; and

d. Demonstrate experience in serving individuals with persistent and severe mental illness who have difficulty living independently in the community.

(p)1. Comprehensive community support services shall:

a. Be activities necessary to allow an individual to live with maximum independence in the community;

b. Be intended to ensure successful community living through the utilization of skills training as identified in the recipient's plan of care; and

c. Consist of using a variety of psychiatric rehabilitation techniques to:

(i) Improve daily living skills;

(ii) Improve self-monitoring of symptoms and side effects;

(iii) Improve emotional regulation skills;

(iv) Improve crisis coping skills; and

(v) Develop and enhance interpersonal skills.

2. To provide comprehensive community support services, a psychiatric hospital shall:

a. Have the capacity to employ staff authorized pursuant to 908 KAR 2:250 to provide comprehensive community support services in accordance with subsection (2)(k) of this section and to coordinate the provision of services among team members; and

b. Meet the requirements for comprehensive community support services established in 908 KAR 2:250.

(q)1. Therapeutic rehabilitation program services shall be:

a. A rehabilitative service for an:

(i) Adult with a severe mental illness; or

(ii) Individual under the age of twenty-one (21) years who has a severe emotional disability; and

b. Designed to maximize the reduction of the effects of a mental health disorder and the restoration of the individual's functional level to the individual's best possible functional level.

2. A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the person-centered service plan.

3. A therapeutic rehabilitation program shall:

a. Be delivered using a variety of psychiatric rehabilitation techniques;

b. Focus on:

(i) Improving daily living skills;

(ii) Self-monitoring of symptoms and side effects;

(iii) Emotional regulation skills;

(iv) Crisis coping skills; and

(v) Interpersonal skills; and

c. Be delivered individually or in a group.

(r)1. Partial hospitalization shall be a short-term (average of four (4) to six (6) weeks), less than twenty-four (24)-hour, intensive

treatment program for an individual who is experiencing significant impairment to daily functioning due to a substance use disorder, a mental health disorder, or co-occurring mental health and substance use disorders.

2. Partial hospitalization may be provided to an adult or a child.

3. Admission criteria for partial hospitalization shall be based on an inability to adequately treat the recipient through community-based therapies or intensive outpatient services.

4. A partial hospitalization program shall consist of individual outpatient therapy, group outpatient therapy, family outpatient therapy, or medication management.

5.a. The department shall not reimburse for educational, vocational, or job training services provided as part of partial hospitalization.

b. An outpatient hospital's partial hospitalization program shall have an agreement with the local educational authority to come into the program to provide all educational components and instruction which are not Medicaid billable or reimbursable.

c. The department shall not reimburse for services identified in a Medicaid-eligible child's individualized education program.

6. Partial hospitalization shall typically be:

a. Provided for at least four (4) hours per day; and

b. Focused on one (1) primary presenting problem (i.e. substance use, sexual reactivity, or another problem).

7. An outpatient hospital's partial hospitalization program shall:

a. Include the following personnel for the purpose of providing medical care if necessary:

(i) An advanced practice registered nurse;

(ii) A physician assistant or physician available on site; and

(iii) A board-certified or board-eligible psychiatrist available for consultation; and

b. Have the capacity to:

(i) Provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;

(ii) Employ required practitioners and coordinate service provision among rendering practitioners; and

(iii) Provide the full range of services included in the scope of partial hospitalization established in this subsection.

(4) The extent and type of a screening shall depend upon the nature of the problem of the individual seeking or being referred for services.

(5) A diagnosis or clinical impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders™.

(6) The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.

Section 5. Additional Limits and Non-covered Services or Activities. (1)(a) Except as established in paragraph (b) of this subsection, unless a diagnosis is made and documented in the recipient's health record within three (3) visits, the service shall not be covered.

(b) The requirement established in paragraph (a) of this subsection shall not apply to:

1. Mobile crisis services;

2. Crisis intervention;

3. A screening; or

4. An assessment.

(2) For a recipient who is receiving assertive community treatment, the following shall not be billed or reimbursed for the same **period of time in which the recipient receives assertive community treatment**~~[date of service for the recipient]~~:

(a) An assessment;

(b) Case management;

(c) Individual outpatient therapy;

(d) Group outpatient therapy;

(e) Peer support services; or

(f) Mobile crisis services.

(3) The department shall not reimburse for both a screening and an SBIRT provided to a recipient on the same date of service.

(4) The following services or activities shall not be covered under this administrative regulation:

(a) A service provided to:

1. A resident of:

a. A nursing facility; or

b. An intermediate care facility for individuals with an intellectual disability;

2. An inmate of a federal, local, or state:

a. Jail;

b. Detention center; or

c. Prison; or

3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the psychiatric hospital;

(c) A consultation or educational service provided to a recipient or to others;

(d) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of "face-to-face" established in Section 1(14) of this administrative regulation;

(e) Travel time;

(f) A field trip;

(g) A recreational activity;

(h) A social activity; or

(i) A physical exercise activity group.

(5)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except as established in Section 4(3)(l)1 of this administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

(6) A billing supervisor arrangement between a billing supervisor and a behavioral health practitioner under supervision shall not:

(a) Violate the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision; or

(b) Substitute for the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision.

Section 6. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the same service is covered, during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a psychiatric hospital.

Section 7. Records Maintenance, Documentation, Protection, and Security. (1) A psychiatric hospital shall maintain a current health record for each recipient.

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

(b) The individual who provided the service shall date and sign the health record within forty-eight (48) hours of the date that the individual provided the service.

(3) A health record shall:

(a) Include:

1. An identification and intake record including:

a. Name;

b. Social Security number;

c. Date of intake;

d. Home (legal) address;

e. Health insurance or Medicaid participation information;

f. **If applicable, the** referral source's name and address;

g. Primary care physician's name and address;

h. The reason the individual is seeking help including the presenting problem and diagnosis;

i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The physical health provider's name; and

j. The name of the informant and any other information deemed necessary by the psychiatric hospital in order to comply with the requirements of:

(i) This administrative regulation;

(ii) The psychiatric hospital's licensure board;

(iii) State law; or

(iv) Federal law;

2. Documentation of the:

a. Screening;

b. Assessment if an assessment was performed; and

c. Disposition if a disposition was performed;

3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services; and

(b) Be:

1. Maintained in an organized central file;

2. Furnished upon request:

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

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

3. Made available for inspection and copying by:

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

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

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.

(4) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(5)(a) A psychiatric hospital's notes regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit; and

2. Describe the:

a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. **Behavioral health practitioner's**[**Therapist's**] intervention;

c. Changes in the plan of care if changes are made; and

d. Need for continued treatment if deemed necessary.

(b)1. Any edit to notes shall:

a. Clearly display the changes; and

b. Be initialed and dated by the person who edited the notes.

2. Notes shall not be erased or illegibly marked out.

(c)1. Notes recorded by a behavioral health practitioner working under supervision shall be co-signed and dated by the supervising professional within thirty (30) days.

2. If services are provided by a behavioral health practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervising professional which reflects consultations with the behavioral health practitioner working under supervision concerning the:

a. Case; and

b. Supervising professional's evaluation of the services being provided to the recipient.

(6) Immediately following a screening of a recipient, the practitioner shall perform a disposition related to:

(a) A provisional diagnosis;

(b) A referral for further consultation and disposition, if applicable; or

(c)1. If applicable, termination of services and referral to an

outside source for further services; or

2. If applicable, termination of services without a referral to further services.

(7) Any change to a recipient's plan of care shall be documented, signed, and dated by the rendering practitioner and by the recipient or recipient's representative.

(8)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;

2. Be dated;

3. Be titled to indicate the service rendered;

4. State a starting and ending time for the service; and

5. Be recorded and signed by the rendering practitioner and include the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not covered under this administrative regulation, or other non-reimbursable contacts shall:

1. Be recorded in the notes; and

2. Not be reimbursable.

(9)(a) A termination summary shall:

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

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

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

b. Final diagnosis of clinical impression; and

c. Individual's condition upon termination and disposition.

(b) A health record relating to an individual who has been terminated from receiving services shall be fully completed within ten (10) days following termination.

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

(11)(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring psychiatric hospital shall, within ten (10) business days of awareness of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

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

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

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

2.a. 42 U.S.C. 290ee-3; and

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

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, a Level I psychiatric residential treatment facility, a Level II psychiatric residential treatment facility, or an acute care hospital for care or treatment, the transferring psychiatric hospital shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

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

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

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

2.a. 42 U.S.C. 290ee-3; and

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

(12)(a) If a psychiatric hospital's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of an owner or deaths of owners, the health records of the psychiatric hospital shall:

1. Remain the property of the psychiatric hospital; and

2. Be subject to the retention requirements established in subsection (13) of this section.



(b) A psychiatric hospital shall have a written plan addressing how to maintain health records in the event of death of an owner or deaths of owners.

(13)(a) Except as established in paragraph (b) or (c) of this subsection, a psychiatric hospital shall maintain a health record regarding a recipient for at least six (6) years from the last date of the service or until any audit dispute or issue is resolved beyond six (6) years.

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

1. Six (6) years unless the recipient is a minor; or
2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

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

(14)(a) A psychiatric hospital shall comply with 45 C.F.R. Part 164.

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

1. Be treated as confidential;
2. Not be disclosed to an unauthorized individual; and
3. Be disclosed to an authorized representative of:

- a. The department;
- b. Federal government; or

c. For an enrollee, the managed care organization in which the enrollee is enrolled.

(c)1. Upon request, a psychiatric hospital shall provide to an authorized representative of the department, federal government, or managed care organization if applicable, information requested to substantiate:

- a. Staff notes detailing a service that was rendered;
- b. The professional who rendered a service; and
- c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department.

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

Section 8. Medicaid Program Participation Compliance. (1) A psychiatric hospital shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672; and
- (c) All applicable state and federal laws.

(2)(a) If a psychiatric hospital receives any duplicate payment or overpayment from the department or a managed care organization, regardless of reason, the psychiatric hospital shall return the payment to the department or managed care organization in accordance with 907 KAR 1:671.

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

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the psychiatric hospital accepts the payment:

1. The payment shall be considered payment in full;
2. A bill for the same service shall not be given to the recipient; and
3. Payment from the recipient for the same service shall not be accepted by the psychiatric hospital.

(b)1. A psychiatric hospital may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

- a. Recipient requests the service; and
- b. Psychiatric hospital makes the recipient aware in writing in advance of providing the service that the:
  - (i) Recipient is liable for the payment; and
  - (ii) Department is not covering the service.
2. If a recipient makes payment for a service in accordance

with subparagraph 1 of this paragraph, the:

a. Psychiatric hospital shall not bill the department for the service; and

b. Department shall not:

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

(ii) Make any payment to the psychiatric hospital regarding the service.

(4)(a) A psychiatric hospital attests by the psychiatric hospital's staff's or representative's signature that any claim associated with a service is valid and submitted in good faith.

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

1. Department or its designee;
2. Cabinet for Health and Family Services, Office of Inspector General, or its designee;
3. Kentucky Office of Attorney General or its designee;
4. Kentucky Office of the Auditor for Public Accounts or its designee;
5. United States General Accounting Office or its designee; or
6. For an enrollee, managed care organization in which the enrollee is enrolled.

(c)1. If a psychiatric hospital receives a request from the:

a. Department to provide a claim, related information, related documentation, or record for auditing purposes, the psychiatric hospital shall provide the requested information to the department within the timeframe requested by the department; or

b. Managed care organization in which an enrollee is enrolled to provide a claim, related information, related documentation, or record for auditing purposes, the psychiatric hospital shall provide the requested information to the managed care organization within the timeframe requested by the managed care organization.

2.a. The timeframe requested by the department or managed care organization for a psychiatric hospital to provide requested information shall be:

(i) A reasonable amount of time given the nature of the request and the circumstances surrounding the request; and

(ii) A minimum of one (1) business day.

b. A psychiatric hospital may request a longer timeframe to provide information to the department or a managed care organization if the psychiatric hospital justifies the need for a longer timeframe.

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

2. Willful abuse by a psychiatric hospital shall result in the suspension or termination of the psychiatric hospital from Medicaid Program participation in accordance with 907 KAR 1:671.

Section 9. Third Party Liability. A psychiatric hospital shall comply with KRS 205.622.

Section 10. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A psychiatric hospital that chooses to use electronic signatures shall:

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

1. Be adhered to by each of the psychiatric hospital's employees, officers, agents, or contractors;
2. Identify each electronic signature for which an individual has access; and
3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;
2. Attest to the signature's authenticity; and
3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

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

1. A copy of the psychiatric hospital's electronic signature

policy;

2. The signed consent form; and
3. The original filed signature.

Section 11. Auditing Authority. The department or managed care organization in which an enrollee is enrolled shall have the authority to audit any:

- (1) Claim;
- (2) Health record; or
- (3) Documentation associated with any claim or health record.

Section 12. Federal Approval and Federal Financial Participation. (1) The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

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

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

(2) The coverage of services provided by a licensed clinical alcohol and drug counselor or licensed clinical alcohol and drug counselor associate shall be contingent and effective upon approval by the Centers for Medicare and Medicaid Services.

Section 13. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

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

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 7, 2015

FILED WITH LRC: July 9, 2015 at 11 a.m.

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program outpatient behavioral health services provided by psychiatric hospitals. This administrative regulation is being promulgated in conjunction with 907 KAR 10:025, Reimbursement for outpatient services provided by psychiatric hospitals. To qualify as a provider, a psychiatric hospital must be licensed in accordance with 902 KAR 20:180. Psychiatric hospitals are authorized to provide, to Medicaid recipients, outpatient behavioral health services related to a mental health disorder, substance use disorder, or co-occurring disorders. The array of services includes a screening; an assessment; psychological testing; crisis intervention; mobile crisis services; day treatment; peer support; intensive outpatient program services; individual outpatient therapy; group outpatient therapy; family outpatient therapy; collateral outpatient therapy; service planning; a screening, brief intervention, and referral to treatment for a substance use disorder; assertive community treatment; comprehensive community support services; therapeutic rehabilitation program services; and partial hospitalization.

(b) The necessity of this administrative regulation: This administrative regulation is necessary - to comply with federal mandates. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment" for all recipients. 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the

service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base for outpatient behavioral health services (to include psychiatric hospitals) will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to outpatient behavioral health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to outpatient behavioral health services.

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

(a) How the amendment will change this existing administrative regulation: The amendment after comments clarifies that a face-to-face encounter is not required for any component of service planning that doesn't require the presence of the recipient or recipient's representative; clarifies that if an individual is under eighteen (18) years of age or unable to direct the development of their service planning then a representative may do so; and also clarifies that an assessment, case management, individual outpatient therapy, group outpatient therapy, peer support services, and mobile crisis services will not be covered if provided during the same period of time as assertive community treatment; and contains miscellaneous wording changes for uniformity or clarity.

(b) The necessity of the amendment to this administrative regulation: The amendment regarding any component of service planning not requiring the presence of the recipient or recipient's representative is necessary for clarity. The amendment allowing for a representative of an individual under eighteen (18) or of an individual unable to direct their service planning is necessary to ensure that an appropriate person is involved in the recipient's service planning. The amendment regarding assertive community treatment is necessary as the above listed services would duplicate components of assertive community treatment. Other revisions are added for uniformity of terms or clarity.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment after comments will conform to the content of the authorizing statutes by clarifying requirements; ensuring appropriate involvement in the development of a recipient's service planning; and preventing the possibility of duplication (and waste of taxpayer money) of services.

(d) How the amendment will assist in the effective administration of the statutes: The amendment after comments will assist in the effective administration of the authorizing statutes by clarifying requirements; ensuring appropriate involvement in the development of a recipient's service planning; and preventing the possibility of duplication (and waste of taxpayer money) of services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Psychiatric hospitals, behavioral health professionals authorized to provide outpatient behavioral health services in psychiatric hospitals, and Medicaid recipients in need of outpatient behavioral health services will be affected by the administrative regulation. Currently, there are twelve (12) psychiatric hospitals enrolled in the Medicaid Program. The following behavioral health professionals are authorized to provide services in a Level I or Level II psychiatric residential treatment facility: licensed psychologists, advanced practice registered nurses, licensed professional clinical counselors, licensed clinical social workers, licensed marriage and family therapists, licensed

psychological practitioners, certified psychologists with autonomous functioning; licensed psychological associates, certified psychologists; certified social workers, licensed professional counselor associates, marriage and family therapy associates, licensed behavior analysts, licensed assistant behavior analysts, licensed professional art therapists, licensed professional art therapist associates, certified alcohol and drug counselors, peer support specialists, community support associates, licensed clinical and alcohol drug counselors (contingent and effective upon approval by the Centers for Medicare and Medicaid Services), and licensed clinical and alcohol drug counselor associates (contingent and effective upon approval by the Centers for Medicare and Medicaid Services). Currently there are twenty-three (23) Level I PRTFs enrolled in the Medicaid Program and zero (0) Level II PRTFs enrolled in the Medicaid Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Psychiatric hospitals who wish to provide outpatient behavioral health services will need to comply with the service requirements.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Psychiatric hospitals will benefit by receiving Medicaid Program reimbursement for outpatient behavioral health services. Behavioral health professionals authorized to provide outpatient behavioral health services will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of outpatient behavioral health services will benefit from an expanded base of providers from which to receive these services.

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

(a) Initially: DMS is unable to accurately estimate the costs of expanding the outpatient behavioral health services provider base due to the variables involved as DMS cannot estimate the utilization of these services in psychiatric hospitals compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers.) However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

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

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

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

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

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

## FEDERAL MANDATE ANALYSIS COMPARISON

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

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

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its substance use disorder provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid.) Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

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

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

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS is unable to accurately estimate the costs of expanding the outpatient behavioral health services provider base due to the variables involved as DMS cannot estimate the utilization of these services in psychiatric hospitals compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers.) However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(d) How much will it cost to administer this program for subsequent years? The response to question (c) also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Policy and Operations**  
**(Amended After Comments)**

**907 KAR 15:080. Coverage provisions and requirements regarding outpatient chemical dependency treatment center services.**

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

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

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

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

(a) Medically necessary; and

(b) Provided:

1. To a recipient; and

2. By a chemical dependency treatment center that meets the provider participation requirements established in Section 2 of this administrative regulation.

(2)(a) Face-to-face contact between a practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a recipient under the age of twenty-one (21) years if the collateral outpatient therapy is in the recipient's plan of care;

2. A family outpatient therapy service in which the corresponding current procedural terminology code establishes that the recipient is not present; or

3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or others in which the corresponding current procedural terminology code establishes that the recipient is not present[; or

~~4. A service planning activity in which the corresponding current procedural terminology code establishes that the recipient is not present].~~

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A billable unit of service shall be actual time spent delivering a service in a face-to-face encounter.

(4) A service shall be:

(a) Stated in the recipient's plan of care; and

(b) Provided in accordance with the recipient's plan of care.

(5)(a) A chemical dependency treatment center shall establish a plan of care for each recipient receiving services from a chemical dependency treatment center.

(b) A plan of care shall meet the treatment plan requirements established in 902 KAR 20:160.

Section 2. Provider Participation. (1)(a) To be eligible to provide services under this administrative regulation, a chemical dependency treatment center shall:

1. Be currently enrolled as a provider in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

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

3. Be licensed as a chemical dependency treatment center to provide outpatient behavioral health services in accordance with 902 KAR 20:160; and

4. Have:

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

b. Documented experience in serving individuals with behavioral health disorders;

c. The administrative capacity to ensure quality of services;

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

e. The capacity to document and maintain individual health records.

(b) The documentation referenced in paragraph (a)4.b. of this subsection shall be subject to audit by:

1. The department;

2. The Cabinet for Health and Family Services, Office of Inspector General;

3. A managed care organization, if the chemical dependency treatment center is enrolled in its network;

4. The Centers for Medicare and Medicaid Services;

5. The Kentucky Office of the Auditor of Public Accounts; or

6. The United States Department of Health and Human Services, Office of the Inspector General.

(2) In accordance with 907 KAR 17:015, Section 3(3), a chemical dependency treatment center which provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(3) A chemical dependency treatment center shall:

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

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

Section 3. Covered Services. (1) The services covered may be provided for a substance use disorder.

(2) The following services shall be covered under this administrative regulation in accordance with the following requirements:

(a) A screening, crisis intervention, or intensive outpatient program service provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner;

3. A certified psychologist with autonomous functioning;

4. A licensed clinical social worker;

5. A licensed professional clinical counselor;

6. A licensed professional art therapist;

7. A licensed marriage and family therapist;

8. A physician;

9. A psychiatrist;

10. An advanced practice registered nurse;

11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;  
 12. A certified psychologist working under the supervision of a board-approved licensed psychologist;  
 13. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation; or  
 14. A behavioral health practitioner under supervision:  
 a. In accordance with Section 11 of this administrative regulation; and  
 b. Except for a licensed assistant behavior analyst;  
 (b) An assessment provided by:  
 1. A licensed psychologist;  
 2. A licensed psychological practitioner;  
 3. A certified psychologist with autonomous functioning;  
 4. A licensed clinical social worker;  
 5. A licensed professional clinical counselor;  
 6. A licensed professional art therapist;  
 7. A licensed marriage and family therapist;  
 8. A physician;  
 9. A psychiatrist;  
 10. An advanced practice registered nurse;  
 11. A licensed behavior analyst;  
 12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;  
 13. A certified psychologist working under the supervision of a board-approved licensed psychologist;  
 14. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation; or  
 15. A behavioral health practitioner under supervision in accordance with Section 11 of this administrative regulation;  
 (c) Psychological testing provided by:  
 1. A licensed psychologist;  
 2. A licensed psychological practitioner;  
 3. A certified psychologist with autonomous functioning;  
 4. A licensed psychological associate working under the supervision of a board-approved licensed psychologist; or  
 5. A certified psychologist working under the supervision of a board-approved licensed psychologist;  
 (d) Day treatment or mobile crisis services provided by:  
 1. A licensed psychologist;  
 2. A licensed psychological practitioner;  
 3. A certified psychologist with autonomous functioning;  
 4. A licensed clinical social worker;  
 5. A licensed professional clinical counselor;  
 6. A licensed professional art therapist;  
 7. A licensed marriage and family therapist;  
 8. A physician;  
 9. A psychiatrist;  
 10. An advanced practice registered nurse;  
 11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;  
 12. A certified psychologist working under the supervision of a board-approved licensed psychologist;  
 13. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation;  
 14. A behavioral health practitioner under supervision:  
 a. Except for a licensed assistant behavior analyst; and  
 b. In accordance with Section 11 of this administrative regulation; or  
 15. A peer support specialist working under the supervision of an approved behavioral health services provider in accordance with Section 11 of this administrative regulation;  
 (e) Peer support provided by a peer support specialist working under the supervision of an approved behavioral health services provider in accordance with Section 11 of this administrative regulation;  
 (f) Individual outpatient therapy, group outpatient therapy, or collateral outpatient therapy provided by:  
 1. A licensed psychologist;  
 2. A licensed psychological practitioner;  
 3. A certified psychologist with autonomous functioning;  
 4. A licensed clinical social worker;  
 5. A licensed professional clinical counselor;

6. A licensed professional art therapist;  
 7. A licensed marriage and family therapist;  
 8. A physician;  
 9. A psychiatrist;  
 10. An advanced practice registered nurse;  
 11. A licensed behavior analyst;  
 12. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;  
 13. A certified psychologist working under the supervision of a board-approved licensed psychologist;  
 14. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation; or  
 15. A behavioral health practitioner under supervision in accordance with Section 11 of this administrative regulation;  
 (g) Family outpatient therapy provided by:  
 1. A licensed psychologist;  
 2. A licensed psychological practitioner;  
 3. A certified psychologist with autonomous functioning;  
 4. A licensed clinical social worker;  
 5. A licensed professional clinical counselor;  
 6. A licensed professional art therapist;  
 7. A licensed marriage and family therapist;  
 8. A physician;  
 9. A psychiatrist;  
 10. An advanced practice registered nurse;  
 11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;  
 12. A certified psychologist working under the supervision of a board-approved licensed psychologist;  
 13. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation; or  
 14. A behavioral health practitioner under supervision:  
 a. Except for a licensed assistant behavior analyst; and  
 b. In accordance with Section 11 of this administrative regulation; or  
 (h) A screening, brief intervention, and referral to treatment for a substance use disorder or SBIRT provided by:  
 1. A licensed psychologist;  
 2. A licensed psychological practitioner;  
 3. A certified psychologist with autonomous functioning;  
 4. A licensed clinical social worker;  
 5. A licensed professional clinical counselor;  
 6. A licensed professional art therapist;  
 7. A licensed marriage and family therapist;  
 8. A physician;  
 9. A psychiatrist;  
 10. An advanced practice registered nurse;  
 11. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;  
 12. A certified psychologist working under the supervision of a board-approved licensed psychologist;  
 13. A licensed clinical alcohol and drug counselor in accordance with Section 11 of this administrative regulation; or  
 14. A behavioral health practitioner under supervision:  
 a. Except for a licensed assistant behavior analyst; and  
 b. In accordance with Section 11 of this administrative regulation;  
 (3)(a) A screening shall:  
 1. Determine the likelihood that an individual has a substance use disorder;  
 2. Not establish the presence or specific type of disorder; and  
 3. Establish the need for an in-depth assessment.  
 (b) An assessment shall:  
 1. Include gathering information and engaging in a process with the individual that enables the practitioner to:  
 a. Establish the presence or absence of a substance use disorder;  
 b. Determine the individual's readiness for change;  
 c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and  
 d. Engage the individual in the development of an appropriate treatment relationship;  
 2. Establish or rule out the existence of a clinical disorder or

service need;

3. Include working with the individual to develop a plan of care; and

4. Not include psychological or psychiatric evaluations or assessments.

(c) Psychological testing shall:

1. Include:

a. A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and

b. Interpretation and a written report of testing results; and

2. Be performed by an individual who has met the requirements of KRS Chapter 319 related to the necessary credentials to perform psychological testing.

(d) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:

a. The recipient; or

b. Another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals;

3. Shall be provided:

a. On-site in the facility where the outpatient behavioral health services are provided;

b. As an immediate relief to the presenting problem or threat; and

c. In a face-to-face, one-on-one encounter between the provider and the recipient;

4. Shall be followed by a referral to non-crisis services if applicable; and

5. May include:

a. Further service prevention planning that includes:

(i) Lethal means reduction for suicide risk; or

(ii) Substance use disorder relapse prevention; or

b. Verbal de-escalation, risk assessment, or cognitive therapy.

(e) Mobile crisis services shall:

1. Be available twenty-four (24) hours per day, seven (7) days per week, every day of the year;

2. Ensure access to a board-certified or board-eligible psychiatrist twenty-four (24) hours per day, seven (7) days per week, every day of the year;

3. Be provided for a duration of less than twenty-four (24) hours;

4. Not be an overnight service;

5. Be a multi-disciplinary team-based intervention in a home or community setting that ensures access to substance use disorder services and supports to:

(i) Reduce symptoms or harm; or

(ii) Safely transition an individual in an acute crisis to the appropriate least restrictive level of care;

6. Involve all services and supports necessary to provide:

a. Integrated crisis prevention;

b. Assessment and disposition;

c. Intervention;

d. Continuity of care recommendations; and

e. Follow-up services; and

7. Be provided face-to-face in a home or community setting.

(f) 1. Day treatment shall be a non-residential, intensive treatment program for an individual under the age of twenty-one (21) years who has:

a. A substance use disorder; and

b. A high risk of out-of-home placement due to a behavioral health issue.

2. Day treatment shall:

a. Consist of an organized, behavioral health program of treatment and rehabilitative services;

b. Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skills training;

(iii) Independent living skills that correlate to the age and developmental stage of the recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

c. Be provided:

(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

(ii) On school days and on non-instructional weekdays during the school year including scheduled school breaks;

(iii) In coordination with the recipient's individualized educational plan or Section 504 plan if the recipient has an individualized educational plan or Section 504 plan;

(iv) Under the supervision of a licensed or certified approved behavioral health services provider in accordance with Section 11 of this administrative regulation or a behavioral health practitioner working under clinical supervision in accordance with Section 11 of this administrative regulation; and

(v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider.

3. To provide day treatment services, a chemical dependency treatment center shall have:

a. The capacity to employ staff authorized to provide day treatment services in accordance with this section and to coordinate the provision of services among team members; and

b. Knowledge of substance use disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education plan.

(g) 1. Peer support services shall:

a. Be emotional support that is provided ~~to a recipient~~ by:

(i) An individual who has been trained and certified in accordance with 908 KAR 2:220 or 907 KAR 2:240 and who is experiencing or has experienced a substance use disorder to a recipient by sharing a similar substance use disorder in order to bring about a desired social or personal change;

(ii) A parent who has been trained and certified in accordance with 908 KAR 2:230 of a child having or who has had a substance use disorder to a parent or family member of a child sharing a similar substance use disorder in order to bring about a desired social or personal change; or

(iii) A family member who has been trained and certified in accordance with 908 KAR 2:230 of a child having or who has had a substance use disorder to a parent or family member of a child sharing a similar substance use disorder in order to bring about a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;

d. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

e. Be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

f. Be identified in each recipient's plan of care; and

g. Be designed to contribute directly to the recipient's individualized goals as specified in the recipient's plan of care.

2. To provide peer support services, a chemical dependency treatment center shall:

a. Have demonstrated:

(i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240;

c. Use an approved behavioral health services provider in accordance with Section 11 of this administrative regulation to supervise peer support specialists;

d. Have the capacity to coordinate the provision of services

among team members; and

e. Have the capacity to provide on-going continuing education and technical assistance to peer support specialists.

(h)1. Intensive outpatient program services shall:

a. Be an alternative to or transition from inpatient hospitalization or partial hospitalization for a substance use disorder;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Be provided at least three (3) hours per day at least three (3) days per week; and

d. Include:

(i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

(ii) Crisis intervention; or

(iii) Psycho-education.

2. During psycho-education the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a chemical dependency treatment center shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, physician, or advanced practice registered nurse for medication prescribing and monitoring;

c. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) recipients to one (1) staff person;

d. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles; and

e. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members.

(i) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and well-being of the recipient[individual]; and

b. Recipient's recovery from a substance use disorder;

2. Consist of:

a. A face-to-face, one-on-one encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning; and

d. Not exceed three (3) hours per day unless additional time is medically necessary.

(j)1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;

b. Be provided to promote the:

(i) Health and wellbeing of the recipient[individual]; and

(ii) Recipient's recovery from a substance use disorder;

c. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

d. Be provided to a recipient in a group setting;

(i) Of nonrelated individuals except for multi-family group therapy; and

(ii) Not to exceed twelve (12) individuals;

e. Focus on the psychological needs of the recipients as

evidenced in each recipient's plan of care;

f. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h. Not exceed three (3) hours per day per recipient unless additional time is medically necessary.

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of group outpatient therapy shall relate to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient of the group and within each recipient's health record.

(k)1. Family outpatient therapy shall consist of a face-to-face behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.

3. Family outpatient therapy shall:

a. Be provided to promote the:

(i) Health and well-being of the recipient[individual]; or

(ii) Recipient's recovery from a substance use disorder; and

b. Not exceed three (3) hours per day per individual unless additional time is medically necessary.

(l)1. Collateral outpatient therapy shall:

a. Consist of a face-to-face behavioral health consultation:

(i) With a parent or caregiver of a recipient, household member of a recipient, recipient's representative, school staff person, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's plan of care; and

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age.

2. Consent given to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed by the recipient or recipient's representative and filed in the recipient's health record.

(m) Screening, brief intervention, and referral to treatment for a substance use disorder shall:

1. Be an evidence-based early-intervention approach for an individual with non-dependent substance use in order to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; and

2. Consist of:

a. Using a standardized screening tool to assess an individual for risky substance use behavior;

b. Engaging a recipient, who demonstrates risky substance use behavior, in a short conversation and providing feedback and advice to the recipient; and

c. Referring a recipient to additional substance use disorder services if the recipient is determined to need additional services to address the recipient's substance use.

(4) The extent and type of a screening shall depend upon the nature of the problem of the individual seeking or being referred for services.

(5) A diagnosis or clinical impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders™.

(6) The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.

Section 4. Additional Limits and Non-covered Services or Activities. (1)(a) Except as established in paragraph (b) of this

subsection, unless a diagnosis is made and documented in the recipient's health record within three (3) visits, the service shall not be covered.

(b) The requirement established in paragraph (a) of this subsection shall not apply to:

1. Mobile crisis services;
2. Crisis intervention;
3. A screening; or
4. An assessment.

(2) The department shall not reimburse for both a screening and an SBIRT provided to a recipient on the same date of service.

(3) The following services or activities shall not be covered under this administrative regulation:

(a) A service provided to:

1. A resident of:

a. A nursing facility; or

b. An intermediate care facility for individuals with an intellectual disability;

2. An inmate of a federal, local, or state:

a. Jail;

b. Detention center; or

c. Prison; or

3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) A consultation or educational service provided to a recipient or to others;

(c) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of "face-to-face" established in 907 KAR 15:005, Section 1(14);

(d) Travel time;

(e) A field trip;

(f) A recreational activity;

(g) A social activity; or

(h) A physical exercise activity group.

(4)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except as established in Section 3(3)(l)1 of this administrative regulation.

(b) A third-party contract shall not be covered under this administrative regulation.

(5) A billing supervisor arrangement between a billing supervisor and a behavioral health practitioner under supervision shall not:

(a) Violate the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision; or

(b) Substitute for the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision.

Section 5. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the same service is covered, during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a chemical dependency treatment center.

Section 6. Records Maintenance, Documentation, Protection, and Security. (1) A chemical dependency treatment center shall maintain a current health record for each recipient.

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

(b) The individual who provided the service shall date and sign the health record within forty-eight (48) hours of the date that the individual provided the service except as established in subsection (5)(a) of this section.

(3) A health record shall:

(a) Include:

1. An identification and intake record including:

a. Name;

b. Social Security number;

c. Date of intake;

d. Home (legal) address;

e. Health insurance or Medicaid participation information;

f. **If applicable, the** referral source's name and address;

g. Primary care physician's name and address;

h. The reason the individual is seeking help including the presenting problem and diagnosis;

i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The physical health provider's name; and

j. The name of the informant and any other information deemed necessary by the chemical dependency treatment center in order to comply with the requirements of:

(i) This administrative regulation;

(ii) The chemical dependency treatment center's licensure board;

(iii) State law; or

(iv) Federal law;

2. Documentation of the:

a. Screening;

b. Assessment if an assessment was performed; and

c. Disposition if a disposition was performed;

3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services; and

(b) Be:

1. Maintained in an organized central file;

2. Furnished upon request:

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

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

3. Made available for inspection and copying by:

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

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

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.

(4) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(5)(a) A chemical dependency treatment center's notes regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit; and

2. Describe the:

a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. **Behavioral health practitioner's**[Therapist's] intervention;

c. Changes in the plan of care if changes are made; and

d. Need for continued treatment if deemed necessary.

(b)1. Any edit to notes shall:

a. Clearly display the changes; and

b. Be initialed and dated by the person who edited the notes.

2. Notes shall not be erased or illegibly marked out.

(c)1. Notes recorded by a behavioral health practitioner working under supervision shall be co-signed and dated by the supervising professional within thirty (30) days.

2. If services are provided by a behavioral health practitioner working under supervision, there shall be a monthly supervisory



note recorded by the supervising professional which reflects consultations with the behavioral health practitioner working under supervision concerning the:

- a. Case; and
- b. Supervising professional's evaluation of the services being provided to the recipient.

(6) Immediately following a screening of a recipient, the practitioner shall perform a disposition related to:

- (a) A provisional diagnosis;
- (b) A referral for further consultation and disposition, if applicable; or
- (c)1. If applicable, termination of services and referral to an outside source for further services; or
2. If applicable, termination of services without a referral to further services.

(7) Any change to a recipient's plan of care shall be documented, signed, and dated by the rendering practitioner and by the recipient or recipient's representative.

(8)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;
2. Be dated;
3. Be titled to indicate the service rendered;
4. State a starting and ending time for the service; and
5. Be recorded and signed by the rendering practitioner and include the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not covered under this administrative regulation, or other non-reimbursable contacts shall:

1. Be recorded in the notes; and
2. Not be reimbursable.

(9)(a) A termination summary shall:

1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and
2. Contain a summary of the significant findings and events during the course of treatment including the:
  - a. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's plan of care;
  - b. Final diagnosis of clinical impression; and
  - c. Individual's condition upon termination and disposition.

(b) A health record relating to an individual who has been terminated from receiving services shall be fully completed within ten (10) days following termination.

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

(11)(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring chemical dependency treatment center shall, within ten (10) business days of awareness of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

- 1.a. The Health Insurance Portability and Accountability Act;
- b. 42 U.S.C. 1320d-2 to 1320d-8; and
- c. 45 C.F.R. Parts 160 and 164; or
- 2.a. 42 U.S.C. 290ee-3; and
- b. 42 C.F.R. Part 2.

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, a Level I psychiatric residential treatment facility, a Level II psychiatric residential treatment facility, or an acute care hospital for care or treatment, the transferring chemical dependency treatment center shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

- 1.a. The Health Insurance Portability and Accountability Act;
- b. 42 U.S.C. 1320d-2 to 1320d-8; and

- c. 45 C.F.R. Parts 160 and 164; or
- 2.a. 42 U.S.C. 290ee-3; and
- b. 42 C.F.R. Part 2.

(12)(a) If a chemical dependency treatment center's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of an owner or deaths of owners, the health records of the chemical dependency treatment center shall:

1. Remain the property of the chemical dependency treatment center; and
2. Be subject to the retention requirements established in subsection (13) of this section.

(b) A chemical dependency treatment center shall have a written plan addressing how to maintain health records in the event of death of an owner or deaths of owners.

(13)(a) Except as established in paragraph (b) or (c) of this subsection, a chemical dependency treatment center shall maintain a health record regarding a recipient for at least six (6) years from the last date of the service or until any audit dispute or issue is resolved beyond six (6) years.

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

1. Six (6) years unless the recipient is a minor; or
2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

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

(14)(a) A chemical dependency treatment center shall comply with 45 C.F.R. Part 164.

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

1. Be treated as confidential;
2. Not be disclosed to an unauthorized individual; and
3. Be disclosed to an authorized representative of:
  - a. The department;
  - b. Federal government; or
  - c. For an enrollee, **the** managed care organization in which the enrollee is enrolled.

(c)1. Upon request, a chemical dependency treatment center shall provide to an authorized representative of the department, federal government, or managed care organization if applicable, information requested to substantiate:

- a. Staff notes detailing a service that was rendered;
- b. The professional who rendered a service; and
- c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department.

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

Section 7. Medicaid Program Participation Compliance. (1) A chemical dependency treatment center shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672; and
- (c) All applicable state and federal laws.

(2)(a) If a chemical dependency treatment center receives any duplicate payment or overpayment from the department or a managed care organization, regardless of reason, the chemical dependency treatment center shall return the payment to the department or managed care organization in accordance with 907 KAR 1:671.

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

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered

service and the chemical dependency treatment center accepts the payment:

1. The payment shall be considered payment in full;
2. A bill for the same service shall not be given to the recipient; and

3. Payment from the recipient for the same service shall not be accepted by the chemical dependency treatment center.

(b)1. A chemical dependency treatment center may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

- a. Recipient requests the service; and
- b. Chemical dependency treatment center makes the recipient aware in writing in advance of providing the service that the:

- (i) Recipient is liable for the payment; and
- (ii) Department is not covering the service.

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

a. Chemical dependency treatment center shall not bill the department for the service; and

b. Department shall not:

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

(ii) Make any payment to the chemical dependency treatment center regarding the service.

(4)(a) A chemical dependency treatment center attests by the chemical dependency treatment center's staff's or representative's signature that any claim associated with a service is valid and submitted in good faith.

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

1. Department or its designee;
2. Cabinet for Health and Family Services, Office of Inspector General, or its designee;
3. Kentucky Office of Attorney General or its designee;
4. Kentucky Office of the Auditor for Public Accounts or its designee;

5. United States General Accounting Office or its designee; or

6. For an enrollee, managed care organization in which the enrollee is enrolled.

(c)1. If a chemical dependency treatment center receives a request from the:

a. Department to provide a claim, related information, related documentation, or record for auditing purposes, the chemical dependency treatment center shall provide the requested information to the department within the timeframe requested by the department; or

b. Managed care organization in which an enrollee is enrolled to provide a claim, related information, related documentation, or record for auditing purposes, the chemical dependency treatment center shall provide the requested information to the managed care organization within the timeframe requested by the managed care organization.

2.a. The timeframe requested by the department or managed care organization for a chemical dependency treatment center to provide requested information shall be:

- (i) A reasonable amount of time given the nature of the request and the circumstances surrounding the request; and
- (ii) A minimum of one (1) business day.

b. A chemical dependency treatment center may request a longer timeframe to provide information to the department or a managed care organization if the chemical dependency treatment center justifies the need for a longer timeframe.

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

2. Willful abuse by a chemical dependency treatment center shall result in the suspension or termination of the chemical dependency treatment center from Medicaid Program participation in accordance with 907 KAR 1:671.

Section 8. Third Party Liability. A chemical dependency treatment center shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures. (1) The creation,

transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A chemical dependency treatment center that chooses to use electronic signatures shall:

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

1. Be adhered to by each of the chemical dependency treatment center's employees, officers, agents, or contractors;

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

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

(b) Develop a consent form that shall:

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

2. Attest to the signature's authenticity; and

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

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

1. A copy of the chemical dependency treatment center's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 10. Auditing Authority. The department or managed care organization in which an enrollee is enrolled shall have the authority to audit any:

(1) Claim;

(2) Health record; or

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

Section 11. Federal Approval and Federal Financial Participation. (1) The department's reimbursement of services pursuant to this administrative regulation shall be contingent upon:

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

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

(2) The reimbursement of services provided by a licensed clinical alcohol and drug counselor or licensed clinical alcohol and drug counselor associate shall be contingent and effective upon approval by the Centers for Medicare and Medicaid Services.

Section 12. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

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

LISA LEE, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 7, 2015

FILED WITH LRC: July 9, 2015 at 11 a.m.

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program outpatient chemical dependency treatment center (CDTC) services. This administrative regulation is being promulgated in conjunction with 907 KAR 15:085, Reimbursement for outpatient chemical dependency treatment center services. To qualify as a provider, a chemical dependency treatment center must be licensed in accordance with 902 KAR 20:160. CDTCs are authorized to provide, to Medicaid recipients, behavioral health services related to a substance use

disorder. The array of services includes a screening; an assessment; psychological testing; crisis intervention; mobile crisis services; day treatment; peer support; intensive outpatient program services; individual outpatient therapy; group outpatient therapy; family outpatient therapy; collateral outpatient therapy; and a screening, brief intervention, and referral to treatment (SBIRT) for a substance use disorder.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal mandates. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment" for all recipients. 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base (to include chemical dependency treatment centers) will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to behavioral health services.

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

(a) How the amendment will change this existing administrative regulation: The amendment after comments removes a reference to service planning; also clarifies that an assessment, case management, individual outpatient therapy, group outpatient therapy, peer support services, and mobile crisis services will not be covered if provided during the same period of time as assertive community treatment; and contains miscellaneous wording changes for uniformity or clarity.

(b) The necessity of the amendment to this administrative regulation: The amendment which removes a reference to service planning is necessary as service planning is not a CDTC-covered service. The amendment regarding assertive community treatment is necessary as the above listed services would duplicate components of assertive community treatment. Other revisions are added for uniformity of terms or clarity.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment after comments will conform to the content of the authorizing statutes by clarifying requirements and preventing the possibility of duplication (and waste of taxpayer money) of services.

(d) How the amendment will assist in the effective administration of the statutes: The amendment after comments will assist in the effective administration of the authorizing statutes by clarifying requirements and preventing the possibility of duplication (and waste of taxpayer money) of services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Entities licensed as chemical dependency treatment centers (CDTCs), behavioral health professionals authorized to provide services in CDTCs, and Medicaid recipients who receive services in CDTCs will be affected by the administrative regulation. The following behavioral health

professionals are authorized to provide services in a CDTC: licensed psychologists, advanced practice registered nurses, licensed professional clinical counselors, licensed clinical social workers, licensed marriage and family therapists, licensed psychological practitioners, certified psychologists with autonomous functioning, licensed psychological associates, certified psychologists, certified social workers, licensed professional counselor associates, marriage and family therapy associates, licensed professional art therapists, licensed professional art therapist associates, certified alcohol and drug counselors, licensed clinical alcohol and drug counselors (contingent and effective upon approval by the Centers for Medicare and Medicaid Services), licensed clinical alcohol and drug counselor associates (contingent and effective upon approval by the Centers for Medicare and Medicaid Services), and peer support specialists. Currently, there are four (4) licensed CDTCs in Kentucky.

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

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement for providing behavioral health services to Medicaid recipients. Behavioral health professionals authorized to provide services in a chemical dependency treatment center will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of behavioral health services will benefit from an expanded base of providers from which to receive these services.

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

(a) Initially: DMS is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate the utilization of these services in CDTCs compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers.) However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

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

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

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

(8) State whether or not this administrative regulation

establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

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

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

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its substance use disorder provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid.) Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

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

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

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

(a) How much revenue will this administrative regulation

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

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

(c) How much will it cost to administer this program for the first year? DMS is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate the utilization of these services in CDTCs compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers.) However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(d) How much will it cost to administer this program for subsequent years? The response to question (c) also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY  
Division of Student and Administrative Services  
(Amendment)

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

RELATES TO: KRS 154A.130(4), 164.7871, 164.7874, 164.7877, 164.7879, 164.7881, 164.7885, 164.7889

STATUTORY AUTHORITY: KRS 164.7874, 164.7877(3), 164.7879(1), (2), (3), 164.7881(4)(a), (c), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7877(3) requires the authority to administer the Kentucky Educational Excellence Scholarship (KEES) trust fund. KRS 164.7874(16) requires the authority to determine the KEES curriculum's courses of study. KRS 164.7879(3)(d) requires the authority to determine the eligibility of a noncertified, nonpublic high school graduate and of a GED recipient for a supplemental award. KRS 164.7874(3) requires the authority to establish a table to convert an SAT score to an ACT score. KRS 164.7881(6) requires the authority to establish a five (5) year postsecondary education program standard. KRS 164.7881(4)(a) requires the authority to establish overall award levels for the program. KRS 164.7879(2)(c) requires the authority to determine eligibility for children of parents who are in the military and who claim Kentucky as their home of record. KRS 164.7881(4)(c) requires the authority to identify equivalent undergraduate programs of study. This administrative regulation establishes those requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program.

Section 1. Definitions. (1) "Academic term" means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution and does not include summer sessions.

(2) "Accredited out-of-state high school" means a high school that is:

(a) Located in a state other than Kentucky or in another country; and

(b) A member of an organization belonging to the Commission on International and Trans-Regional Accreditation.

(3) "ACT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the ACT Corporation of Iowa City, Iowa.

(4) "Advanced placement" or "AP" is defined by KRS 164.002(1)[158.007(4)].

(5) "Cambridge Advanced International" or "CAI" is defined by KRS 164.002(2).

(6) "Course" means the equivalent of one (1) credit as determined by KDE in 704 KAR 3:305.

(7)[(6)] "Department of Defense school" means a school operated by the U. S. Department of Defense for the purpose of providing a high school education to a child whose custodial parent or guardian is in active military or diplomatic service in a state other than Kentucky or in another country.

(8)[(7)] "Dual credit" is defined in KRS 158.007(8).

(9)[(8)] "Enrolled" means the status of a student who has completed the registration requirements, except for the payment of tuition and fees, at a participating postsecondary education institution that the student is attending.

(10)[(9)] "Free and Reduced Price Lunch" means the National School Lunch program established by the United States Department of Agriculture to provide subsidized meals to lower income students.

(11)[(10)] "GED" means a general educational development diploma awarded to a student.

(12)[(11)] "International Baccalaureate" or "IB" is defined by KRS 164.002(7)[158.007(10)].

(13)[(12)] "KDE" means the Kentucky Department of Education authorized and established pursuant to KRS 156.010.

(14)[(13)] "SAT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the College Board.

Section 2. High School Grade Point Average Calculation and Reporting. (1) An eligible high school student's grade point average for an academic year shall be calculated using each letter grade awarded for all courses taken during an academic year. The grading scale cutoff scores used to determine the letter grade for each course shall be the same as those used to determine the letter grade for each course reported on the student's official high school transcript.

(2)(a) Except as provided in paragraphs (b) and (c) of this subsection, an eligible high school student's grade point average shall be calculated by:

1. Taking the number of units in a course multiplied by the course grade as expressed on a 4.0 point grading scale where 4.0 is an "A", 3.0 is a "B", 2.0 is a "C", 1.0 is a "D", and 0.0 is an "F";

2. Adding the total number of points accumulated for an academic year; and

3. Dividing the total number of points accumulated in subparagraph 2 of this paragraph by the total number of units for the academic year.

(b) For an eligible high school student taking an AP, IB, or CAI~~advanced placement or international baccalaureate~~ course during the academic year, the course grade assigned shall be calculated using a 5.0 point scale where 5.0 is an "A", 4.0 is a "B", 3.0 is a "C", 2.0 is a "D", and 1.0 is an "F".

(c) Beginning with the academic year 2015-2016, for an eligible high school student taking a dual credit course during the academic year, the course grade assigned shall be calculated using a 5.0 point scale where 5.0 is an "A", 4.0 is a "B", 3.0 is a "C", 2.0 is a "D", and 1.0 is an "F". This weighted scale shall not be applicable to a remedial course.

(3) The grade point average reported for an eligible high school student for each academic year shall include all information as set forth in KRS 164.7885(1) and be submitted to the authority in either an electronic or hard copy format.

(4) A high school student who participated in an educational high school foreign exchange program or the Congressional Page School that was approved by the student's local high school shall have the student's grade point average reported in accordance with KRS 164.7879(2)(b).

Section 3. High School Students of Custodial Parents or Guardians in Active Military Service. (1)(a) For purpose of determining eligibility under the provisions of KRS 164.7879(2)(c), a high school student shall establish that the custodial parent or guardian meets the requirements of KRS 164.7879(2)(c)1a and b and shall submit the Home of Record Certification Form to the authority.

(b) The authority annually shall notify the eligible high school student and the custodial parent or guardian of the student's eligibility.

(2)(a) A high school student, determined to be eligible for the KEES program under the terms of KRS 164.7879(2)(c) and subsection (1)(a) of this section, shall be responsible for:

1. Requesting grade and curriculum information from the local school; and

2. Requesting that the local school submit the information to the authority using the Curriculum Certification Form and the Data Submission Form.

(b) Upon receipt of curriculum and grade information from an accredited out-of-state high school or Department of Defense school for a student determined to be eligible for the KEES Program under this section, the authority shall:

1. Verify that the submitted curriculum meets the requirements of Section 4 of this administrative regulation;

2. Verify that the out-of-state high school or Department of Defense school is an accredited high school; and

## VOLUME 42, NUMBER 2 – AUGUST 1, 2015

3. Retain the Curriculum Certification Form on file until the student's eligibility has expired.

Section 4. Postsecondary Student Eligibility and KEES Curriculum. (1) A Kentucky postsecondary student shall be eligible to receive a base scholarship award if the student:

- (a) Has earned a base scholarship award in high school;
- (b) Has completed the KEES curriculum as set forth in subsection (2) of this section;
- (c) Has graduated from a Kentucky high school except as provided in Section 2(4) or 3 of this administrative regulation; and
- (d) Is enrolled in a participating institution in an eligible program.

(2) Except as provided in subsection (4) of this section, the KEES curriculum shall consist of the curriculum standards established in 704 KAR 3:305.

(3) A student who graduates from high school at the end of the fall semester of his or her senior year and who meets the requirements of KRS 164.7874(7) shall be eligible to earn a KEES award for that year upon:

- (a) Completion of no fewer than three (3) courses of study; and
- (b) Satisfying the provisions of KRS 164.7879.

(4) Except as provided in subsection (5) of this section, a high school may substitute an integrated, applied, interdisciplinary, or higher level course for a required course or required academic and career interest standards-based learning experience if:

- (a) The course provides the same or greater academic rigor and the course covers or exceeds the minimum required content areas established in 703 KAR 4:060; or
- (b) The course is an honors course, cooperative education course, AP[advanced—placement] course, IB[international baccalaureate] course, CAI course, dual credit course, or a course taken at a postsecondary education institution.

(5) Beginning with the 2012-2013 academic year, only one (1) cooperative education course per academic year shall count for purposes of satisfying KEES curriculum requirements.

(6) A high school annually shall provide written documentation to a student on whether the student's schedule of coursework meets the requirements of the KEES curriculum.

Section 5. Eligible Postsecondary Education Programs. (1) An eligible program shall be a certificate or degree program offered by a participating institution and recognized by the authority.

(2) An eligible program at an out-of-state participating institution shall be limited to those programs that qualify through the Academic Common Market administered by the Southern Regional Education Board except as provided in subsection (4) of this section.

(3) Pursuant to KRS 164.7881(6), the following academic programs at Kentucky postsecondary education institutions shall be approved as five (5) year baccalaureate degree programs:

(a) Landscape architecture (04.0601); and

(b) For students that graduated from high school not later than the 2004-2005 academic year, engineering if enrollment in the engineering program has been continuous (14.0101, 14.201, 14.0301, 14.401, 14.501, 14.0701, 14.0801, 14.0901, 14.1001, 14.1201, 14.1301, 14.1401, 14.1701, 14.1801, 14.1901, 14.2101, 14.2301, 14.2401, 14.2801, 14.9999.01, 14.3501).

(4) Pursuant to KRS 164.7881(4)(c)1, an academic program shall be designated as an equivalent undergraduate program of study if the student in the program of study:

(a) Has not received eight (8) academic terms of a KEES award;

(b) Is classified by an institution as a graduate or professional student and is enrolled in one (1) of the following academic programs:

1. Pharm. D;

2. The optometry or veterinary medicine programs at an institution which is a part of the Kentucky Contract Spaces Program; or

3. A program contained on the Equivalent Undergraduate Programs List; and

(c) Has not completed a baccalaureate degree.

Section 6. SAT Conversion Table. (1) Pursuant to KRS 164.7874(3), the following SAT to ACT Conversion Table shall be used to convert scores for SAT exams taken prior to the 2011-2012 academic year:

Table C-2 Concordance Between SAT I Recentered V+M Score and ACT Composite Score									
SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite
1600	35-36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	14
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	34	1320	30	1090	24	860	18	630	13
1540	34	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	13
1520	34	1290	29	1060	23	830	17	600	13
1510	34	1280	29	1050	22	820	17	590	13
1500	33	1270	28	1040	22	810	17	580	12
1490	33	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	28	1010	21	780	16	550	12
1460	33	1230	27	1000	21	770	16	540	12
1450	32	1220	27	990	21	760	16	530	12
1440	32	1210	27	980	21	750	15	520	12
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15	500	11
1410	32	1180	26	950	20	720	15		
1400	31	1170	26	940	20	710	15		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

This table can be used to relate SAT I V+M scores to ACT Composite scores.

The estimates are based on the test scores of 103,525 students from fourteen (14) universities and two (2) states who took both the ACT and the SAT I between October 1994 and December 1996. Because the ACT and the SAT I have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table.

Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471).  
January 1998

(2) Pursuant to KRS 164.7874(3), the SAT to ACT Conversion Table included in this subsection shall be used to convert scores for SAT exams taken during or after the 2011-2012 academic year. Only the scores from the critical reasoning and mathematics sections of the SAT within a single exam administration shall be considered for KEES supplemental awards.

Table C-2 Concordance Between SAT I Recentered CR[V]+M Score and ACT Composite Score									
SAT I CR[V]+M	ACT Composite	SAT CR+M	ACT Composite	SAT CR+M	ACT Composite	SAT CR+M	ACT Composite	SAT CR+M	ACT Composite
1600	36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	13
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	35	1320	29	1090	24	860	18	630	13
1540	35	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	12
1520	34	1290	29	1060	23	830	17	600	12
1510	34	1280	28	1050	23	820	17	590	12
1500	34	1270	28	1040	22	810	16	580	12
1490	34	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	27	1010	21	780	16	550	11
1460	33	1230	27	1000	21	770	16	540	11
1450	33	1220	27	990	21	760	15	530	11
1440	33	1210	27	980	21	750	15	520	11
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15		
1410	32	1180	26	950	20	720	15		
1400	32	1170	26	940	20	710	14		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

This table can be used to relate SAT CR+M scores to ACT Composite scores.

The estimates are based on the test scores of 300,437 students who took both the ACT and the SAT CR+M between September 2004 and June 2006. Because the ACT and the SAT CR+M have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table.

Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471).  
June, 2008

Section 7. Criteria for Supplemental Award to Noncertified, Nonpublic High School Students and to GED Students. (1) A Kentucky resident who is a citizen, national, or permanent resident of the United States and who graduates from a nonpublic Kentucky high school not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

- (a) The student is not a convicted felon;
- (b) The date of the student's graduation is May 1999 or thereafter;
- (c) The student takes the ACT or SAT and has at least a minimum score as established by KRS 164.7879(3); and
- (d) The student enrolls in a participating institution within five (5) years after graduation from high school.

(2) A Kentucky resident who is a citizen, national, or permanent resident of the United States and who has not graduated from either a certified Kentucky high school or a nonpublic Kentucky high school that is not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

- (a) The student is not a convicted felon;
- (b) The student's 18th birthday occurs on or after January 1, 1999;
- (c) The student takes and receives a GED diploma in Kentucky within five (5) years of attaining eighteen (18) years of age;
- (d) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3);

and

(e) The student enrolls in a participating institution after July 1, 1999, and within five (5) years of receiving the GED diploma.

(3) A student who graduates from or attends an accredited out-of-state high school or Department of Defense school shall qualify for a supplemental award if:

- (a) The parents meet the provisions of KRS 164.7879(2)(c)1a and b;
- (b) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and

(c) The student enrolls in a participating institution within five (5) years of graduating from or attending the accredited out-of-state high school or Department of Defense school.

(4) A student requesting a supplemental award under this section shall notify the participating institution where the student has or intends to enroll.

(5)(a) Residency shall be determined by a participating institution in accordance with 13 KAR 2:045.

(b) A participating institution shall determine a student's eligibility for a supplemental award under this section and shall notify the authority of the student's eligibility.

Section 8. Supplemental Award. An eligible high school student who receives a supplemental award as a result of taking and receiving a GED within five (5) years of attaining eighteen (18) years of age shall have a maximum of five (5) years eligibility

beyond the date the GED is received.

Section 9. Supplemental Award for Achievement on Examinations. (1) Pursuant to KRS 164.7879(3)(c) and (d), a supplemental award shall be provided for achievement on AP, IB, or CAI[Advanced Placement (AP) or International Baccalaureate (IB)] examinations to an eligible high school student whose family was eligible for free and reduced price lunch during any year of high school.

(2)(a) An eligible high school shall report the status of each student as eligible or ineligible for free and reduced price lunch to the authority on an annual basis.

(b) In determining a high school student's free and reduced price lunch eligibility, the high school shall utilize the income eligibility guidelines published each year by the United States Department of Agriculture, Food and Nutrition Service.

Section 10. Administrative Responsibilities and Expenses of Program. (1) The authority annually shall determine the level of funding for expenses associated with the program and shall allocate funds from the "Wallace G. Wilkinson Kentucky Educational Excellence Scholarship Trust Fund" described in KRS 164.7877(1) and (3).

(2) The authority annually shall adopt a budget proposal indicating the amount of funds available and a detailed listing of the expenditures necessary to operate the program.

(3) The authority shall develop an allotment schedule for the release of the administrative funds.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Home of Record Certification", June 2005;
- (b) "Curriculum Certification", June 2005;
- (c) "Data Submission", June 2005; and
- (d) "Equivalent Undergraduate Programs List", June 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LISA PAYNE, Chair

APPROVED BY AGENCY: May 21, 2015

FILED WITH LRC: July 10, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, August 25, 2015, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 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: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Director of Student Aid Services

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedures for administering the Kentucky Educational Excellence Scholarship (KEES) Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program for the Kentucky Higher Education Assistance Authority (KHEAA).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.7877(3) requires KHEAA to administer the funds appropriated to the trust fund for the program; KRS 164.7874(14) requires KHEAA to determine the KEES curriculum's courses of study; KRS 164.7879(3)(c) requires KHEAA to determine the eligibility of a noncertified, nonpublic high school graduate and for a GED recipient for a supplemental award; KRS 164.7874(3) requires KHEAA to establish a table to convert an SAT score to an ACT standard; KRS 164.7881(6) requires KHEAA to establish a five (5) year postsecondary education program standard; KRS 164.7881(4)(a) requires KHEAA to establish overall award levels for the program; KRS 164.7879(2)(c) requires KHEAA to determine eligibility for children of parents who are in the military and who claim Kentucky as their home of record; and KRS 164.7535 and 164.7881 (4)(c) require KHEAA to identify equivalent undergraduate programs of study. This administrative regulation establishes these requirements related to the KEES program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing program eligibility criteria for administration of the KEES program by KHEAA.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by adding the Cambridge Advanced International curriculum courses to eligibility for grade point average weighting for KEES purposes. Further, it will provide for supplemental KEES awards based upon scores obtained on the Cambridge Advanced International examinations.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary to comply with statutory changes to the KEES program enacted by the General Assembly during the 2015 Regular Legislative Session through HB268.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require KHEAA to promulgate regulations for the administration of the KEES program. This amendment conforms to the authorizing statutes by incorporating the Cambridge Advanced International curriculum high school courses and examinations to the KEES program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation will assist in the effective administration of the statutes by making provision for the Cambridge Advanced International courses and examinations for purposes of the KEES program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment to this administrative regulation will positively affect those high school students pursuing Cambridge Advanced International courses and achieving high scores on those examinations as their eligibility for KEES awards will be enhanced.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Those entities must enroll in and successfully complete courses offered through Cambridge Advanced International.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost will be required except to the extent



there is a per course fee assessed by Cambridge Advanced International.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those entities who enroll in and complete courses through Cambridge Advanced International will have their grade point averages for those courses weighted for KEES purposes and will be eligible for a supplemental award for high achievement on examinations based on those courses.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KEES program is funded through net lottery revenues transferred in accordance with KRS 154A.130.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: Any increase in funding as a result of the amendment to this administrative regulation would be nominal at most. Although the changes could increase the overall KEES award of a participating student, Cambridge Advanced International courses and examinations are currently offered by only one participating high school to a few dozen students.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor increase any existing fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.784, 164.787(3), 164.789(1), (2), (3), 164.7881(4)(a), (c), (6).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the authority during the first full year of its effectiveness.

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

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

c. How much will it cost to administer this program for the first year? No costs are associated with this administrative regulation for the first year.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this administrative regulation for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student and Administrative Services (Amendment)

#### 11 KAR 16:060. Early Childhood Development Scholarship Program system of monetary incentives.

RELATES to: KRS 164.518

STATUTORY AUTHORITY: KRS 164.518(3), 164.748(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes responsibility for administration of the system of monetary incentives offered to Early Childhood Development Scholarship recipients.

Section 1. Textbook Expense Incentive[Reimbursement]. A scholarship recipient shall be entitled to a monetary allowance from his employer for the purchase of textbooks in an amount equal to the actual cost of the textbooks not to exceed fifty (50) dollars per academic term and \$150 per academic year. This allowance may be provided through reimbursement to the scholarship recipient by the employer, direct payment by the employer to the textbook vendor, or other means as agreed upon by the employer and scholarship recipient.

##### (1) Reimbursement.

(a) The scholarship recipient shall present to his employer at the participating early childhood facility a receipt for the purchase of textbooks for the scholarship program curriculum. The scholarship recipient shall present the receipt to his employer no later than the end of the academic term to be eligible to receive a textbook expense reimbursement for the academic term.

(b)[(2)] The participating early childhood facility shall, no later than fifteen (15) days after presentation of a receipt for textbook purchase, reimburse the scholarship recipient for the actual cost of the textbooks up to the maximum specified in this section[not to exceed fifty (50) dollars per academic term and \$150 per academic year].

(c)[(3)] The participating early childhood facility shall, upon request by the professional development counselor, provide evidence of reimbursement of scholarship recipients for textbooks.

##### (2) Direct payment.

(a) The participating early childhood facility shall enter into an arrangement with the textbook vendor whereby the employer authorizes the scholarship recipient to obtain the approved/necessary textbooks, and, upon receipt of a billing statement from the vendor, make a payment to the vendor of the actual cost of the textbooks up to the maximum specified in this section.

(b) The participating early childhood facility shall, upon request by the professional development counselor, provide evidence of direct payment of the textbook incentive to the vendor on behalf of a scholarship recipient.

(3) Other funding means. If the participating early childhood facility and the scholarship recipient mutually agree to another method for payment of the textbook expense incentive, the participating early childhood facility shall maintain documentation to evidence payment of the incentive and, upon request by the professional development counselor, provide proof to substantiate the payment.

Section 2. Related Educational Expense Reimbursement. (1) Subject to the availability of funds, a scholarship recipient who meets the requirements set forth in this section shall be eligible for

reimbursement of related educational expenses.

(2) The scholarship recipient shall present to the professional development counselor no later than sixty (60) days following completion of the academic term an official grade report from the participating educational institution as evidence of completion of the scholarship program curriculum with a grade of at least "C" or its equivalent in each course in which the scholarship recipient is enrolled for credit during the academic term.

(3) The amount of the related educational expense reimbursement shall be:

(a) Fifty (50) dollars to a scholarship recipient pursuing a child development associate's credential at a participating educational institution; or

(b) \$100 to a scholarship recipient pursuing an ECAC-approved early childhood development credential, pursuing other than a child development associate's, or an ECAC-approved associate or bachelor's degree credential.

(4) The professional development counselor, no later than thirty (30) days after considering whether the scholarship recipient is eligible to receive reimbursement of related educational expenses associated with attendance at the participating educational institution, shall notify the scholarship recipient in writing of the determination of eligibility for the reimbursement of related educational expenses and the amount of the award.

(5)(a) After determination of eligibility, the professional development counselor shall transmit to the Department for Community Based Services of the Cabinet for Health and Family Services a list of eligible recipients of reimbursement of related educational expenses. The list shall indicate:

1. The name, home address, and Social Security number of the award recipient; and
2. The amount of the reimbursement of related educational expenses earned by the recipient.

(b) The Cabinet for Health and Family Service shall remit to the award recipient the earned reimbursement of related educational expenses specified in subsection (3) of this section.

Section 3. Milestone Achievement Award. (1) The scholarship recipient shall present to the professional development counselor and to the participating early childhood facility no later than sixty (60) days following completion of the academic term evidence of earning the ECAC-approved early childhood development credential or degree to be eligible to receive a milestone achievement award. Milestone achievement award reimbursement shall be provided only to the extent funds are available.

(2) Evidence of earning the ECAC-approved early childhood development credential or associate or bachelor's degree shall be:

(a) The certificate for the Commonwealth Child Care Credential, the Child Development Associate Credential, or the Kentucky Early Childhood Development Director's Credential; or

(b) The diploma or official transcript from the participating educational institution for an ECAC-approved early childhood associate or bachelor's degree.

(3) The milestone achievement award amount shall be:

(a) \$100 for earning the Commonwealth Child Care Credential in an early childhood development program approved by the ECAC;

(b) \$250 for earning an initial child development associate's credential;

(c) \$300 for earning an initial associate degree in early childhood education or other program approved by the ECAC, or the Kentucky Early Childhood Development Director's Credential; or

(d) \$500 for earning an initial baccalaureate degree in interdisciplinary early childhood education or other program approved by the ECAC.

(4) The professional development counselor, no later than thirty (30) days after considering whether the scholarship recipient is eligible to receive a milestone achievement award, shall notify the scholarship recipient in writing of the determination of eligibility for the milestone achievement award and the amount of the award.

(5)(a) No later than fifteen (15) days following receipt of the document specified in subsection (2) of this section, the

participating early childhood facility that employs the scholarship recipient at the time the scholarship recipient earns the ECAC-approved early childhood credential or degree shall remit to the scholarship recipient by check a minimum of ten (10) percent of the earned milestone achievement award specified in subsection (3) of this section.

(b) The participating early childhood facility shall send to the professional development counselor a copy of the check as evidence that the participating early childhood facility has paid the scholarship recipient in accordance with paragraph (a) of this subsection.

(6)(a) After determination of eligibility and evidence of payment by the participating early childhood facility of the milestone achievement award, the professional development counselor shall transmit to the Department for Community Based Services of the Cabinet for Health and Family Services a list of eligible recipients of the milestone achievement award. The list shall indicate:

1. The name, home address, and Social Security number of the award recipient; and
2. The amount of the milestone achievement award earned by the recipient.

(b) The Cabinet for Health and Family Services shall remit to the award recipient ninety (90) percent of the earned milestone achievement award specified in subsection (3) of this section.

(7) A participating early childhood facility may appeal to the Early Childhood Development Authority Advisory Council for an exception to the foregoing provisions regarding the type of credentials for which it funds the Milestone Achievement Award or the timing of the payment of the award based upon the needs and organizational goals of the facility, the professional learning objectives of the scholar, or any fiscal limitations to which the facility may be subject.

LISA PAYNE, Chair

APPROVED BY AGENCY: May 21, 2015

FILED WITH LRC: July 10, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, August 25, 2015, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 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: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Director of Student Aid Services

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the system of monetary incentives and expense reimbursement for the Early Childhood Development Scholarship program as authorized by KRS 164.518(3).

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to set forth the system of monetary incentives and expense reimbursement for the Early Childhood Development Scholarship program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.518(3) requires the authority

to promulgate administrative regulations pertaining to the Early Childhood Development Scholarship program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the system of monetary incentives and expense reimbursement for the Early Childhood Development Scholarship program.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by modifying the methods by which the textbook incentive can be funded by a participation early childhood facility.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary in order to remove the barriers to participation that some early childhood facilities encounter as a result of fiscal and budgetary constraints to which they may be subject.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require KHEAA to promulgate administrative regulations pertaining to the system of monetary incentives under the Early Childhood Development Scholarship program. This amendment conforms to the authorizing statutes by expanding the permissible funding methods for one of the monetary incentives.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation will assist in the effective administration of the statutes by enabling students employed by additional facilities, particularly public entities, to participate in the ECDS program by eliminating a barrier to participation that encounter as a result of fiscal and budgetary constraints to which they may be subject.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Students who are employed by early childhood facilities that are not currently able to participate in the program due to the strict funding requirements set forth in the existing administrative regulation will be able to participate if they satisfy the other requirements.

(4) Provide an analysis of how the entities identified in (3) above will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, 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 identified in (3) above will not be required to take any additional actions in order to receive benefits under this amendment to 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): No costs are associated with compliance with the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in (3) will be eligible for an award under this program without any additional compliance requirements.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for the Early Childhood Development Scholarship Program is provided by appropriations from the Tobacco Settlement Fund. The authority does retain some of the funds for the costs associated in administering the Early Childhood Development Scholarship Program.

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

increase in the demand for the limited funds available for this program. However, it will result in neither an increase in the individual award amount nor an increase in the overall amount of funding available for scholarships under the program.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor increase any existing fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The administrative regulation provides equal treatment and opportunity for all applicants and recipients.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.518(3), 164.748(4).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

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

c. How much will it cost to administer this program for the first year? No costs are associated with this administrative regulation for the first year.

d. How much will it cost to administer this program for subsequent years? No costs are associated with this administrative regulation for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET  
Kentucky Retirement Systems  
(Amendment)**

**105 KAR 1:200 Retirement procedures and forms.**

RELATES TO: KRS 16.576, 16.577, 16.645, 61.590, 61.595, 61.623, 61.637, 61.680[61.702], 61.705, 78.545

STATUTORY AUTHORITY: KRS 61.590(1), 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 61.510[61.515] to 61.705, 16.505[16.510] to 16.652, and 78.510[78.520] to 78.852. KRS 61.590(1) requires that a member or beneficiary eligible to receive retirement benefits have on file at the retirement office each form required by the board. This administrative regulation establishes the procedures and forms for application for and receipt of retirement benefits by members of the Kentucky Retirement Systems.

Section 1. (1)[(a)] The member shall submit a Form 6000, Notification of Retirement, to the retirement systems no earlier than six (6) months prior to the member's desired effective retirement date. If the member submits a Form 6000, Notification of Retirement, that is incomplete or is incorrect, the retirement systems shall find the Form 6000, Notification of Retirement, to be invalid and shall notify the member of the actions necessary for completion or correction. The retirement systems shall not process an invalid Form 6000, Notification of Retirement[(b) The member shall provide current information regarding any sick or compensatory leave balances with the Form 6000, Notification of Retirement.

(c) The member shall file a copy of the member's most recent check stub indicating the sick and compensatory leave balances or the member shall submit written verification by the member's employer of the member's sick and compensatory leave balances as of the member's actual or scheduled employment termination date].

(2) The member shall designate the beneficiary of the member's retirement allowance on the Form 6000, Notification of Retirement.

(3) The Form 6000, Notification of Retirement, shall be dated and the member's signature shall be witnessed.

(4)(a) The member shall designate on the Form 6000, Notification of Retirement, all other state administered retirement systems from which the member is simultaneously retiring with reciprocity.

(b) If the member fails to retire from all state administered retirement systems simultaneously or with an effective retirement date within one (1) month of the member's effective retirement date in the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System, the member shall not retire with reciprocity after the member's effective retirement date.

(5)(a) The member may designate a federal tax withholding preference on the Form 6000, Notification of Retirement.

(b) If the member fails to designate a federal tax withholding preference, the retirement systems shall withhold federal tax based on married status with three (3) exemptions.

(c) A recipient of a monthly retirement allowance may submit a Form 6017, Federal Income Tax Withholding Preference for Periodic Payments to establish or change the recipient's federal tax withholding preference.

(d) A recipient of a monthly retirement allowance may establish or change the recipient's tax withholding preference via Retiree Self Service on the Web site maintained by Kentucky Retirement Systems.

(6)(a) The member may designate a beneficiary of the \$5,000 Death Benefit on the Form 6000, Notification of Retirement.

(b) A retired member may file a Form 6030, Death Benefit Designation, to designate or change the beneficiary of the \$5,000 death benefit at any time after the retired member begins receiving

a monthly retirement allowance.

(c) If the member does not designate a beneficiary of the \$5,000 death benefit, the member's estate shall be the beneficiary.

(d) If the member files a Form 6030, Death Benefit Designation, to change the beneficiary of the \$5,000 death benefit that is incomplete or incorrect, the member's beneficiary designation on file at the retirement office shall remain in effect.

(7)(a) The member shall authorize the direct deposit of the member's retirement allowance on the Form 6000, Notification of Retirement.

(b) The member shall attach to the Form 6000, Notification of Retirement:

1. A voided personalized check for the account to which the retirement allowance is being deposited; or

2. Verification from the financial institution receiving the electronic fund transfer.

(c) A recipient of a monthly retirement allowance may change the designated financial institution or account by filing a Form 6130, Authorization for Deposit of Retirement Payment, at the retirement office in Frankfort.

(d) A recipient of a monthly retirement allowance may establish or change the recipient's designated financial institution or account via Retiree Self Service on the Web site maintained by Kentucky Retirement Systems.

(e) The member shall submit a Form 6135, Request for Payment by Check, if the member does not currently have an account with a financial institution or the member's financial institution does not participate in the electronic funds transfer program.

(8)(a) The member's employer shall complete Section H of the Form 6000, Notification of Retirement. If the employer does not complete Section H of the Form 6000, Notification of Retirement, the retirement systems shall only utilize the information reported by the member's employer and former employers to the retirement systems in accordance with KRS 61.675 and 78.625 and shall not include any additional sick leave, compensatory time, or projected salary increases in its calculations of the member's retirement allowance or eligibility to retire.

(b) Section H of the Form 6000, Notification of Retirement, shall be signed by a person designated by the employer on file at the retirement office.

Section 2. (1)(a) The member shall provide the retirement system with a copy of the member's birth certificate or other verification of date of birth of the member and, if a survivorship payment option is selected, a copy of the birth certificate or other verification of date of birth of the beneficiary named on the member's Form 6000, Notification of Retirement.

(b) If the member's or beneficiary's name is no longer the same as the name listed on the birth certificate or other verification of date of birth, the systems shall require the member or beneficiary to submit a marriage license, court order, or legally-binding documentation of the name change.

(2) The retirement system shall accept one (1) or more of the following as proof of date of birth of the member or beneficiary:

(a) Age record of the Social Security Administration;

(b) Immigration and naturalization service records;

(c) Birth certificate;

(d) Military discharge;

(e) U.S. passport;

(f) Driver's license issued by the Commonwealth of Kentucky;

or

(g) Other reliable proof of date of birth that may be used by the courts to verify the person's date of birth.

Section 3. (1) The retirement system shall provide an estimate of the member's retirement allowance based on the salary reported to the system and information provided by[that may be supplied by the member or] the member's employer.

(2) The payment options and amounts available to the member shall be printed on the Form 6010, Estimated Retirement Allowance, and provided to the member with a place to designate the member's choice of payment option.

~~(3)[Section 3.-(4)](a)~~ The member shall designate a desired payment option and sign and date the Form 6010, Estimated Retirement Allowance.

(b) The member's signature on the Form 6010, Estimated Retirement Allowance, shall be witnessed and the Form 6010, Estimated Retirement Allowance, returned to the retirement office as required by subsection ~~(4)(b)[(2)(e)]~~ or ~~(5)[(3)]~~ of this section.

~~(4)[(2)](a)~~ The member shall terminate employment with all employers participating in the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System no later than the month before the member's effective retirement date if the member is retiring pursuant to KRS 61.590(5)(a) or (c)[The member's employment shall be terminated the month before the member's effective retirement date].

(b) The retirement office shall process the first payment in the month following the month in which the completed Form 6010, Estimated Retirement Allowance, and all other applicable forms and documents as provided in this administrative regulation, have been filed at the retirement office but not before the member's effective retirement date.

~~(5)(c)~~ The Form 6010, Estimated Retirement Allowance, and all other applicable forms as provided in this administrative regulation, shall be filed in the retirement office on the last day of the month preceding the month of the member's effective retirement date.

~~(3)~~ If the member is retiring pursuant to KRS 61.590(5)(c)[early retirement provisions], the member shall return the Form 6010, Estimated Retirement Allowance, within six (6) months of the member's effective retirement date as provided on the member's Form 6000, Notification of Retirement to retain the effective date of retirement shown on the form.

~~(6)[(4)(a)]~~ If the member fails to return the Form 6010, Estimated Retirement Allowance, within six (6) months of the member's effective retirement date, the member's Form 6000, Notification of Retirement, shall be ~~considered~~ void and the member shall be required to submit a new Form 6000, Notification of Retirement and select a new effective retirement date. The member shall not select an effective retirement date prior to the date the Form 6000, Notification of Retirement is submitted.

~~(7)~~ If a member who is approved for disability retirement benefits fails to return the member's Form 6010, Estimated Retirement Allowance within six (6) months of the date the member is notified that the member's disability application has been approved, then the member's Form 6000, Notification of Retirement, and the approval of the member's application for disability retirement benefits shall be considered void. The member may file a subsequent Form 6000, Notification of Retirement, to re-apply for disability retirement benefits.

~~(8)[(b)]~~ If a member's Form 6000, Notification of Retirement, is withdrawn, invalid, or voided, the beneficiary or beneficiaries and contingent beneficiary or beneficiaries designated on the last Form 2035, Beneficiary Designation, on file at the retirement office shall remain in full force and effect.

Section 4.~~[(1)(a)]~~ The member shall provide the retirement system a copy of the member's birth certificate or other verification of age and, if a survivorship payment option is selected, a copy of the birth certificate or other verification of age of the beneficiary named on the member's Form 6000, Notification of Retirement.

(b) If the member's or beneficiary's name is no longer the same as the name listed on the birth certificate or other verification of age, the systems shall require the member or beneficiary to submit a marriage license, court order, or legally-binding documentation of the name change.

(2) The retirement system shall accept one (1) or more of the following as proof of age of the member or beneficiary:

- (a) Age record of the Social Security Administration;
- (b) Immigration and naturalization service records;
- (c) Baptismal record;
- (d) Marriage license;
- (e) School record;
- (f) Birth certificate;

- (g) Military discharge;
- (h) U.S. passport; or
- (i) Other reliable proof of age that may be used by the courts to verify the person's age.

Section 5. ~~(1)(a)~~ A recipient shall complete a Form 6130, Authorization for Deposit of Retirement Payment, to have the monthly retirement allowance deposited to an account in a financial institution.

~~(b)~~ The member or financial institution shall provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's Office to the designated financial institution.

~~(2)(a)~~ At any time while receiving a retirement allowance, the recipient may change the designated institution by completing a new Form 6130, Authorization for Deposit of Retirement Payment and filing the form at the retirement office in Frankfort.

~~(b)~~ The last Form 6130, Authorization for Deposit of Retirement Payment on file at the retirement office shall control the electronic transfer of the recipient's retirement allowance.

~~(3)~~ The recipient may complete a Form 6135, Request for Payment by Check, if the recipient does not currently have an account with a financial institution or the recipient's financial institution does not participate in the electronic funds transfer program.

~~(4)~~ The retirement office shall not process the retirement allowance until the recipient has filed a completed:

- (a) Form 6130, Authorization for Deposit of Retirement Payment; or
- (b) Form 6135, Request for Payment by Check.

Section 6. ~~(1)~~ The retirement office shall provide a Form 6120, Certification of Service, to the member to certify service with another agency participating in the Kentucky Retirement Systems for which the member may be eligible to purchase credit prior to employment termination.

~~(2)~~ The retirement office shall, upon request, provide the member with the cost of purchasing the service and an estimate of the benefits attributable to the additional service credit.

Section 7. ~~(1)(a)~~ The retirement office shall provide forms for the selection or waiver of medical insurance coverage for the member, the member's spouse, or the member's dependents pursuant to the group insurance plan upon retirement.

~~(b)~~ The recipient shall complete the Kentucky Employees Health Plan Health Insurance Application for the Kentucky Retirement Systems or the Form 6200, Kentucky Retirement Systems Medicare Eligible Insurance Enrollment Form.

~~(2)(a)~~ If the insurance form is received by the last day of the month prior to the month the initial retirement allowance is processed, the insurance coverage shall be effective the first day of the month the recipient becomes eligible for insurance coverage.

~~(b)~~ If the form is received or if changes are made within thirty (30) days following the first day of the month in which the initial retirement allowance is processed, coverage shall be effective the first day of the month following the month in which the initial retirement allowance is processed.

~~(3)~~ A recipient who fails to submit a form selecting medical insurance coverage within thirty (30) days following the first day of the month in which the initial retirement allowance is processed shall not be eligible for benefits pursuant to the insurance plan until the following open enrollment period.

Section 8. ~~(1)~~ The retirement office shall provide a Form 6017, Federal Income Tax Withholding Preference for Periodic Payments, to the member to request that federal income taxes be withheld or not withheld from the member's retirement allowance.

~~(2)~~ If the member is eligible for benefits from the excess benefit plan, the member shall provide the information required by 26 U.S.C. 3402 for purposes of federal income tax withholding from the member's retirement allowance.

Section 9. ~~(1)~~ The retirement office shall provide a Form 6030,

~~Death Benefit Designation, to the member to designate a beneficiary for the death benefit provided by the Kentucky Retirement Systems.~~

~~(2) If the member does not file or incorrectly completes a Form 6030, Death Benefit Designation, the member's estate shall become the default beneficiary.~~

~~Section 10.] (1) The retirement office shall not process a monthly retirement allowance until the member has filed at the retirement office:~~

- ~~(a) A Form 2001, Membership Information;~~
- ~~(b) A properly signed, witnessed, and dated Form 6010, Estimated Retirement Allowance;~~
- ~~(c) A copy of the member's birth verification;~~
- ~~(d) A copy of the birth verification for the beneficiary if selecting a survivorship option; and~~

~~(e) 1. A completed Form 6130, Authorization for Deposit of Retirement Payment; or~~

~~2. A completed Form 6135, Request for Payment by Check.~~

~~(2) The retirement office shall not process a lump sum retirement benefit until:~~

~~(a) The member has filed at the retirement office:~~

- ~~1. A Form 2001, Membership Information Form;~~
- ~~2. A properly signed, witnessed, and dated Form 6010, Estimated Retirement Allowance; and~~
- ~~3. A Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution; and~~

~~[4. A copy of the member's birth verification; and]~~

~~(b) The member's employer has filed at the retirement office proof of the member's employment termination and reported all creditable compensation and accumulated sick leave.~~

~~[(3) The retirement office shall not process a partial lump sum options retirement benefit until:~~

~~(a) The member has filed at the retirement office:~~

- ~~1. A Form 2001, Membership Information Form;~~
- ~~2. A properly signed, witnessed, and dated Form 6010, Estimated Retirement Allowance;~~
- ~~3. A Form 6025, Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution;~~
- ~~4. A copy of the member's birth verification; and~~
- ~~5. A copy of the birth verification for the beneficiary if selecting a survivorship option; and~~

~~(b) The recipient has filed a completed:~~

- ~~1. Form 6130, Authorization for Deposit of Retirement Payment; or~~
- ~~2. Form 6135, Request for Payment by Check.]~~

~~Section 5.[14.] Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) Form 6000, "Notification of Retirement", May 2015[July 2004];~~

~~(b) Form 6010, "Estimated Retirement Allowance", May 2015[July 2004];~~

~~(c) Form 6130, "Authorization for Deposit of Retirement Payment", May 2015[2008];~~

~~(d) [Form 6120, "Certification of Service", July 2000;~~

~~(e) Form 6200, "Kentucky Retirement Systems Medicare Eligible Insurance Enrollment Form", October 2006;~~

~~(f) Form 6017, "Federal Income Tax Withholding Preference for Periodic Payments", May 2015[2008];~~

~~(e)[(g)] Form 6030, "Death Benefit Designation", May 2015[2008];~~

~~(f)[(h)] Form 6135, "Request for Payment by Check", May 2015[February 2002];~~

~~(g)[(i)] "Kentucky Employees Health Plan Health Insurance Application for the Kentucky Retirement Systems (KRS)"; August 2007;~~

~~(j) Form 2001 "Membership Information", May 2015[February 2002];~~

~~(h)[(k)] Form 2035, "Beneficiary Designation", May 2015[June 2003]; and~~

~~(j)[(h)] Form 6025, "Direct Rollover/Direct Payment Election Form for a Member or a Spouse Beneficiary of an Eligible Rollover Distribution", May 2015[2008].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

THOMAS ELLIOTT, Chair

APPROVED BY AGENCY: May 21, 2015

FILED WITH LRC: July 15, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2015 at 9:00 a.m. Eastern Time at the Kentucky Retirement Systems, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 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: Jennifer A. Jones, Assistant General Counsel, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 5501, fax (502) 696-8801.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer A. Jones

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and procedures for members of the State Police Retirement System, Kentucky Employees Retirement System, and County Employees Retirement System to file for retirement and receive retirement benefits.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements and procedures for members of the State Police Retirement System, Kentucky Employees Retirement System, and County Employees Retirement System to file for retirement and receive retirement benefits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the requirements and procedures for members of the State Police Retirement System, Kentucky Employees Retirement System, and County Employees Retirement System to file for retirement and receive retirement benefits.

(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 statutes by establishing the requirements and procedures for members of the State Police Retirement System, Kentucky Employees Retirement System, and County Employees Retirement System to file for retirement and receive retirement benefits.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds additional sections to the Form 6000, Notification of Retirement, to make it easier for the member and describes the more streamlined process. The member will have all the necessary application forms in one document rather than having to submit multiple separate documents. The process for changing tax withholding preferences, direct deposit, payment by check, and death benefit designation after retirement are also

provided. The amendment requires the member's employer to provide projected leave and salary information in order to provide members with the most accurate estimate of their retirement allowance possible. The amendment removes the health insurance provisions which have been added to a new comprehensive health insurance regulation, 105 KAR 1:410, Kentucky Retirement Systems Health Insurance and Kentucky Retirement Systems Insurance Fund Trust. The amendment also clarifies language, updates forms and eliminates forms that are no longer required because of more detailed reporting by employers.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add additional sections to the Form 6000, Notification of Retirement, to make it easier for the member and describes the more streamlined process. The member will have all the necessary application forms in one document rather than having to submit multiple separate documents. The process for changing tax withholding preferences, direct deposit, payment by check, and death benefit designation after retirement is also provided. The amendment is necessary to require the member's employer to provide projected leave and salary information in order to provide members with the most accurate estimate of their retirement allowance possible. The amendment is necessary to remove the health insurance provisions which have been added to a new comprehensive health insurance regulation, 105 KAR 1:410, Kentucky Retirement Systems Health Insurance and Kentucky Retirement Systems Insurance Fund Trust. The amendment is also necessary to clarify language, update forms and eliminate forms that are no longer required because of more detailed reporting by employers.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes, which require Kentucky Retirement Systems to have a form for Notification of Retirement and procedures for applying for retirement.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will streamline the retirement process for retirees and make the calculations more accurate by adding additional sections to the Form 6000, Notification of Retirement, so the member will have all the necessary application forms in one document, requiring the member's employer to provide projected leave and salary information, removing the health insurance provisions which have been added to a new comprehensive health insurance regulation, 105 KAR 1:410, Kentucky Retirement Systems Health Insurance and Kentucky Retirement Systems Insurance Fund Trust, providing clarifying language, updating forms, and eliminating forms that are no longer required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Members of the systems administered by Kentucky Retirement Systems approximately 348,123 (2014 CAFR), approximately 1,474 participating employers (2014 CAFR), and Kentucky Retirement Systems.

(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: Members seeking to retire will complete the necessary forms for retirement, retired members will complete the necessary forms to change tax withholding, direct deposit, receive payment by check, and death benefit designation, and employers will provide projected salary and leave information.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional administrative cost. Employers are already required to provide reports and information to Kentucky Retirement Systems by KRS 61.675, 78.625, and 105 KAR 1:140. There should be no cost to members completing forms.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Members seeking to retire will have a more streamlined process and more accurate projected

information.

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

(a) Initially: There is no additional administrative cost.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The administrative costs of Kentucky Retirement Systems are paid from the trusts it administers.

(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 are no fees or funding established or changed.

(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 was not applied. The administrative regulation affects all members and participating employers 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? All employers participating in the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System as well as Kentucky Retirement Systems.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.590, 61.595, 61.623, 61.645(9)(g), 61.680, and 61.705

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 generates no revenue the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no additional cost for participating employers to administer the program as they are already required to report by KRS 61.675, 78.625, and 105 KAR 1:140.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost for participating employers to administer the program as they are already required to report by KRS 61.675, 78.625, and 105 KAR 1:140.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

**FINANCE AND ADMINISTRATION CABINET**  
**Office of the Secretary**  
**(Amendment)**

**200 KAR 5:365. Alternative project delivery methods for capital construction.**

RELATES TO: KRS 45A.030, 45A.085, 45A.180, 45A.183, 45A.690-45A.725

STATUTORY AUTHORITY: KRS 45A.180, 45A.183

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.180 requires the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of as many recognized alternative methods of management of construction contracting as he may determine to be feasible. This administrative regulation implements the provisions of KRS 45A.180 and 45A.183 relating to alternative construction delivery methods.

Section 1. Definitions. (1) "Alternative construction delivery method" means a delivery method other than design-bid-build.

(2) "Chief purchasing officer" is defined in KRS 45A.030(3).

(3) "Construction manager-agency" is defined in KRS 45A.030(5).

(4) "Construction management-at-risk" is defined in KRS 45A.030(6).

(5) "Construction manager-general contractor" is defined in KRS 45A.030(7).

(6) "Design-bid-build" is defined in KRS 45A.030(11).

(7) [(6)] "Design-build" is defined in KRS 45A.030(12).

Section 2. Use of Alternative Construction Delivery Methods.

(1) An alternative construction delivery method may be deemed appropriate for a competitive process consistent with KRS Chapter 45A [negotiation pursuant to KRS 45A.085] upon issuance of a written determination by the chief purchasing officer that due to the nature, detail, or circumstances of a project, it is not appropriate to solicit competitive bids using the conventional design-bid-build delivery method and an alternative construction delivery method is justified. The determination shall include a description of facts justifying use of an alternative construction delivery method, and shall state whether the method to be used shall be one of "construction management-at-risk," "design-build," "construction manager-general contractor," or "construction manager-agency."

(2) The criteria for determining the utilization of a specific alternative delivery method for a particular project shall include factors such as the dollar scope of the project, the anticipated schedule of the project, the type of project, and the overall complexity of the project.

Section 3. (1) If it has been determined that it is not appropriate to solicit competitive bids using the conventional design-bid-build delivery method, action to deliver a capital construction project using a specific alternative construction delivery method shall commence by solicitation of written proposals as provided in this section [in accordance with KRS 45A.085(2) and 200 KAR 5:307]. A copy of the request for proposals shall be transmitted to the Capital Projects and Bond Oversight Committee staff.

~~(2) [The criteria for determining the utilization of a specific alternative delivery method for a particular project shall include, factors such as the dollar scope of the project, the anticipated schedule of the project, the type of project, and the overall complexity of the project. The Finance and Administration Cabinet, in conjunction with the user agency, shall determine the appropriate project delivery method prior to the development of preliminary specifications and the issuance of any project solicitations.]~~

~~(3)] A solicitation of proposals for competitive negotiation shall state:~~

~~(a) That the purchasing agency proposes to enter into competitive negotiation with responsible offerors;~~

~~(b) The date, hour, and place that written proposals shall be received;~~

~~(c) The type of alternative delivery method involved and the associated requirements;~~

~~(d) A description of the services sought and the procurement procedures to be followed;~~

~~(e) Specifications, or the location where specifications may be obtained;~~

~~(f) The specific qualitative and pricing evaluative factors, with associated scoring values or weights, to be considered in determining the proposal most advantageous to the commonwealth, with qualifications and price to be weighted at not less than twenty-five (25) percent and fifty (50) percent respectively;~~

~~(g) The level or quantity of information required from each offeror to allow for equitable evaluation;~~

~~(h) The proposed method of award of contract;~~

~~(i) Other information as may be desirable or necessary to reasonably inform potential offerors of technical, performance, and any other data and requirements of the procurement;~~

~~(j) The existence of a funding limitation, if determined to be in the best interest of the commonwealth;~~

~~(k) The amount of the funding limit, if it is determined by the Director of the Division of Contracting and Administration that disclosure of the amount of the funding limit will promote competition and will be in the best interest of the commonwealth; and~~

~~(l) The level or amount of stipends, if any, to be provided and to whom, contingent upon funding limitations. Stipends shall only be provided if adequate funds are available over and above the required project costs.~~

~~(3) [(4)] If a funding limit has been established, proposals that exceed the funding limit may be rejected.~~

Section 4. (1) Procedures for the manner in which proposals will be evaluated shall be established by the purchasing officer per the requirements of the competitive negotiation for each procurement and shall be set forth in the request for proposals. The purchasing officer may request offerors to submit written clarification or explanation of their proposals, and the proposal of any offeror who fails to respond or to request an extension of time to respond within the time requested may be rejected.

(2) Proposals shall be evaluated based upon factors stated in the request for proposals. Numerical rating systems shall be used. ~~[All evaluation documentation, scoring, and summary conclusions shall be in writing and made a part of the file records for the procurement.]~~

Section 5. The Director of the Division of Contracting and Administration shall appoint an evaluation committee of scoring and nonscored (technical) members with membership comprised of personnel from the Finance and Administration Cabinet and the user agency for which the project is being constructed. The Director of the Division of Contracting and Administration shall determine, in writing, the number of committee members based upon the financial scope and technical complexity of the subject project, with no less than four (4), nor more than seven (7), scoring members.

Section 6. Interim preproposal meetings may [shall] be conducted with potential offerors to allow for questions and clarifications regarding project plans and specifications provided as a part of the request for proposals. A written confirmation of all information presented in these meetings shall become an official addendum to the procurement documents and provided to all potential offerors. The number of preproposal meetings shall be determined by the Director of the Division of Contracting and Administration and stated in the request for proposals.

Section 7. All written proposals received by the procurement agency in response to a solicitation shall be kept secure and unopened by the purchasing officer until the date and hour established for opening the proposals. Proposals not clearly marked as such may be opened for identification purposes, and shall be appropriately identified with reference to the particular



procurement and resealed until the time for opening proposals.

Section 8. At the close of the proposal submission deadline, all proposals received shall be opened by the purchasing officer. The purchasing officer shall examine each written proposal received for general conformity with the terms of the procurement. If, after examination of the written proposals initially submitted, it is determined, in writing, that no acceptable proposal has been submitted, all proposals may be rejected and new proposals may be solicited on the basis of the same, or revised terms, or the procurement may be abandoned.

Section 9. If, after solicitation of proposals to enter into competitive negotiations, only one (1) proposal responsive to the solicitation is received, the purchasing officer may commence negotiations with the single offeror and any resulting contract entered into with that offeror shall be deemed to have been competitively negotiated and awarded in accordance with KRS 45A.085 and this administrative regulation. The terms and conditions of the contract shall not in any material respect deviate in a manner detrimental to the purchasing agency from the terms and conditions specified in the solicitation for proposals.

Section 10. The purchasing officer shall hold separate any pricing information before forwarding all conforming proposals to the appropriate, designated evaluation committee for qualitative evaluation. Pricing information shall be kept separate and secure until it is combined with the evaluation committee aggregate qualitative scoring to achieve the final score for the procurement process as set forth in the request for proposals.

Section 11. Proposals shall not be subject to public inspection until the procurement process has been completed and a contract awarded to the highest scoring, responsible offeror submitting the proposal determined to be the most advantageous to the commonwealth, based upon the pricing and qualitative evaluation factors set forth in the solicitation.

Section 12. Discussions with offerors by any member of the evaluation committee relative to the procurement shall be discouraged except during the selection committee interview process. Any ex parte communications between offerors and members shall be documented by each member with a written summary of all discussions setting forth both the dates and the general substance of the discussions. Verbatim records of the discussion shall not be required. The written summaries shall become part of the procurement file.

Section 13. An awarded contract utilizing an alternative project delivery method shall be submitted to the Government Contract Review Committee for review in accordance with KRS 45A.690 to 45A.725.

LORI FLANERY, Secretary

APPROVED BY AGENCY: June 16, 2015

FILED WITH LRC: June 16, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 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 July 31, 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

(1) Provide a brief summary of:

(a) What this administrative regulation does: It provides for a new alternative construction delivery method, Construction Manager-General Manager.

(b) The necessity of this administrative regulation: KRS 45A.180(1) directs the Finance and Administration Cabinet ("FAC") to promulgate regulations regarding the determination to use an alternative construction delivery method for state construction contracts. KRS 45A.183(1)(2)(a)(effective June 24, 2015) requires the FAC to use administrative regulations promulgated pursuant to KRS 45A.180 in the use of the Construction Manager-General Manager alternative delivery method.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The amended regulation sets forth the criteria and requirements for the determination and use of the Construction Manager-General Manager alternative delivery method.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides prospective bidders guidance on the response to solicitations using the Construction Manager-General Manager alternative delivery method in accordance with the procedures used in existing alternative delivery methods allowed by 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 amendment adds the definition of "Construction Manager-General Manager." This will allow the FAC to use the existing administrative procedures set forth in the regulation for this new alternative delivery method.

(b) The necessity of the amendment to this administrative regulation: The regulation must be amended to meet the requirements of KRS 45A.180 and 45A.183.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment sets forth the procedure on the use of this new alternative delivery method.

(d) How the amendment will assist in the effective administration of the statutes: The amendments give FAC flexibility to use an additional alternative delivery method which may reduce construction costs on some projects.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendments will impact prospective bidders for construction contracts but 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: Prospective bidders must comply with the filing requirements for bids, but these requirements are not new and apply to existing alternative delivery methods. Prospective bidders should be familiar with these procedures.

(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 compared to responses to solicitations for existing alternative delivery methods.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No benefits or detriments will accrue to the prospective bidders. This is simply a new construction method.

(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 should have no additional impact on 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? Universities and counties.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 45A.183.

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:

#### GENERAL GOVERNMENT CABINET

##### Board of Pharmacy (Amendment)

#### 201 KAR 2:220. Collaborative care agreements.

RELATES TO: KRS 315.010(4), 315.040(4), 315.191(1)(a)

STATUTORY AUTHORITY: KRS 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations to regulate and control matters relating to pharmacists, pharmacist interns, pharmacy[pharmacist] technicians, pharmacies, wholesale distributors, and manufacturers. This administrative regulation establishes minimum requirements for the development and maintenance of collaborative care agreements between[an individual] pharmacist and[an individual] practitioner.

Section 1. A collaborative care agreement shall:

(1) Be in writing;

(2) Be signed and dated by the:

(a) Each[individual] practitioner; and

(b) Each[individual] pharmacist who is a party to the agreement;and

(c) Patient or care giver;

(3) Provide the method for referral of patients to be managed under the agreement[that upon termination of the agreement the

individual practitioner or individual pharmacist shall notify the patient in writing];

(4) State the method for termination of the agreement; and

(5) Contain the information specified by Section 2 of this administrative regulation.

Section 2. The following information relating to a patient managed under the collaborative care agreement shall be maintained by the pharmacist[A collaborative care agreement shall contain the following information]:

(1) [Patient]Name;

(2) [Patient]Address and phone[telephone] number;

(3) Emergency notification contact[Protocol, criteria, standing orders, or other method by which services are authorized];

(4) Date of birth, weight, height, and gender;[The method established for the assessment of patient outcomes, if appropriate; and]

(5) Medical history, including:

(a) Known diseases;

(b) Known allergies;

(c) Reactions and conditions relating to:

1. Prescription medications; and

2. Nonprescription medications;

(d) Current prescription regimen; and

(e) Current nonprescription regimen;

(6) Lab tests ordered, including results of lab tests;

(7) Assessment of patient outcomes; and

(8) Notes relating to the care and course of therapy of the patient[Lab tests that may be ordered].

Section 3. Notes relating to the care and course of therapy of the patient[The following information relating to a collaborative care agreement shall be maintained by a pharmacist] and shall be provided to the collaborating practitioner:

(1) Emergency notification contact;

(2) Date of birth, weight, height, and gender;

(3) Prescription regimen;

(4) Nonprescription regimen;

(5) Medical history, including:

(a) Known diseases;

(b) Known allergies; and

(c) Reactions and conditions relating to:

1. Prescription regimens; and

2. Nonprescription regimens;

(6) Lab tests ordered, including results of lab tests;

(7) Assessments of patient outcomes;

(8) Notes relating to contacts between the individual pharmacist and the individual practitioner concerning the care and course of therapy of the patient; and

(9) Documentation of the specific counseling information provided to the patient or care giver].

Section 4. A collaborative care agreement shall contain the following information:

(1) Protocol, criteria, standing orders, or other method by which services are authorized;

(2) The method established for the assessment of patient outcomes, if appropriate; and

(3) Lab tests that may be ordered.

Section 5. A collaborative care agreement and information and records required by the provisions of this administrative regulation[,] shall be maintained:

(1) At the pharmacist's practice site; and

(2) For at least five (5) years after termination.

JOEL THORNBURY, President

APPROVED BY AGENCY: July 8, 2015

FILED WITH LRC: July 13, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday August 26, 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. Monday August 31, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Steve Hart, 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: Steve Hart

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements collaborative care agreements between practitioners and pharmacists.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 315.010(4).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute that requires the board to promulgate administrative regulations that establishes the requirements for collaborative care agreements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will set the requirements for collaborative care agreements.

(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 allow collaborative care agreements between multiple practitioner and multiple pharmacists.

(b) The necessity of the amendment to this administrative regulation: Pharmacists and practitioners can establish collaborative care agreements.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment authorizes the board to promulgate regulations regarding collaborative care agreements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow collaborative care agreements between practitioner(s) and pharmacist(s).

(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: Collaborative care agreements will be allowed between practitioner(s) and pharmacist(s).

(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): Multiple practitioners and pharmacists will be allowed to establish a collaborative care agreement.

(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 315.010(4), KRS 315.121 and 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:

Revenues: The board anticipates no revenues.

Expenditures: The board anticipates no expenditures.

**GENERAL GOVERNMENT CABINET  
Board of Medical Licensure  
(Amendment)**

**201 KAR 9:305. Continued licensure of athletic trainers.**

RELATES TO: KRS 214.610, 311.901(1), 311.905(2), 311.909(1)(o)

STATUTORY AUTHORITY: KRS 214.610(1), 311.901(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.901(1) requires the Kentucky Board of Medical Licensure to promulgate administrative regulations relating to the licensure and regulation of athletic trainers and requires continuing education courses on the transmission, control, treatment, and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome. This administrative regulation establishes the criteria for the continued licensure of athletic trainers.

Section 1. Definition. "CEU" means the completion of ten (10) hours of educational courses approved by the:

- (1) Kentucky Board of Medical Licensure; or
- (2) Board of Certification, Inc.

Section 2. ~~[(4)]~~ An athletic trainer licensed to practice in the Commonwealth of Kentucky shall complete six (6) CEUs during each three (3) year renewal cycle beginning with the renewal cycle that ends on June 30, 2015. ~~[(2)(a) During each ten (10) year period of practice, each licensee shall complete a minimum of two (2) hours of continuing education in HIV/AIDS courses approved pursuant to KRS 214.610.~~

~~(b) The hours required by paragraph (a) of this subsection shall be counted as part of the six (6) CEUs required by subsection (1) of this section for the three (3) year renewal cycle during which the HIV/AIDS course was completed.]~~

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: July 13, 2015

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2015 at 11:00 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by August 19, 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. 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 August 31, 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: Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Leanne K. Diakov, (502) 429-7150

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for obtaining continuing education units for athletic trainers licensed in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish the requirements for obtaining continuing education units for athletic trainers licensed in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for obtaining continuing education units for athletic trainers licensed in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the requirements for obtaining continuing education units for athletic trainers licensed in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation; This amendment deletes the mandatory HIV continuing medical unit requirement for athletic trainers licensed in the Commonwealth of Kentucky.

(b) The necessity of the amendment to this administrative regulation; It is necessary to promulgate this regulation to delete the mandatory HIV continuing medical education unit for athletic trainers licensed in the Commonwealth of Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation acts specifically to delete the mandatory HIV continuing education unit requirement for athletic trainers licensed in the Commonwealth of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes. This amendment acts specifically to delete the mandatory HIV continuing education unit for athletic trainers licensed in the Commonwealth of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all athletic trainers licensed to practice in the Commonwealth of Kentucky.

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

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

(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): None.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because the amendment applies equally to all athletic trainers licensed to practice in the Commonwealth of Kentucky.

**FISCAL NOTE ON STATE OR LOCAL GOVERNMENT**

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 214.610, 311.601(1)

(3) Estimate the effect of this administrative regulation on the

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET  
Board of Medical Licensure  
(Amendment)**

**201 KAR 9:310. Continuing medical education.**

RELATES TO: KRS 214.610, 214.615, 214.620, 218A.205, 311.565(1)(b), 311.601, 620.020

STATUTORY AUTHORITY: KRS 311.565(1)(a), (b), 311.601(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.601(1) authorizes the board to promulgate an administrative regulation that establishes requirements to insure the continuing professional competency of licensees. This administrative regulation establishes continuing medical education requirements for physicians in Kentucky, including requirements for courses relating to the use of KASPER, pain management, and addiction disorders required for physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky.

Section 1. Continuing Medical Education. Except as provided in Section 4 of this administrative regulation, at the time a licensee seeks to renew his or her license, the licensee shall submit verification of satisfactory completion of a program of continuing medical education using the Continuing Medical Education Certification Form by the renewal deadline established in 201 KAR 9:051.

Section 2. In order to meet the continuing medical education requirements, a licensee shall:

(1) Submit evidence that thirty (30) of the sixty (60) hours were certified in Category I by an organization accredited by the:

- (a) Accreditation Council on Continuing Medical Education; or
- (b) The American Osteopathic Association;

(2) Submit evidence that:

(a) The licensee has received the American Medical Association's "physician recognition award", or the American Osteopathic Association's "osteopathic physicians' recognition award"; and

(b) The award is in effect at the time the license is renewed;

(3) Submit verification that the:

(a) Licensee has completed continuing medical education requirements of any specialty organization which is recognized by the American Medical Association or American Osteopathic Association as at least equivalent to their recognition awards; and

(b) Certification is in effect at the time a license is renewed; or

(4) Submit verification that the licensee is in, or has been in, an approved postgraduate training program. Each year of postgraduate training shall be equivalent to fifty (50) hours of

continuing medical education.

Section 3. Required Hours of Continuing Education. (1)(a) For each three (3) year continuing education cycle, a licensee shall complete a total of sixty (60) hours of continuing medical education, if his or her license has been renewed for each year of a continuing medical education cycle.

(b) If the license has not been renewed for each year of a continuing medical education cycle, a licensee shall complete twenty (20) hours of continuing medical education for each year for which the license has been renewed.

(c) A licensee whose initial licensure was granted the first year of the continuing education cycle for which verification is submitted shall complete sixty (60) hours of continuing medical education before the end of the cycle.

(d) A licensee whose initial licensure was granted the second year of the continuing education cycle for which verification is submitted shall complete forty (40) hours of continuing medical education before the end of the cycle.

(e) A licensee whose initial licensure was granted the third year of the continuing education cycle for which verification is submitted shall complete twenty (20) hours of continuing medical education before the end of the cycle.

(2) Upon renewal of licensure following the end of a three (3) year continuing education cycle, a licensee shall certify that he or she has met the continuing medical education requirements for the cycle as provided by this section.

(3) Verification of completion of continuing medical education requirements shall be submitted upon request by the board.

Section 4. Extensions of Time. (1) To request an extension of time, the licensee shall submit:

(a) A completed Request for Extension to Complete Required CME Hours; and

(b) The fee required by 201 KAR 9:041, Section 1(17).

(2) The board may grant an extension of time to a physician who for sufficient cause has not yet received continuing medical education certification, following the submission of the items required by subsection (1) of this section.

~~Section 5. [During each ten (10) year period of practice, each licensee shall complete a minimum of one (1) hour of continuing medical education in HIV/AIDS courses approved pursuant to KRS 214.610, 214.615 and 214.620.~~

~~Section 6.]~~ (1) For each three (3) year continuing education cycle beginning on January 1, 2015, a licensee who is authorized to prescribe or dispense controlled substances within the commonwealth at any time during that cycle shall complete at least four and one-half (4.5) hours of approved continuing education hours relating to the use of KASPER, pain management, addiction disorders, or a combination of two (2) or more of those subjects. A licensee may satisfy this requirement by completing a single approved program of four and one-half (4.5) hours or longer or by completing multiple approved programs for a total of four and one-half (4.5) hours or longer for that cycle.

(2) Each physician licensed to practice medicine or osteopathy within the Commonwealth of Kentucky who is authorized to prescribe or dispense controlled substances within the commonwealth from July 20, 2012 through the end of the three (3) year continuing education cycle beginning on January 1, 2012 and ending on December 31, 2014 shall complete at least four and one-half (4.5) hours of approved Category I Credit continuing medical education hours relating to the use of KASPER, pain management, addiction disorders, or a combination of two (2) or more of those subjects on or before December 31, 2014. The licensee may satisfy this requirement by completing a single approved program of four and one-half (4.5) hours or longer or by completing multiple approved programs for a total of four and one-half (4.5) hours or longer for this cycle.

(3) Each physician licensed to practice medicine or osteopathy within the Commonwealth of Kentucky who is authorized to prescribe or dispense controlled substances during the calendar

years 2013 and 2014, but not during any portion of 2012, shall complete at least three (3) hours of approved Category I Credit continuing medical education hours relating to the use of KASPER, pain management, addiction disorders, or a combination of two (2) or more of those subjects on or before December 31, 2014. The licensee may satisfy this requirement by completing a single approved program of three (3) hours or longer or by completing multiple approved programs for a total of three (3) hours or longer for those two (2) years.

(4) Each physician licensed to practice medicine or osteopathy within the Commonwealth of Kentucky who is authorized to prescribe or dispense controlled substances during calendar year 2014, but not during any portion of 2012 or 2013, shall complete at least one and one-half (1.5) hours of approved Category I Credit continuing medical education hours relating to the use of KASPER, pain management, addiction disorders, or a combination of two (2) or more of those subjects on or before December 31, 2014. The licensee may satisfy this requirement by completing a single approved program of one and one-half (1.5) hours or longer or by completing multiple approved programs for a total of one and one-half (1.5) hours or longer for that calendar year.

(5)(a) To qualify as approved continuing education under this section, the educational program shall have been approved in advance for the specified number of continuing education hours by the board.

(b) The board may approve an educational program that:

1. Consists of a live presentation;
2. Is presented by a live or recorded webinar; or
3. Is presented through an online module.

(c) The board shall maintain a current listing of approved continuing education programs on its official Web site, [www.kbmi.ky.gov](http://www.kbmi.ky.gov).

(6)(a) In order to lawfully prescribe or dispense controlled substances within the Commonwealth of Kentucky, a licensee shall complete the required number of continuing education hours for each period designated in this section.

(b) Failure to complete the required number of continuing education hours for the required period or to submit the required written verification within the time specified shall constitute a violation of KRS 311.595(9) and (12), which shall constitute an immediate danger to the public health, safety, or welfare, for the purposes of KRS 311.592 and 13B.125.

(c) If the board determines that a licensee has failed to complete the required continuing education hours within the time specified or has failed to provide the written verification of completion within the time specified, the appropriate inquiry panel or its chair shall promptly issue an emergency order restricting that licensee from prescribing or dispensing controlled substances within the Commonwealth of Kentucky until the licensee has completed the required continuing education hours for that period and has provided written verification of completion to the board.

(d) An emergency order restricting a licensee from prescribing or dispensing controlled substances within the Commonwealth of Kentucky issued pursuant to paragraph (c) of this subsection shall remain valid and in effect until the board has received written verification that the licensee has successfully completed the required continuing education hours for the time period specified. Upon receipt of the written verification, the panel or its chair shall immediately issue an order terminating the emergency order issued pursuant to this section.

(e) If a licensee who is affected by an emergency order issued pursuant to this section requests an emergency hearing pursuant to KRS 13B.125(3), the hearing officer conducting the emergency hearing shall affirm the emergency order if presented with written notification on board letterhead stating that the board has not received the required written verification that the licensee completed the required continuing education hours for the period specified by the time specified.

(7) If a licensee prescribes or dispenses a controlled substance within the Commonwealth of Kentucky during any period after the licensee has failed to complete the required continuing education hours within the time specified or has failed to provide written verification of completion within the time specified, each instance of

prescribing or dispensing of a controlled substance shall constitute a separate violation of KRS 311.595(12) and (9), as illustrated by KRS 311.597(1)(b), and shall serve as the basis for disciplinary sanctions pursuant to KRS 311.595.

Section 6.[7-] Each licensee practicing in the specialty of pediatrics, radiology, family medicine, or emergency medicine and each licensee practicing in an urgent care practice environment shall complete at least one (1) hour of continuing medical education regarding the recognition and prevention of pediatric abusive head trauma in a course approved by the board pursuant to KRS 620.020, prior to December 31, 2017, or within five (5) years of initial licensure.

Section 7.[8-] The board may randomly require physicians submitting certification of continuing medical education to demonstrate satisfactory completion of the continuing medical education requirements stated in the certification.

Section 8.[9-] (1) A licensee shall be fined a minimum of \$200, if he or she fails to:

(a) Timely complete the continuing medical education requirements; or

(b) Obtain an extension of time for completion of the continuing medical education requirements.

(2)(a) A licensee subject to subsection (1) of this section shall be granted a period of six (6) months to come into compliance.

(b) If a licensee has not completed the continuing medical education requirements within the six (6) month period established by this subsection, his or her license shall:

1. Be immediately suspended; and
2. Remain suspended until the licensee has submitted verifiable evidence that he or she has completed the continuing education requirements.

Section 9.[10-] A waiver of the requirements established by the provisions of this administrative regulation shall not be granted.

Section 10.[11-] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Continuing Medical Education Certification Form", January 2013; and

(b) "Request for Extension to Complete Required CME Hours", January 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, 8 a.m. to 4:30 p.m., Monday through Friday.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: July 13, 2015

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2015 at 10:00 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by August 19, 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. 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 August 31, 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: Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax

(502) 429-7118.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leanne K. Diakov, (502) 429-7150.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for obtaining continuing medical education hours for physicians in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish the requirements for obtaining continuing medical education hours for physicians in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for obtaining continuing medical education hours for physicians practicing in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the requirements for obtaining continuing medical education hours for physicians practicing in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment deletes the mandatory HIV continuing medical education requirement for physicians practicing in the Commonwealth of Kentucky.

(b) The necessity of the amendment to this administrative regulation: It is necessary to promulgate this regulation to delete the mandatory HIV continuing medical education requirement for physicians practicing in the Commonwealth of Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation acts specifically to delete the mandatory HIV continuing medical education requirement for physicians practicing in the Commonwealth of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes. This amendment acts specifically to delete the mandatory HIV continuing medical education requirement for physicians practicing in the Commonwealth of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all physicians licensed to practice in the Commonwealth of Kentucky.

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

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

(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): None.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does

it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because the amendment applies equally to all physicians licensed to practice in the Commonwealth of Kentucky.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 214.610, 311.565(1)(a)

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## GENERAL GOVERNMENT CABINET Kentucky Real Estate Commission (Amendment)

**201 KAR 11:170. Real estate[Private] school and pre-license course approval.**

RELATES TO: KRS 324.010(7), 324.046(1), (2), 324.085

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.010(7) and (8) authorizes the commission to approve a real estate school. KRS 324.046(1) and (2) require an applicant for initial licensure as a broker or sales associate to have completed the specified number of courses from an approved or accredited real estate school. This administrative regulation establishes the requirements and application procedures for an approved real estate school seeking approval of courses for license credit.

Section 1. (1) To apply for certification as an approved real estate school or to renew certification, a real estate school shall submit a:

(a) Completed Provider Application – Form E101[for an ~~Approved Real Estate School,~~] including the information required concerning curriculum, instructors, required textbooks, educational materials, and policies of the school;

(b) Copy of the license[~~Certificate of Approval~~] from the Kentucky Commission on[~~State Board for~~] Proprietary Education[~~or Kentucky Department of Education~~], if applicable;

(c) Sample schedule to outline how a course will be presented;

(d) Completed detailed Course Outline – Form E105 broken into four (4) hour increments to include teaching methods, learning

objectives for the course, auxiliary aids, and materials for each course, which shall include:

1. ~~[A Real Estate]~~ Instructor Application – Form E100 and any additional documents required to explain a response on the application for each instructor who will teach this course, as required by 201 KAR 11:175; and

2. A copy of the written material, other than the textbook or real estate license law manual, which the instructor will use in the classroom;

(e) Sample copy of a school brochure or information sheet promoting the school;

(f) Copy of legal documentation required to support an answer, if applicable;

(g) A sample copy of an official transcript that will be issued by the school; ~~[-]~~

(h) A copy of a contract or agreement signed by the student which outlines the class schedule, assignments or projects, examination requirements, grading system, and attendance requirements; and

(i) Other documents as outlined in Section 2 of this administrative regulation.

(2) An approved real estate school shall include a statement in the school application that a criminal conviction may prevent an applicant from qualifying for licensure under KRS 324.045. Failure to do so may result in suspension of an approved school's certification until the information is included in the application.

(3) An approved real estate school shall notify the commission within ten (10) days of a material change in the information originally furnished on the application or in an attachment to the application.

(4) A renewal application shall be submitted by October 1 of each even numbered year. The approval shall be for a two (2) year period, beginning November 1.

Section 2. (1) The curriculum for a pre-license course at an approved real estate school shall:

(a) Include a minimum of:

1. Three (3) academic hours per course; or

2. Fifteen (15) hours for a course related to the appraisal of property;

(b) Be conducted for a maximum of no more than seven (7) academic hours during a twenty-four (24) hour period;

(c) 1. Consist of a course containing the topics listed in the Pre-license Prescribed Topics – Form E112 ~~[Topics Prescribed]~~ by the Real Estate Commission.

2. A real estate course shall be one that ~~[which]~~ is designated specifically as a real estate course by an approved or accredited real estate school that ~~[which]~~ offers the course.

3. The academic content for the course shall specifically focus on real estate.

4. The course shall be for academic credit and not a continuing education unit, examination preparation or review, experiential education, or competency testing.

5. A candidate shall not submit completion of the same course or essentially the same course twice for licensure credit;

(d) 1. Include a closed-book monitored final examination of at least:

a. Seventy-five (75) multiple choice questions for a three (3) hour ~~academic~~ ~~[hour]~~ course; or

b. 100 multiple choice questions for a six (6) hour ~~academic~~ ~~[hour]~~ course.

2. The passing score shall be seventy-five (75) percent in order to pass the course.

3. Examination questions shall cover all aspects of material covered in the course, including applicable license laws and administrative regulations.

4. One (1) retake of the examination shall be permitted; and

(e) Include in all real estate pre-license ~~[prelicense]~~ courses, a practicum or project applicable to the topic, that shall be completed with a passing score and averaged with the final examination and other components or assignments required in the course, as part of the student's final grade.

(2) The application for course approval shall include a copy of

the final examination and answer key, an explanation and copies of the project or practicum that shall be required of students, when that assignment shall be due, and how the final grade for the course shall be calculated.

(3)(a) All primary and secondary providers offering online pre-license ~~[prelicense]~~ or other distance education courses shall be approved ~~in accordance with the provisions set forth in 201 KAR 11:240~~ ~~[certified by the Association of Real Estate License Law Officials (ARELLO) or the International Distance Education Certification Center (IDECC) as to format and delivery systems of the program]~~.

(b) The commission shall review the content to ensure that it meets the requirements outlined in this administrative regulation and in 201 KAR 11:240.

(4)(a) The application and all required attachments shall be submitted to the commission for consideration at its next regularly-scheduled meeting.

(b) The provider shall be notified in writing of the commission's approval or denial of the course for academic credit.

Section 3. Each real estate pre-license ~~[prelicense]~~ course completed at an out-of-state accredited institution, for which credit may be granted under this section, shall be approved or rejected under the following procedure:

(1) A course description from the school catalog, course syllabus, table of contents from text used in the course, or other summary of the course shall be provided to the commission by the applicant;

(2) The commission education director shall review the material submitted by the applicant and recommend the commission either grant or reject credit under this section at the commission's regular monthly meeting;

(3) The commission education director shall record:

(a) The name of the course;

(b) Whether approval was granted or rejected; and

(c) The date of approval or rejection.

(4) If a course has been previously approved by the commission under this section or if a course is substantially similar to a previously-approved course, the commission education director shall be authorized to determine course approval;

(5) In determining whether a course is substantially similar to a previously-approved course, one (1) or more of the following items shall be considered:

(a) The table of contents from text used in the course;

(b) The course syllabus;

(c) Course description from the school catalog; or

(d) Other summary of the course.

(6) The commission's education director shall notify an applicant if a course is rejected for credit under this section;

(7)(a) If an applicant disagrees with the education director's decision under this section, he or she shall, within ten (10) days from the date of the education director's notification of rejection, file with the commission a written request for a commission review of its education director's decision.

(b) The request shall specifically indicate the applicant's disagreement.

(c) Failure to indicate disagreement within the ten (10) day period shall constitute waiver by the applicant and the education director's decision shall become final;

(8)(a) In addition to notifying ~~[the indication to]~~ the education director of disagreement with his or her decision, the applicant shall provide a written summary to the education director detailing why credit under this section is merited.

(b) The commission education director shall forward this summary to the commission along with his or her response to the commission for a final decision at the commission's regular monthly meeting.

(c) Failure to provide within ten (10) days a specific summary detailing why credit is merited under this section shall constitute waiver by the applicant and the education director's decision shall become final at that point;

(9)(a) If the applicant indicates disagreement with the education director's decision within ten (10) days of notification and



provides a written summary detailing the disagreement within ten (10) days of notification, the commission shall consider the submissions from the applicant and the education director and reject or approve the course for credit under this section.

(b) The commission shall notify the applicant of its decision in writing.

Section 4. An approved real estate[course] school shall not:

(1) Advertise in conjunction with the business of a broker or a brokerage firm; or

(2) Discuss, induce, or promote affiliation with a broker or brokerage firm.

Section 5. (1) An approved real estate school shall maintain accurate and permanent records on each student enrolled in a course.

(a) A permanent record shall include each student's record of courses completed or attempted, academic hours awarded, and final grades.

(b) A certificate of completion shall be:

1. Included in the permanent records of each student; and

2. Mailed to each student upon completion of a course.

(2) Records shall:

(a) Be maintained for three (3) years; and

(b) Include student attendance records, final grade, and test scores.

(3) An approved real estate school shall notify the commission, in writing, within five (5) days of the beginning of a pre-license[prelicense] course. Notice shall include the name of the course, class location, and scheduled dates and times the class will be offered.

(4) Schools and instructors shall take appropriate steps to maintain the confidentiality of the final examinations at all times. These steps shall include:

(a) Maintaining examinations and answer keys in a secure place accessible only to the school administrator and the instructor;

(b) Prohibiting students from retaining copies of the final examination and answer sheets; and

(c) Monitoring students at all times when examinations are being conducted.

Section 6. (1) An approved real estate school shall permit an inspection and monitoring by the commission or its designee to evaluate an aspect of the administration or operation of the school or to evaluate the performance of the instructor.

(2) Monitoring may include a periodic mailing by the commission to students seeking an evaluation of his or her pre-license[prelicense] course and instructor.

Section 7. (1) Private school approval may[shall] be withdrawn if the commission determines that:

(a)[(4)] Information contained on the application or renewal is inaccurate or misleading;[or]

(b)[(2)] The establishment or conduct of the school is not in compliance with this administrative regulation or the instruction is so deficient as to impair the value of the course; or

(c)[If a school has been given notice of a deficiency under this section, the commission shall give the school an opportunity to correct the deficiency within thirty (30) days. If the deficiency has been corrected, the commission may, after reviewing the steps taken to correct the problem, recertify the school or course.]

(3) The school is not certified by the Kentucky Commission on[State Board for] Proprietary Education.

(2) If the commission has notice that a school's approval may be subject to withdrawal for the reasons set forth in subsection (1) of this section, the commission shall:

(a) Give written notice to the school of the intent to withdraw approval and the reasons therefor;

(b) Give the school an opportunity to address the notice, in writing, within thirty (30) days of the date of the notice of intent to withdraw approval; and

(c) Review the issues and the school's response, and the commission may withdraw approval of the school.

Section 8. An effort made directly or indirectly by a school, official, or employee, or a person on their behalf to reconstruct the real estate licensing examination or portion of the examination shall result in immediate revocation of school approval.

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

(a) "Instructor Application - Form E100[Application for Certification of Approved Real Estate School]", 05/15[09/07] edition, Kentucky Real Estate Commission;

(b) "Provider Application - Form E101[Course Outline]", 05/15[09/07] edition, Kentucky Real Estate Commission;

(c) "Course Outline - Form E105[Certificate of Completion]", 05/15[09/07] edition, Kentucky Real Estate Commission; and

(d) "Pre-license Prescribed Topics - Form E112[Topics Prescribed by the Real Estate Commission]", 05/15[2007] edition, Kentucky Real Estate Commission; and

(e) "Real Estate Instructor Application", 09/07 edition, Kentucky Real Estate Commission].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

JIM HUFF, Chairperson

APPROVED BY AGENCY: June 22, 2015

FILED WITH LRC: June 29, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, August 24, 2015 at 9:00 a.m., in the boardroom of the Kentucky Real Estate Commission located at 10200 Linn Station Road, Suite 201, in Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 August 31, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Rhonda K. Richardson, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rhonda K. Richardson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and application procedures for an approved real estate school and requirements and procedures for course approval.

(b) The necessity of this administrative regulation: KRS 324.010(7) and KRS 324.281(8) require that the commission promulgate regulations setting forth the review process and procedure for approval of real estate schools and courses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets forth the requirements and application procedures for approval of real estate school applications and requirements and procedures for approval of courses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a review process and procedure for approval of real estate schools and courses.

(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:

i. Application for an Approved Real Estate School renamed "Provider Application" to allow a more generic use of the form;

ii. Kentucky State Board for Proprietary Education change to "Kentucky Commission for Proprietary Education" to reflect change in name;

iii. Certificates of Approval form title changed to "license" to reflect change of document title of required document issued by Kentucky Commission for Proprietary Education;

iv. "Pre-license" inserted before "course(s)" and "topics" where necessary, to distinguish pre-license course requirements and process from post-license course requirements and process;

v. Adds a provision to address the withdrawal of approval from a school by the Kentucky Commission for Proprietary Education;

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to maintain compatibility with the newly enacted KRS 324.235;

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation sets forth the requirements and application procedures for approval of real estate school applications and requirements and procedures for approval of courses;

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides a review process and procedure for approval of real estate schools and courses.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Forty-five (45) Proprietary schools may be affected by this administrative regulation;

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Impacted entities will be required to follow the processes set forth in this regulation and to utilize the required forms.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Education providers are currently charged \$15.00 per course approval application. There will be no additional cost to the providers in completing the new forms.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By utilizing the required forms the proprietary school approval process will be not be delayed.

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

(a) Initially: This administrative regulation substitutes the existing form for a new form. This regulation will be implemented utilizing existing staff and no additional cost will be incurred.

(b) On a continuing basis: Administrative regulation will be implemented utilizing existing staff.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The existing agency 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 are funding will be 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 or directly increase any fees. The fee schedule for this administrative regulation is set forth in KRS 324.287.

(9) TIERING: Is tiering applied? Tiering has not been applied as there is no disproportionate impact on any regulated entity.

#### 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 Real Estate Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.010(7) and KRS 324.281(8).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will be implemented utilizing existing staff and no additional cost will be incurred.

(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? Approximately \$7,200.

(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? Approximately \$7,200.

(c) How much will it cost to administer this program for the first year? Administration will be carried out by existing staff and there will be no additional costs..

(d) How much will it cost to administer this program for subsequent years? None. Administration will be carried out by existing staff.

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 Real Estate Commission (Amendment)

#### 201 KAR 11:175. Instructor approval procedures and guidelines.

RELATES TO: KRS 324.010(7)(1)(g), 324.046(1), (2)

STATUTORY AUTHORITY: KRS 324.085, 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.010(7)(1)(g) authorizes the commission to approve a real estate school. KRS 324.085(4), (5) authorizes the commission to promulgate administrative regulations necessary to implement requirements for instructor approval[324.046(1) and (2) require an applicant for initial licensure as a broker or sales associate to have completed the specified number of courses from an approved or accredited real estate school]. This administrative regulation establishes the requirements and application procedures for approval as an instructor at an approved real estate school.

Section 1. To apply for certification as an instructor at an approved real estate school, an instructor shall:

(1) Submit a:

(a) Completed[Real Estate] Instructor Application – Form E100;

(b) Copy of a current resume;

(c) Copy of legal documentation required to support an answer, if applicable; and

(d) Completed Course Outline – Form E105 for each course;

(2) Have:

(a) A bachelor's, master's, [masters] or doctorate degree from a college or university duly accredited by a nationally recognized rating or accrediting organization, in a field directly related to the nature of the course, such as real estate, business, law, finance, or education;

(b) An associate degree in real estate from a college or university duly accredited by a nationally recognized rating or

accrediting organization;

(c) Completed five (5) consecutive years full-time experience in the real estate related subject area that he is teaching (averaging at least twenty (20) hours per week for each of the five (5) years); or

(d) A combination of teaching, education, and full-time experience in real estate totaling five (5) years (averaging at least twenty (20) hours per week for each year of experience); and

(3) Possess:

(a) A thorough familiarity of the provisions of KRS Chapter 324 and the effect of those provisions on the subject area of the course; and

(b) A thorough knowledge of the subject area of the course he is teaching.

Section 2. Approval of an instructor shall be withdrawn by the commission for:

(1) A violation of a provision of KRS Chapter 324 or an administrative regulation promulgated under it;

(2) Falsification of material submitted to the commission to become an approved instructor;

(3) Failure to provide to the commission requested material;

(4) While acting as an instructor in an educational facility, engaging in brokerage activity with an enrolled student;

(5) Soliciting an investment from a student; or

(6) Attempting to recruit a student to a real estate company while acting as an instructor.

Section 3. (1) An approved instructor may[shall] teach:

(a) A pre-license[prelicensure] course offered by an:

1. Approved real estate school; or

2. Accredited real estate school which receives funding under the real estate education, research and recovery fund;[or]

(b) A mandatory continuing education course; or

(c) A post-license education course.

(2) A person who is not an approved instructor shall not teach a course listed in subsection (1) of this section.

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

(a) "[~~Real Estate~~]Instructor Application – Form E100", 05/15[44/97] edition, Kentucky Real Estate Commission; and

(b) "Course Outline – Form E105", 05/15[44/97] edition, Kentucky Real Estate Commission.

(2) This material may be inspected, copied, or obtained at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

JIM HUFF, Chairperson

APPROVED BY AGENCY: June 22, 2015

FILED WITH LRC: June 29, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, August 24, 2015 at 9:00 a.m., in the boardroom of the Kentucky Real Estate Commission located at 10200 Linn Station Road, Suite 201, in Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 August 31, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Rhonda K. Richardson, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rhonda K. Richardson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and application procedures for approval as an instructor at an approved real estate school, and removes the mandatory language regarding the courses an instructor may teach.

(b) The necessity of this administrative regulation: KRS 324.085(5) requires that the commission promulgate administrative regulations implementing procedures for instructor approval.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements and application procedures for approval as an instructor at an approved real estate school.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the procedures and guidelines for the approval of an instructor at an approved real estate school.

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

(a) How the amendment will change this existing administrative regulation:

i. The amendment changes the reference to "prelicensure" to "pre-license" and changed the form names and numbers referenced in the existing administrative regulation.

ii. Amendments were made to the "RELATES TO" provision to more precisely identify statutes to which the amended administrative regulation relates;

iii. Amendments were made to the "STATUTORY AUTHORITY" provision to more precisely identify the statutory authority;

iv. Amendments were made to the "NECESSITY, FUNCTION AND CONFORMITY" provision to address the requirement for implementation of an instructor approval process.

(b) The necessity of the amendment to this administrative regulation: Amendments to this administrative regulation were necessary for compatibility and consistency with post-licensure education requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation sets forth the procedures and guidelines for the approval of an instructor at an approved real estate school.

(d) How the amendment will assist in the effective administration of the statutes: Education providers may qualify and obtain the approval of their instructors by following the procedures and guidelines set forth in this regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: At present, there are fifty-three (53) approved education providers that 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: All education providers must use the guidelines and procedures set forth in this amended administrative regulation to have their instructors approved.

(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 new costs associated with the amended administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Education providers, with qualifying instructor applicants, will have their instructors approved.

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

(a) Initially: None. Regulation will be implemented utilizing

existing staff.

(b) On a continuing basis: None. Regulation will be implemented utilizing existing staff.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.

(9) TIERING: Is tiering applied? Tiering has not been applied, as there is no disproportionate impact on any regulated entity.

#### 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 Real Estate Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.085, 324.281(5), 324.282

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

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

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

(c) How much will it cost to administer this program for the first year? NONE, administration will be carried out by existing staff.

(d) How much will it cost to administer this program for subsequent years? None, administration will be carried out by existing staff.

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 Real Estate Commission (Amendment)

#### 201 KAR 11:210. Licensing, education, and testing requirements.

RELATES TO: KRS 324.010, 324.040, 324.045(1), (2), (3), 324.046

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. This administrative regulation establishes standards relative to education[,] and licensure application requirements.

Section 1. In lieu of proof of high school graduation or a GED diploma, an applicant may submit an official transcript from a United States institution, or from an institution outside of the United States as indicated in Section 2 of this administrative regulation, which indicates completion of a degree program at a post-secondary[~~post-secondary~~] institution, or a transcript from a United

States institution, or from an institution outside of the United States as indicated in Section 2 of this administrative regulation, which indicates successful completion of twenty-eight (28) academic semester hours or the equivalent from a post-secondary[~~post-secondary~~] institution.

Section 2. (1) If an applicant submits documentation of qualifying education in a language other than English, the diploma or transcript shall be translated by a disinterested third party.

(2) The entity shall provide:

(a) A translation of the documents; and

(b) A certification stating that the translation is true, accurate, and complete.

(3) The applicant shall provide a letter to the commission indicating that the curriculum of the proffered education is equivalent to a high school diploma or GED. The comparison shall be made by an education credential service provider with membership in the National Association of Credential Evaluation Services[: ~~(a) International Education Research Foundation, www.ierf.org;~~

~~(b) International Education Evaluations, www.iee1981.com; or~~

~~(c) World Education Services, www.wes.org/fees/evaltypes.asp].~~

(4) If the applicant is unable to comply with the requirements of this section, the applicant shall furnish proof of the receipt of a GED granted by an agency or institution within the United States.

Section 3. An applicant who successfully passes the real estate examination shall apply for a license within sixty (60) days after the examination. A candidate who fails to apply for a license within this period shall be reexamined[~~An official transcript is a document imprinted with the institution's seal, signed by the registrar, and sent directly from the institution to the commission.~~

~~Section 4. An applicant who successfully passes the real estate examination shall apply for a license within sixty (60) days after the examination. A candidate who fails to apply for a license within this period shall be reexamined].~~

JIM HUFF, Chairperson

APPROVED BY AGENCY: June 22, 2015

FILED WITH LRC: June 22, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on Monday, August 24, 2015 at 9:00 a.m., in the Boardroom of the Kentucky Real Estate Commission located at 10200 Linn Station Road, Suite 201, in Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 August 31, 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: Rhonda K. Richardson, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rhonda K. Richardson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation removes three (3) organizations authorized to certify high school curriculum equivalency for schools whose records are not in the English language, and removes the definition of "official transcript."

(b) The necessity of this administrative regulation: This

regulation is necessary to remove the current approved organizations to allow credentialing by any education credential service provider with membership in the National Association of Credential Evaluation Services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.282 authorizes the promulgation of administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. This administrative regulation establishes standards relative to education, and licensure application requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administration regulation enables individuals with foreign credentials to have their educational curriculums evaluated for equivalency with the established standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This regulation broadens the number of education credential service providers that are authorized to provide credentialing.

(a) How the amendment will change this existing administrative regulation: This regulation broadens the number of education credential service providers that are authorized to provide credentialing.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to create more options for foreign language review.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation sets forth the entities through which certification of educational equivalency may be certified.

(d) How the amendment will assist in the effective administration of the statutes: This regulation establishes standards relative to education, and licensure application requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect individuals seeking licensure.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: NONE.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): NONE.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Not applicable.

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

(a) Initially: NONE. Existing staff will be utilized to implement this regulation.

(b) On a continuing basis: NONE. Existing staff will be utilized to implement this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: NONE.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: NONE.

(9) TIERING: Is tiering applied? Tiering has not been applied, as there is no impact on any regulated entity.

#### 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 Real Estate Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. NONE.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? NONE.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Kentucky Real Estate Commission (Amendment)

#### 201 KAR 11:230. Continuing education requirements.

RELATES TO: KRS 324.010(7), (8), 324.046(5), 324.085(1), (2), 324.090, 324.160(1)(c), [324.160](4)(u), 324.281(7)

STATUTORY AUTHORITY: KRS 324.085(1), (4), 324.160(1)(c), [324.160](4)(u), 324.281(5), (7), (8), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.085(1) requires an actively-licensed agent, except an agent licensed prior to June 19, 1976, to successfully complete six (6) hours of mandatory continuing education each year as a condition of license renewal and requires that three (3) of the six (6) hours pertain to the study of real estate law. This administrative regulation establishes the requirements relating to continuing education and sets the amount of the fine for failure to comply with the requirements.

Section 1. Definition. "Continuing education course" means a course approved pursuant to the requirements set forth in KRS 324.085(1) and this administrative regulation.

Section 2. Mandatory Continuing Education. (1) An active licensee, licensed by the commission on or after June 19, 1976, shall meet the requirements of KRS 324.085(1) by attending and successfully completing six (6) hours of continuing education courses that are sponsored or approved by the commission by December 31 of each calendar year. An active licensee[licensee] shall receive continuing education credit for any approved course taken, if he or she files with the commission a certificate of completion for each course for which credit is sought by December 31 of each calendar year. These courses may be offered[taken] in one (1) to six (6) hour increments. An active license shall not be renewed unless the licensee has complied with the provisions of this administrative regulation.

(2) An active licensee shall attend a commission-approved core course once every four (4) years; the first four (4) year cycle beginning from the date of initial licensure. The core course shall:

(a) Satisfy the licensee's mandatory continuing education requirement for the year in which the course is taken; and

(b) Be a six (6) hour comprehensive review of the requirements of KRS Chapter 324, 201 KAR Chapter 11, common and federal law relating to real estate, and the standards of practice for a real

estate licensee.

(3) ~~When a licensee is first licensed in Kentucky, his or her year of compliance shall be assigned by the commission based upon the following schedule:~~

~~(a) If the licensee's birth month is January, February, or March, the licensee shall take the core course in the first year of a four (4) year cycle.~~

~~(b) If the licensee's birth month is April, May, or June, the licensee shall take the core course in the second year of a four (4) year cycle.~~

~~(c) If the licensee's birth month is July, August, or September, the licensee shall take the core course in the third year of a four (4) year cycle.~~

~~(d) If the licensee's birth month is October, November, or December, the licensee shall take the core course in the fourth year of a four (4) year cycle.~~

~~(4) Continuing education hours exceeding the amount required shall not be carried forward to the next year's requirements or used to reactivate a license in the next calendar year.~~

~~(4) [(5)] Hours of instruction in pre-license[prelicense] real estate education courses, unless it is the licensee's year to complete the core course, shall be credited to the mandatory continuing education requirements for the calendar year in which it is taken and completed. The licensee shall submit a transcript or course completion certificate for the pre-license[prelicense] course in order to receive credit toward the continuing education requirements for that calendar year.~~

Section 3.2] Exemptions from the Mandatory Continuing Education Requirement. (1) The provisions of this administrative regulation shall not apply to any person licensed by the commission prior to June 19, 1976.

(2) A license recognition broker[licensee] shall not be required to attend a continuing education course during the first calendar year in which he or she is first licensed in Kentucky.

(3) A licensee shall not be required to attend a continuing education course during the first two (2) calendar years from the date of issuance of an initial sales associate license.

(4)(a) An escrowed licensee shall not be required to attend continuing education courses while the license remains in escrow.

(b) Before a license is changed from escrow to active status, a licensee shall provide the commission with documentation of the completion of the current calendar year's[continuing] education requirements.

(c) If the licensee has not completed the core course in the previous four (4) years as required, the core course shall become the current calendar year's continuing education requirement for a license changing from escrow to active.

[Section 3. Continuing Education Course Criteria. (1) One (1) hour of continuing education shall be allowed for each fifty (50) minutes of actual attendance.

(2) To receive approval, courses shall:

(a) Be in hourly increments from one (1) to six (6) hours;

(b) Be real estate specific;

(c) Consist of topics that shall:

1. Enable the student to better understand the brokerage business; and

2. Serve the public.

(3) A course that is motivational or considered to be personal development in nature shall not be approved.

(4) All course approvals shall expire on December 31 of each calendar year.

(5) All primary or secondary providers wishing to offer online or other distance education courses, as outlined in 201 KAR 11:240, shall be certified by the Association of Real Estate License Law Officials (ARELLO) or the International Distance Education Certification Center (IDECC) as to format and delivery systems of the program. The commission shall review the content to ensure that it meets the requirements outlined in 201 KAR 11:240.

Section 4. Continuing Education Course Provider

Requirements. (1) An education course shall be sponsored by:

(a) An accredited institution;

(b) A school that has been given a certificate of approval by the Kentucky State Board of Proprietary Education;

(c) An appropriate governmental regulatory body; or

(d) An approved real estate school as defined in KRS 324.010(7)(b).

(2) To apply for approval of a continuing education course, a provider shall submit a:

(a) Completed Continuing Education Provider Application, which shall:

1. Include a completed Course Outline form, broken into fifteen (15) minute increments, to include learning objectives for the course, teaching methods, auxiliary aids, materials, and the policies of the provider; and

2. Be signed by the sponsor's administrator to indicate compliance with applicable law and the requirements of this administrative regulation;

(b) Copy of the Certificate of Approval from the Kentucky State Board for Proprietary Education, or the Kentucky Department of Education, unless the provider is an accredited college or university; or an approved real estate school as defined in KRS 324.010(7).

(c) Completed Real Estate Instructor Application for each instructor who will teach the course, as required by 201 KAR 11:175; and

(d) Copy of all advertising or brochures advertising the continuing education course.

(3) The course provider shall agree that all instructors shall abide by the Generally Accepted Principles of Education as adopted by the Real Estate Educators Association and the commission as the standard for classroom performance and comply with the KREC Guidelines for Classroom Management.

(4) The commission education director shall submit the information to the commission for approval or rejection of the course at their regularly scheduled meeting.

(5) A course and instructor that have been previously approved within the calendar year may be conducted by another provider, upon the submission of a short form application and approval by the commission staff.

(6) A provider shall:

(a) At least thirty (30) days prior to the scheduling of a continuing education course, submit to the commission a completed Continuing Education Schedule that identifies the course provider, course title and number, instructor, date, time, and location of each class;

(b) Give to each attendee listed on the roster a completed Continuing Education Completion Certificate;

(c) Within ten (10) days of a continuing education course, submit to the commission:

1. A completed Continuing Education Attendance Roster, which shall include the full legal name, residence address, and other identifying information required by the commission, in alphabetical order;

2. Continuing Education Course Evaluation completed by each attendee listed on the roster; and

3. A completed CE Course Evaluation Transmittal Form;

(d) Permit monitoring of the courses and inspection of the records by the commission; and

(e) Make the course available to all licensed agents, subject only to space limitations.

(7) The providers' approval to conduct continuing education courses may be withdrawn by the commission for:

(a) A violation of the classroom management guidelines;

(b) Falsification of attendance information submitted to the commission;

(c) Allowing an instructor to solicit business or sell materials to students in the classroom;

(d) Failure to provide the commission the required materials in accordance with this administrative regulation; or;

(e) Conducting courses that were not approved prior to being offered.

## VOLUME 42, NUMBER 2 – AUGUST 1, 2015

~~Section 5. Instructor Requirements. (1) A course instructor shall:~~

- ~~(a) Have adequate education, knowledge and experience in the topic to be presented;~~
- ~~(b) Have prior teaching experience; and~~
- ~~(c) Be an "approved instructor" under the requirements established in 201 KAR 11:175.~~

~~(2) A licensee who teaches an approved continuing education course shall be entitled to credit on a hour-for-hour basis. To obtain continuing education credit, the instructor's name shall be added to the attendance roster for the course. However, the instructor shall not receive credit more than once in a calendar year for teaching a specific course.~~

~~(3) An instructor of an approved real estate course shall receive credit toward his or her continuing education requirements. The instructor's supervisor shall provide the commission with a written notice requesting teaching credit, to include the instructor's name, name of course, dates the course was conducted, and be signed by the approved school or institution's authorized representative.]~~

Section 4.6. Out-Of-State Continuing Education Requirements. A licensee who attends continuing education in another jurisdiction within the United States, its territories, and possessions[state] may receive approval for continuing education courses completed in another state provided:

(1) The real estate regulatory agency of the state[jurisdiction] where the[continuing education] course is held approved the course[accepts courses held in Kentucky] for real estate continuing education credit[in the jurisdiction];

(2) The focus of the course shall not be on the specific real estate laws of another state[The real estate regulatory agency of the state where the course is held approved the course for real estate continuing education credit];

(3) The course shall be taken and completed during the calendar year for which continuing education credit is sought in Kentucky;

(4) The course enables the licensee to better understand the real estate brokerage business and meets the content criteria prescribed by the commission;

(5) The licensee submits proof of completion of the out-of-state course to the Kentucky Real Estate Commission through electronic or paper verification[a Course Completion Certificate] issued by the provider, and a completed[an] Out of State Continuing Education Compliance Form – Form E111[The documentation shall provide the:

(a) Name and residence address of the licensee seeking continuing education credit and other identifying information as required by the commission;

(b) Name and date of the course for which credit is sought;

(c) Course number if one exists;

(d) Number of hours completed for which credit is sought;

(e) Continuing education provider's name;

(f) A signature from a representative of the continuing education provider documenting the licensee's course attendance;

(g) Regulatory jurisdiction where the course is approved for continuing education credit; and

(h) An outline of the course for which continuing education credit is sought if the outline is specifically requested by the commission];

(6) The provider's course verification, the Out-of-State Continuing Education Compliance form – Form E111,[completion documentation – certificate] and other requested forms shall be provided to the commission for review by December 31 of the calendar year for which the licensee is seeking credit[within fourteen (14) days of the licensee's receipt of the certificate from the approved education provider]; and

(7) If after review of the materials submitted, the commission determines the course does not merit continuing education credit, the commission may deny continuing education credit for the course. The commission shall notify the licensee of this denial and a brief explanation of the reasons for denial.

Section 5.7. Compliance and Delinquency. (1) The time requirements established in this administrative regulation may be extended by the commission if:

(a) A true hardship or other good cause clearly warrants relief; and

(b) The request for extension and any required documentation[is] is received in writing on or before February 10[15] of the calendar year immediately following the year in which continuing education requirements were not fulfilled.

(2) If a licensee fails to comply with the provisions of this administrative regulation, the executive director or his representative shall notify the licensee as soon as practical on or after January 10[15] of the next calendar year of the failure to comply. If the licensee fulfilled the continuing education requirements in the previous year, proof of completion shall be forwarded to the commission on or before February 10[15].

(3) A license shall not be cancelled for nonfulfillment of the continuing education requirements if, by February 10, the licensee enters into a written delinquency plan, pays a \$500 fine, and either[takes one (1) of the following steps by February 15]:

(a) Places the[his] license in escrow; or

(b) Agrees in the[writing to a] delinquency plan to complete[which includes completion of] the delinquent continuing education requirements for the previous calendar year on or before June 15[; and

(c) Submits a \$500 fine which shall be assessed against each licensee who fails to complete the continuing education requirements outlined in KRS 324.085(1) by the end of the calendar year].

(4) A licensee who places his license in escrow under the provisions of this section shall not reactivate his license until[unless] he has:

(a) First completed the core course or the current year's mandatory continuing education requirements as outlined in Section 2(2) of this administrative regulation; and

(b) Satisfied the requirements of KRS 324.310[Paid the fees required by KRS 324.287 and under this administrative regulation].

(5) A licensee who fails to place his license in escrow or file the delinquency plan on or before February 10[15] immediately following the year in which continuing education requirements were not fulfilled, shall automatically have his license cancelled as of that date and shall not be eligible to renew.

(6) If a licensee fails to complete the requirements of the delinquency plan:

(a) The commission shall notify the licensee of the deficiency on or after July 1;

(b) The deficiency notice shall advise that the licensee may request a hearing for the commission to consider whether the license should be suspended for noncompliance with the delinquency plan;

(c) Failure to request a hearing shall result in a default order of suspension; and

(d) Any suspension ordered by the commission for noncompliance with the continuing education delinquency plan shall be for a period of six (6) months.

(7) If the commission suspends the license as a result of a default order or after hearing, the licensee shall not be allowed to activate his license unless, within ninety (90) days following[of the] expiration of the suspension, the licensee[;]

(a) First completes the current year's continuing education requirements;

(b) Submits the required documents to reinstate the license; and

(c) Pays all necessary renewal and transfer fees as required by KRS 324.287.

(8) If the licensee does not reinstate the license within ninety (90) days following the completion of the suspension period, the license shall be cancelled and the licensee shall meet the requirements for initial licensure, including retaking the examination.

~~[Section 8. Records Maintenance. (1) Each continuing education provider shall maintain the following records in a file for~~

two (2) years following the end of each calendar year:

- (a) A copy of the roster submitted to the commission of licensees attending the course;
  - (b) A copy of the Course Evaluation Transmittal form;
  - (c) The sign in sheet or registration list used by the provider to track attendance; and
  - (d) Any other documentation regarding student attendance.
- (2) Records containing licensee information shall be destroyed by the provider.];

Section 6.[9.] Incorporation by Reference. (1) "Out-of-State Continuing Education Compliance Form – Form E111", 05/15 edition.[The following material] is incorporated by reference[:

- (a) "Continuing Education Provider Application", 09/07 edition;
- (b) "Course Outline", 09/07 edition;
- (c) "Real Estate Instructor Application", 09/07 edition;
- (d) "Continuing Education Schedule", 09/07 edition;
- (e) "Continuing Education Attendance Roster", 09/07 edition;
- (f) "CE Course Evaluation Transmittal Form", 09/07 edition;
- (g) "Continuing Education Course Evaluation", 09/07 edition;
- (h) "Kentucky Continuing Education Completion Certificate", 09/07 edition;
- (i) "Continuing Education Short Form Application", 09/07 edition;
- (j) "KREC Guidelines for Classroom Management", 09/07 edition;
- (k) "Generally Accepted Principles of Education", as adopted by the Real Estate Educators Association and the Kentucky Real Estate Commission, 09/07 edition;
- (l) "Kentucky Core Course Provider Application", 09/07 edition;
- (m) "Kentucky Real Estate Commission Out-of-State Continuing Education Compliance Form", 09/07 edition].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

JIM HUFF, Chairperson

APPROVED BY AGENCY: June 22, 2015

FILED WITH LRC: June 22, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, August 24, 2015 at 9:00 a.m., in the Boardroom of the Kentucky Real Estate Commission located at 10200 Linn Station Road, Suite 201, in Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 August 31, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Rhonda K. Richardson, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rhonda K. Richardson

(1) Provide a brief summary of:

- (a) What this administrative regulation does:
  - i. Mandates six (6) hours of continuing education to be completed annually and the deadline for submission of the documentation of completion; and forty-eight (48) hours of post-license education;
  - ii. Sets forth the exemptions from the mandatory continuing education requirement;

iii. Sets forth the continuing education out-of-state course requirements; and

iv. Sets forth non-compliance and delinquency remedies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the requirements relating to continuing education and to provide an option for informal resolution of non-compliance with the continuing education requirements by the licensee.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth the requirements related to real estate education;

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for continuing education credits, course and instructor approval, and provides options for the licensee to informally resolve non-compliance issues with the licensee.

(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:

- i. One (1) hour of continuing education changed to be measured by length of instruction rather than attendance time;
- ii. Limits approval for continuing education taken outside Kentucky to continuing education taken within the United States, its territories and possession, with the condition that the course not be state specific and requiring the licensee to submit proof through electronic or paper verification by December 31;
- iii. Removes redundant language requiring information to be included on forms;
- iv. Shortens deadlines for extension request to February 10;
- v. Shortens deadline for commission to notify licensee of non-compliance to January 10;
- vi. Shortens deadline for licensees to submit proof of completion of continuing education requirement to February 10th; and
- vii. Sets forth an informal delinquency plan agreement to remedy non-compliance without automatic cancellation of license if request made prior to February 10.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary for implementation of the continuing and post-license education requirements and to remove and place education provider requirements from this regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation establishes the continuing and post-licensing education requirements for licensees.

(d) How the amendment will assist in the effective administration of the statutes: These amendments provide more clarity and efficient implementation of the continuing education requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees, totaling approximately 21,441, will be affected by this regulation;

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be required to meet the new deadlines, utilize the revised forms to submit the requested applications and documentation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Licensees will have to pay the cost for courses they are attending. Course pricing is set by the provider.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will be more knowledgeable of the laws and practices of the industry and will meet their education requirements to maintain their licenses.

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



(a) Initially: NONE - Regulation shall be implemented using existing staff.

(b) On a continuing basis: NONE - Regulation shall be implemented using existing staff.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Existing agency 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.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as there is no disproportionate impact on the different classes of licensees.

#### 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 Real Estate Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.085(1), (4), 324.160(1)(c), 324.160(4)(u), 324.281(5), (7), (8), 324.282

(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 costs will be incurred by the administration of this regulation shall be carried out by existing staff.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred by the administration of this regulation shall be carried out by existing staff.

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 Real Estate Commission (Amendment)

#### 201 KAR 11:240. Distance education requirements.

RELATES TO: KRS 324.046(5), 324.085(1), (2), 324.281(7)  
STATUTORY AUTHORITY: KRS 324.085(1), (4), 324.281(5), (7), (8), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Kentucky Real Estate Commission to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. KRS 324.085(4) requires the commission to promulgate administrative regulations for implementing continuing education and post-education requirements and instructor approval. This administrative regulation establishes the requirements for courses offered through distance education.

Section 1. Definitions. (1) "Continuing education course" means a course approved pursuant to the requirements set forth in KRS 324.085(1) and 201 KAR 11:230~~[program of at least three (3) fifty-(50) minute hours taken primarily to satisfy license renewal requirements for individuals holding a sales associate's license or a broker's license].~~

(2) "Distance education course" means a continuing or post-license education course or a pre-license course that is taught in a setting where the teacher and the student are in separate locations and that uses instructional methods that include internet-based training, computer-based training (CBT), satellite transmission, or teleconferencing.

(3) "Post-license education course" means a course that satisfies the forty-eight (48) hours of education that is required within two (2) years of receiving or activating an initial sales associate license.

(4) "Pre-license~~[Pre]license~~ course" means a course that satisfies an education requirement to obtain a real estate sales associate's or broker's license, generally consisting of forty-eight (48) fifty (50) minute hours or more.

Section 2. Distance Education Standards for Approval~~[Process Course Requirements]~~. (1)(a) The design and format of all continuing education, post-license education, and pre-license~~[pre]license~~ courses offered through means of distance education shall satisfy the requirements of this administrative regulation and guidelines of the commission~~[shall be certified by the Association of Real Estate License Law Officials (ARELLO) or the International Distance Education Certification Center (IDECC)]~~.

(b) Continuing education, post-license education, and pre-license~~[pre]license~~ courses conducted for academic credit in an accredited college or university via interactive television shall be exempt from this requirement, but shall satisfy the requirements established in Section 5 of this administrative regulation.

(2) A course shall be offered only in the delivery format in which it was approved~~[Any secondary provider, who obtains an ARELLO or IDECC certified course from a primary provider or course developer, shall obtain the certification as a secondary provider before the course may be offered to Kentucky licensees].~~

(3)(a) An instructor for a distance education course shall be approved by the commission pursuant to the requirements set out in 201 KAR 11:175~~[A course shall be offered only in the delivery format in which it was certified. Components of the course may not be added, deleted or altered by the provider in order to fulfill different licensing requirements for a particular jurisdiction.~~

(4)(a) An instructor for a distance education course shall be approved by the commission pursuant to the requirements set out in 201 KAR 11:175.

(b) Each course shall have an approved instructor available to answer questions from students.

(c) The individual applying for approval as an instructor shall complete the course before submitting the application to the commission for its approval and shall submit evidence of course completion with the application.

(4)(a) The commission shall require approval of the course content as established in 201 KAR 11:170, 201 KAR 11:230, and 201 KAR 11:235.

(b) The content of the course shall be in a topic specifically related to real estate.

(c) License law or regulations from other states and general skills computer classes shall not satisfy this course-content requirement.

(5)(a) If the ARELLO or IDECC certification is discontinued for any reason, the provider shall immediately notify the commission.

(b) Approval of the course shall be suspended pending recertification.

(c) If the certification for a primary provider is discontinued for any reason, any approved secondary provider's approval shall also be suspended pending recertification of the primary provider.

(6)(a) The commission shall require approval of the course content as established in 201 KAR 11:170 and 201 KAR 11:230.

(b) The content of the course shall be in a topic specifically related to real estate.

(c) ~~License law or regulations from other states and general skills computer classes shall not satisfy this course content requirement.~~

(7)(a) The provider shall be approved by the commission and meet all other requirements for education as outlined in KRS Chapter 324 and its administrative regulations.

(b) A course shall be open to all licensees.

Section 3. Distance Education Course Requirements. (1) A distance education course shall provide mastery of the material and be developed in accordance with the following guidelines:

(a) The material shall be divided into learning units, modules, or chapters;

(b) Each unit shall contain learning objectives that are comprehensive enough to ensure that the course will likely be mastered by the student upon completion of the material;

(c) The course shall provide a structured learning method designed to enable students to attain each objective;

(d) The course shall provide a means to assess the student's performance on a regular basis during each unit of instruction and before proceeding to the next unit; and

(e) Provide a method for tracking the length of time a student spends on the course~~[1. The course shall provide a method for tracking the length of time a student spends on the course].~~

2. A student shall not be able to bypass the course materials and advance directly to the end-of-module quizzes or exercises that are included to assess the student's performance;

(f) Security shall be provided to ensure that the student receiving credit is the one who actually completes the course;

(g) 1. For a continuing and post-license education course, the student shall pass a final exam with a score of at least seventy-five (75) percent that shall be included as the last module of the course, in order to receive credit.

2. No more than two (2) retakes~~[One (1) retake]~~ of the final examination shall be allowed.

3. Each course shall have an item bank from which the final examination questions shall be pulled.

4. The bank shall contain multiple choice items and have forty (40)~~[thirty (30)]~~ percent more questions than required on the final examination, so that retake exams will contain~~[have some]~~ unique new questions.

5. The final examination shall have a minimum of five (5) questions for each approved hour of education~~[- a. Twenty-five (25) questions for a three (3) hour course;~~

~~b. Thirty (30) questions for a four (4) hour course; and~~

~~c. Fifty (50) questions for a six (6) hour course;]~~

(h) 1. A pre-license~~[prelicense]~~ distance education course shall contain a monitored final examination arranged for the student by the instructor for the course.

2. The examination shall cover both the content area covered by the course and the applicable real estate laws and administrative regulations ~~that~~[which] apply to those content areas.

3. Each course shall have an item bank from which the final examination questions shall be pulled.

4. The bank shall contain multiple choice items and have forty (40)~~[thirty (30)]~~ percent more questions than required on the final examination, so that retake exams will have some unique new questions.

5. a. A forty-eight (48) hour course shall contain a minimum of fifty (50)~~[-~~

~~a. Seventy-five (75)] items; [- and]~~

~~b. A ninety-six (96) hour course shall contain at least 100 questions.~~

6. No more than two (2) retakes of the~~[One (1) retake]~~ exam shall be allowed;

(i) 1. A pre-license~~[prelicense]~~ final examination shall be monitored by the approved instructor for the course or another individual designated by the instructor who is not a relative or a business associate of the student.

2. The monitor may be:

a. A certified librarian;

b. A public school administrator;

c. A college professor~~;~~or]

d. Other approved real estate instructor who may be associated with the school that offers the course; or

e. A monitor from a qualified online test monitoring service.

3. The monitor shall sign a statement that he or she is not affiliated with the student in any way.

4. The monitor shall:

a. Verify that the person taking the examination is the person registered for the course;

b. Observe the student taking the exam;

c. Assure that the student does not use aids of any kind;

d. Assure that a calculator is nonprogrammable;

e. Assure that any time limitations on the final examination are not exceeded;

f. Certify to the provider that all requirements for the final examination have been met;[and]

g. Submit to the provider, a signed and notarized statement to that effect; and

h. Assure that any student's mobile device, cell phone, or camera is shut down and put away, while at the test site.

(j) 1. Each student shall complete an affidavit that~~[which]~~ certifies that he or she has personally completed all components of the course and the final exam with no assistance from persons other than the instructor.

2. The certification shall include the date of completion and the student's signature, which may be provided electronically.

3. Credit may be denied and disciplinary action taken if it is determined that a licensee received assistance on a distance education course or the final exam.

4. a. [(2)(a)] To obtain credit for a distance education course, a licensee shall complete the course within the time frame allotted by the school for pre-license~~[prelicense]~~ courses or within the calendar year for continuing and post-license education, unless the licensee is completing the course to comply with a continuing education delinquency plan as outlined in 201 KAR 11:230, or to comply with an order of the commission.

b. The~~[(b)]~~ completion date for all courses shall be the date the student completes the final examination with a passing score of at least seventy-five (75) percent, and submits the evaluation and the student affidavit.

Section 4. Distance Education Provider Requirements. (1)(a) A provider shall submit the appropriate application for approval and the Distance Education Checklist and Information Sheets – Form E114~~[a copy of the ARELLO or IDECC certification form and summary sheet].~~

(b) The application shall include:

1. A complete copy of the program on the medium that is to be used;

2. All hardware or software required to review the material;

3. A link to the internet site;

4. A copy of the final examination question bank and key for each course; and

5. A copy of any student materials.

(c) The application and other required documents shall be submitted at least sixty (60)~~[forty-five (45)]~~ days prior to the commission's meeting date, to allow adequate time for review.

(2) The provider shall have reasonable oversight of a student's work in order to ensure that the student completing the work is the one who is enrolled in the course.

(3)(a) The provider shall ensure that approved instructors are available to assist students who have questions regarding:

1. The technology used in the delivery;

2. The course content; or

3. The completion requirements.

(b) The provider shall ensure that the approved instructor has knowledge of both the content and the technology required to complete the program.

(c) A student shall not be required to call more than one (1) person to obtain answers to questions about the course.

(4)(a) The provider shall include a complete description of the hardware and software or other technology required by the student in order to complete the course.

(b) The provider shall include an explanation of the safeguards

against loss of data resulting from inadvertent hardware or software failure.

(5) The provider shall include a detailed explanation of how the course measures, documents and records the student completion of the material, and any activities or exercises required to achieve mastery of the material.

(6)(a) The provider shall obtain an evaluation from each student~~[on forms developed by and available from ARELLO or IDECC, whichever is applicable]~~.

(b) An evaluation may be submitted to the provider electronically and a copy of each form shall be returned along with the attendance roster and other documents required by the commission for continuing education courses.

(c) Attendance rosters for each approved continuing and post-license education course shall be submitted on a semi-monthly basis and shall include:

1. Provider's name;
2. Course name and number assigned by the commission;
3. Total enrollment for the month;
4. Licensee's full legal name;
5. Residence address;
6. Identifying information; and
7. The date of completion for each student, so that compliance with various deadlines can be verified.

(d) A completion certificate shall be issued to the student upon completion of the course, submission of the evaluation, signing of the affidavit, and passing the final exam.

(7)(a) For a pre-license[prelicensure] course, a provider shall issue a completion certificate to the student. The document shall contain:

1. The provider's name;
2. Course name;
3. Number of hours earned;
4. Beginning and completion date for the course;
5. Student's full legal name; and
6. Residence address.

(b) This document shall be submitted with the student's license application.

Section 5. Interactive Television Requirements.~~[(4)]~~ A course offered for academic credit via interactive television in an accredited college or university shall require the following~~[not be subject to the ARELLO or IDECC certification requirement, if the following criteria are met]:~~

~~(1)[(a)]~~ There shall be two (2) way audio and video connections between the instructor and the student;

~~(2)[(b)]~~ College personnel shall be stationed at each remote site to handle technology problems that may arise and to monitor attendance of students during the class; and

~~(3)[(c)]~~ The program shall be one that has been properly approved by the college accrediting body as fulfilling the requirements for academic credit;~~and~~

~~(d) Documentation shall be supplied to the commission along with the application for approval which outlines the compliance with this criteria.~~

~~(e) The course or program shall be ARELLO or IDECC certified, if any of the requirements in paragraphs (a) through (d) are not met].~~

Section 6. Incorporation by Reference. (1) "Distance Education Checklist and Information Sheets – Form E114~~[Information Sheet]~~", 06/15~~[09/07]~~ edition, Kentucky Real Estate Commission, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

JIM HUFF, Chairperson

APPROVED BY AGENCY: June 22, 2015

FILED WITH LRC: June 29, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

Monday, August 24, 2015 at 9:00 a.m., in the boardroom of the Kentucky Real Estate Commission located at 10200 Linn Station Road, Suite 201, in Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 August 31, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Rhonda K. Richardson, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rhonda K. Richardson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for courses offered through distance education.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide standards for the development and conduct of courses offered thru distance education mediums.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.085(4) requires the commission to promulgate administrative regulations for implementing continuing education and post-education requirements, and instructor approval. This administrative regulation sets standards for the development and conduct of courses offered thru distance education mediums.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 324.085(4) requires the commission to promulgate regulations for implementing continuing education and post-education requirements, and instructor approval. This administrative regulation sets standards for the development and conduct of courses offered thru distance education mediums, and provides instructor qualifications and approval, requirements.

(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 applies the administrative regulation to post-license education courses, and clarifies the existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to apply the administrative regulation to post-license education courses, and to clarify the existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324.085(4) requires the commission to promulgate administrative regulations for implementing continuing education and post-education requirements, and instructor approval. This amendment addresses the standards for the development and conduct of courses offered through distance education mediums, and provides instructor qualifications and approval requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment applies the administrative regulation to post-license education courses, and clarifies the existing 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 affects fourteen (14) current online real estate education providers and any real estate provider seeking approval in the future, and does

not affect individual real estate licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Real estate education providers seeking to provide distance education will be required to meet the standards and follow the protocols set forth in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will reduce the cost providers currently incur for course review and certification by more than half that incurred by use of the current third party approval process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this administrative regulation will allow providers seeking to incur lower costs for approval of online or other distance education courses.

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

(a) Initially: Extensive staff time will be required None. This administrative regulation will be implemented utilizing existing staff.

(b) On a continuing basis: None. This administrative regulation will be implemented utilizing existing staff.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency 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: Review and approval of online and distance education course will be performed by commission staff in lieu of third party certification. Online and distance education providers will be assessed fees to recoup the cost to the commission.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Online and distance education providers will be assessed fees to recoup the cost to the commission.

(9) TIERING: Is tiering applied? Tiering has been applied to reduce the processing fees incurred by the same provider when submitting subsequent courses for approval as follows:

First Time Submission for 48/96 Hour Course Review/Application: \$300

Subsequent Courses or Renewal of Approved 48/96 Hours Course: \$200

First Time Submission for PLE course (9-47 hour course): \$200

Subsequent PLE Courses or Renewal of Approved PLE (9-47 hrs.): \$150

First Time Submission for CE & PLE Course (1-8 hour course): \$125

Subsequent CE & PLE Courses or Renewal of Approved CE/PLE (1-8 hrs.): seventy-five (75) dollars

A "First Time Submission" is the first course offered by the provider via a specific delivery method. Due to the implementation of the new distance education guidelines and approval process, the first course submitted by each provider for approval in 2016 will be defined as a "First Time Submission". A "First Time Submission" fee is required both for the first continuing and post-license education course and the first 48/96 hour pre-license course.

A "Subsequent Course" is any additional distance education course submitted to the Commission for approval from a provider utilizing the same distance education delivery method that was used in the "First Time Submission".

A "Renewal" is a distance education course that has been previously approved by the Commission and has not undergone any substantive changes.

## 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 Real Estate Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.085(1), (4), 324.281(5), (7), (8), 324.282.

(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. Significant staff time will be utilized in implementing this administrative regulation. Education providers will be assessed fees to recoup the costs.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is estimated that the commission will recoup \$24,950 the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is estimated that the commission will recoup \$15,210 in subsequent years.

(c) How much will it cost to administer this program for the first year? See narrative explanation below.

(d) How much will it cost to administer this program for subsequent years? See narrative explanation below.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The fiscal impact of this amended administrative regulation cannot be determined at this time because the number of courses for which course approval may be sought is indefinable. There are four (4) categories of real estate education requirements -- pre-license, post-license, continuing, and broker management -- with a total of 192 hours of real estate education, respectively. Course offerings can range from a one (1)-hour to a ninety-six (96)-hour course, and the potential number of providers is indefinable.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## GENERAL GOVERNMENT CABINET Kentucky Real Estate Commission (Amendment)

### 201 KAR 11:460. Minimum rating requirements for instructors.

RELATES TO: KRS 324.085

STATUTORY AUTHORITY: KRS 324.085, 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.085 gives the commission authority to require a minimum rating of all instructors approved to teach continuing education courses. KRS 324.281(5) gives the commission the authority to promulgate administrative regulations. This administrative regulation outlines the minimum rating required of all instructors and the means of dealing with instructors who received ratings below the required minimum.

Section 1. All approved continuing and post-license education instructors shall:

(1) Be approved by the Kentucky Real Estate Commission and be in compliance with the provisions of 201 KAR 11:175;

(2) Enforce the KREC Guidelines for Classroom Management – Form E103 as developed by the commission[as part of the continuing education program]; and

(3) Comply with the Generally-Accepted Principles of Education (GAPE) – Form E104 developed by the Real Estate

Educators Association, adopted by the Kentucky Real Estate Commission as the standard for classroom presentation, and incorporated by reference in this administrative regulation[201-KAR 41:450].

Section 2. Evaluation of Instructors. (1) Each ~~continuing~~ education provider shall distribute ~~an[a-continuing-education]~~ instructor evaluation form to each student and collect a Course Evaluation – Form E108~~[continuing-education-evaluation-form]~~ from each student at the end of the course.

(2) Within ten (10) days of course conclusion, the course provider shall deliver all continuing education instructor evaluation forms to the commission education director.

(3) If a course provider fails to submit all forms completed by students and provided to the course provider, the commission may suspend the course provider's approval.

(4) All Course Evaluation – Form E108~~[continuing-education-evaluation]~~ forms shall be reviewed by the commission.

(5) The commission education director shall review the course approval percentage rating for each instructor.

(6) An eighty-five (85) percent approval rating shall be required in the categories of "instructor knowledge" and "instructor presentation".

(7) The comments section of the Course Evaluation – Form E108~~[continuing-education-evaluation]~~ forms shall be reviewed for other remarks concerning the instructor's performance.

(8) After a second rating lower than eighty-five (85) percent, the commission shall notify the instructor and the course provider of the deficiency.

(9) The next class taught by the instructor shall be monitored by a commission representative. The commission monitor shall submit a recommendation to the commission as to whether the instructor ~~shall[should]~~ be allowed to continue to teach courses.

(10) Based on the recommendation of the monitor, the evaluation score, and the comments from the third class, a recommendation ~~shall[will]~~ be made to the commission to:

(a) Take no further action;

(b) ~~[To]~~ Suspend the approval of the instructor; or

(c) ~~[To]~~ Place the instructor on probation pending the evaluation and review of a future class.

(11) ~~If[In the event]~~ the commission issues a probationary order, the commission shall outline the length and terms of the probationary period as well as the date of the class to be monitored.

(12) At the conclusion of the probationary period, the commission education director shall recommend to the commission whether the instructor's approval shall continue.

(13) The commission shall consider the education director's recommendations and determine whether the instructor's approval shall continue or be removed.

(14) The commission shall notify the instructor and the school of its decision in writing.

(15) If probation has ended satisfactorily, the instructor's approval shall be reinstated.

(16) If the commission determines that instructor approval shall be suspended, the instructor shall not be allowed to teach any commission-approved education courses unless approval is reinstated.

(17) In any class with ten (10) or fewer participants for which the instructor receives at least one (1) evaluation below eighty-five (85) percent, the commission shall not consider the highest and lowest course approval percentage rating in order to ensure greater accuracy in the rating.

(18) The annual recertification of instructors and continuing and post-license education courses shall include an in-depth review of the evaluations completed by the students and those of any monitor that may have been present for the class.

(19)(a) Any instructor who has been suspended from teaching continuing and post-license education courses may apply for reinstatement by:

1. Submitting an application for approval to the commission;

2. If the deficiency is in presentation, the instructor shall attend an instructor development workshop approved by the commission

upon request;

3. If the deficiency is in the subject matter, the instructor shall attend a prescribed number of credit hours in that subject approved by the commission upon request;

4. Submitting proof of attendance at the required course;

5. Providing written documentation of other steps taken to improve the instructor's knowledge and skills; and

(b) After submission of the above documents and consideration by the commission, the commission shall approve or deny the instructor's request for reinstatement in its discretion.

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

(a) "KREC Guidelines for Classroom Management – Form E103", 05/15 edition~~[October 2004]~~;

(b) "Generally-Accepted Principles of Education (GAPE) – Form E104", 05/15 edition; and

(c) "Course Evaluation – Form E108", 05/15 edition~~[Continuing Education-Instructor-Evaluation-Form, October 2004]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

JIM HUFF, Chairperson

APPROVED BY AGENCY: June 2, 2015

FILED WITH LRC: June 22, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on Monday, August 24, 2015 at 9:00 a.m., in the Boardroom of the Kentucky Real Estate Commission located at 10200 Linn Station Road, Suite 201, in Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 August 31, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Rhonda K. Richardson, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rhonda K. Richardson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation outlines the minimum rating required of all instructors and the procedure to address instructors who received ratings below the required minimum.

(b) The necessity of this administrative regulation: KRS 324.085 requires instructors to maintain a minimum rating of all instructors approved to teach continuing education courses. This administrative regulation outlines the minimum rating required of all instructors and the procedure to address under-performing instructors.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation outlines the minimum rating required of all instructors and the procedure to address instructors who received ratings below the required minimum.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines the minimum rating required of all instructors and the procedure to address instructors who received ratings below the required minimum.

(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 the minimum rating requirements to post-license education instructors.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed in order to apply the minimum rating requirements to post-license education instructors.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324.046(5) requires instructors to maintain minimum standards. This amendment applies the minimum rating requirements to post-license education instructors.

(d) How the amendment will assist in the effective administration of the statutes: This amendment allows the same minimum rating requirements to apply to all real estate education instructors.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation applies to 158 real estate course instructors approved by the commission to date and any future instructor.

(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: Instructors will be required to meet the minimum rating requirements established by the regulation.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation requires instructors to comply with classroom management guidelines, and the Generally-Accepted Principals of Education (GAPE) developed by the Real Estate Educators Association and adopted by the commission.

(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): Instructors will retain their approved status.

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

(a) Initially: NONE. This regulation will be implemented utilizing existing staff.

(b) On a continuing basis: NONE. This regulation will be implemented utilizing existing staff.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing agency 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: NONE anticipated.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish any fees.

(9) TIERING: Is tiering applied? Tiering has not been applied, as this regulation has no disproportionate impact.

#### 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 Real Estate Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.085, 324.281(5), 324.282.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? NONE.

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

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

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated, as this regulation will be implemented utilizing existing staff.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Kentucky Board of Hairdressers and Cosmetologists (Amendment)

##### 201 KAR 12:110. School license.

RELATES TO: KRS 317A.060, 317A.090

STATUTORY AUTHORITY: KRS 317A.050, 317A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.090 requires that each school owner shall submit an application to operate a school of cosmetology, furnish proof of financial responsibility, and meet all city, county, and state zoning, building, and plumbing codes. This administrative regulation defines the process of applying for a cosmetology school license.

Section 1. Each person, firm, or corporation applying for a license to operate a school of cosmetology shall submit an application provided by the board.

Section 2. Each individual owner, or one (1) partner[,] in the instance of a partnership, or one (1) corporate officer in the instance of a corporation, shall submit a financial statement indicating financial assets in the amount of \$10,000 for twenty (20) students enrolled and \$1,000 for each additional student enrolled.

Section 3. A person having any interest in operating a school shall submit a minimum of two (2) character references, proposed copy of student contract indicating all financial charges to enrolling students, and term of lease for location, if applicable.

Section 4. Application for license to operate a school of cosmetology shall be accompanied by an architect's or draftsman's plan of proposed premises drawn to scale, showing the arrangements of the classroom, clinic area, mannequin area, dispensary, reception area, shampoo area, office and any other area of the school, entrance and exits, and placement of equipment.

Section 5. (1) A license to operate a cosmetology school carries the approval of this board and shall be valid only for the location and person, firm, or corporation named on the application and license issued by the board. A school of cosmetology license shall not be transferable from one (1) location to another or from one (1) person, firm, or corporation to another.

(2) The license shall contain:

(a) The name of the proposed school; and

(b) A statement that the proposed school is authorized to operate educational programs beyond secondary education.

Section 6. The owners, firm, or corporation operating a school of cosmetology shall notify the board in writing twenty (20) days prior to selling, transferring, or changing of ownership and management of a school. Prospective ownership shall meet all qualifications of owning a school and have the approval of the

board.

Section 7. Following approval of the application to operate a school of cosmetology by the board, the site shall be inspected by a quorum of the board or by at least one (1) member of the board and the board administrator. A final inspection of the premises shall be conducted by the members of the board prior to issuing of license. All schools shall comply with city, county, and state zoning laws, plumbing and building codes. The construction or renovation of the proposed school shall be completed and a final inspection conducted by the board within twelve (12) months from the date of approval of the site. Any extension of this period of time shall be granted for good cause shown provided the request is presented, in writing, to the board. The applicant shall provide:

- (1) The reason for extension and the term of request; and
- (2) Supportive documentation of the extension request.

Section 8. Any cosmetology school owner, manager, or instructor who misrepresents facts to the board, to the students, or to the general public concerning any information regarding the school or any student enrolled in the school, or in any way violates administrative regulations adopted by this board, may be served notice to show cause before this board, why the school's license and the instructor's license should not be revoked.

Section 9. Any person, establishment, firm or corporation ~~that~~[which] accepts, directly or indirectly, compensation for teaching persons any branch or subjects of cosmetology as defined in KRS 317A.010 shall be classified as a school and shall be required to comply with all the provisions of law and the rules and administrative regulations of this board by authority established in KRS 317A.090 and 317A.050.

Section 10. The board shall not license a correspondence school, nor shall the board license any school of cosmetology in an establishment that teaches any other trade, profession, or business, excluding vocational training schools.

Section 11. A person who is an owner, partner, stockholder, or corporate officer, or who has any financial or other interest in the management and control of the school[,] shall not be enrolled in the school as a student.

Section 12. A school of cosmetology shall not permit or require students to be in attendance at school more than forty (40) hours in any one (1) week.

Section 13. Any school of cosmetology desiring night classes may, by proper application, be granted permission from the board to operate the classes. Under no condition shall the school operate past 10 p.m. local time.

Section 14. (1) A member of the board or an employee, unless resigning, shall not~~[It shall be considered a conflict of interest and therefore impermissible for a member of the board or for an employee of the board to]~~ apply for a new school license or~~[to]~~ apply for any existing school license under KRS 317A.090 and this administrative regulation.~~[If any member of the board or any employee of the board desires to apply for a new school license or for any existing school license, the board member or employee of the board shall submit a letter of resignation to the board no later than thirty (30) days prior to submitting an application for a school license.]~~

(2) The board may choose not to consider any application for a school license submitted by a relative of a member of the board, by a relative of a board employee, or by any person with whom a member of the board or a board employee shares a significant financial interest. Failure to make full disclosure to the board as to the exact nature of the relationship between the board member or employee of the board and the applicant may result in denial of approval of licensure. A person applying for a new school license shall complete an application with the board.

(3) The provisions of this section shall apply only to

applications for licenses approved or filed, licenses issued, or actions of a person serving as a member of the board or as a board employee after June 10, 1986.

Section 15. Incorporation by Reference. (1) "Application for Kentucky School of Cosmetology", 10/09, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Hairdressers and Cosmetologists, 111 St. James Court, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BEA COLLINS, President

APPROVED BY AGENCY: June 10, 2015

FILED WITH LRC: June 17, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2015, at 10 a.m., at 111 St. James Ct., Frankfort, Ky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Charles Lykins, Administrator, 111 St James Ct., Frankfort, Ky 40601, phone 502-564-4262, fax 502-564-0481.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Charles Lykins

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes requirements for the process of issuing a school license.

(b) The necessity of this administrative regulation: To meet requirements set forth by The Federal Department of Education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: To meet the requirements of issuing a school license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will set the requirements for the process issuing a school license.

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

(a) How the amendment will change this existing administrative regulation: By defining the license content that the board issues

(b) The necessity of the amendment to this administrative regulation: To meet the US. Department of Education requirements for post-secondary education.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires the board to promulgate administrative regulations that govern cosmetology school license.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will help define the school license process and license content.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Seventy (70)

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The license issued will meet requirements set forth by the US Department of Education and will help identify post-secondary schools in the state of Kentucky.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as this regulation is applicable to all applications.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 600.9

2. State compliance standards. KRS 317A.050, KRS 317A.060

3. Minimum or uniform standards contained in the federal mandate. 34 C.F.R. 600.9

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Board of Hair Dressers and Cosmetologist

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.060 and KRS 317A.090

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

#### 201 KAR 20:056. Advanced practice registered nurse licensure and certification requirements.

RELATES TO: KRS 218A.205(3)(g), (7), 314.011, 314.042, 314.091, 314.103, 314.161, 314.470

STATUTORY AUTHORITY: KRS 218A.205(3)(g), (7), 314.042, 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(g) requires the board to establish by administrative regulation for licensees authorized to dispense or prescribe controlled substances the process for submitting a query on each applicant to the National Practitioner Data Bank. KRS 218A.205(7) requires the board to require for any applicant for an initial licensure that authorizes the prescribing or dispensing of controlled substances to complete a state and national criminal records check. KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.042 requires the licensure of an advanced practice registered nurse and authorizes the board to promulgate administrative regulations establishing licensing requirements. KRS 314.103 authorizes the board to require a criminal background investigation of an applicant or a nurse. This administrative regulation establishes the requirements for licensure, renewal, and reinstatement, education[programs], and recognition of a national certifying organization.

Section 1. An applicant for licensure as an advanced practice registered nurse in Kentucky shall:

(1)(a) Complete an Application for Licensure as an Advanced Practice Registered Nurse as required by 201 KAR 20:370, Section 1(1);

(b) Provide a copy of a current active registered nurse license or validation of registered nurse licensure if the state of licensure does not issue licensure cards;

(c) Submit the fee required by 201 KAR 20:240, Section 1(2)(k); and

(d) Comply with the requirements established in KRS 314.042 and this administrative regulation.

(2) If the applicant is applying only for a license as an advanced practice registered nurse, the applicant shall also provide:

(a) A completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

(b) A report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(c) A certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(d) A letter of explanation that addresses each conviction, if applicable.

(3) An applicant shall not be licensed until:

(a) A report is received from the FBI pursuant to the request submitted under subsection (2)(a) of this section and any conviction is addressed by the board; and

(b) A query is completed to the board's reporting agent to the National Practitioner Data Bank of the United States Department of Health and Human Services pursuant to KRS 218A.205(3)(g) and any relevant data on the applicant is received.

Section 2. Education[Postbasic Program of Study] and Clinical Experience. (1) An applicant for licensure as an advanced practice registered nurse shall complete an accredited education program that prepares a registered nurse for one (1) of the four (4) APRN roles[organized postbasic program of study] and clinical experience. This program shall conform to 201 KAR 20:062 or its substantial equivalence if from an out of state program.



(2)(a) If the applicant for licensure as an advanced practice registered nurse completed a ~~postbasic~~ program of study after January 1, 2005, the applicant shall hold a master's degree, doctorate, or postmaster's certificate awarding academic credit by a college or university related to the advanced practice registered nurse designation.

(b) If the applicant for licensure as an advanced practice registered nurse completed a ~~postbasic~~ program of study before January 1, 2005, the program shall be evaluated by the board on an individual basis to find if the program sufficiently prepares a student for advanced practice registered nursing by complying with the requirements of 201 KAR 20:062.

Section 3. National Certifying Organizations. (1) A nationally established organization or agency which certifies registered nurses for advanced practice registered nursing shall be recognized by the board if it meets the following criteria:

(a) The certifying body is an established national nursing organization or a subdivision of this type of organization;

(b) Eligibility requirements for certification are delineated;

(c) Certification is offered in a role as defined by KRS 314.042(2)(a) and in a population focus as defined by KRS 314.011 and with primary or acute care competencies;

(d) Scope and standards of practice statements are promulgated;

(e) Mechanism for determining continuing competency is established; and

(f) The certifying body is accredited by the American Board of Nursing Specialties or the National Commission for Certifying Agencies.

(2) The board recognizes the following national certifying organizations:

(a) American Nurses Credentialing Center;

(b) American Midwifery Certification Board;

(c) National Board of ~~off~~ Certification and Recertification ~~for~~ Nurse Anesthetists;

(d) Pediatric Nursing Certification Board;

(e) National Certification Corporation;

(f) American ~~Academy~~ [Association] of Nurse Practitioners Certification Program; and

(g) American Association of Critical-Care Nurses Certification Corporation.

(3) The board recognizes the Oncology Nursing Certification Corporation only for an individual who has received certification prior to December 15, 2010 and who has continually renewed his or her Kentucky advanced practice registered nurse license since that date.

Section 4. Practice Pending Licensure. (1) A registered nurse who meets all the requirements for practice as an advanced practice registered nurse, and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:110 pending licensure by endorsement or a privilege to practice as a registered nurse, shall be authorized to practice as an advanced practice registered nurse for a period of time not to exceed the expiration date of the temporary work permit.

(2) Authorization to practice pursuant to this section shall be in the form of a letter from the board acknowledging that the applicant has met all the requirements of this section. An applicant shall not practice until the authorization letter has been issued.

(3) An individual authorized to practice pursuant to subsection (1) of this section may use the title "APRN Applicant" or "APRN App."

Section 5. License Renewal. (1) The advanced practice registered nurse license shall expire or lapse when the registered nurse license or privilege expires or lapses.

(2) To be eligible for renewal of the license as an advanced practice registered nurse, the applicant shall:

(a) Renew the registered nurse license or privilege on an active status;

(b) Submit a completed Annual Licensure Renewal Application: RN and APRN or a completed Annual Licensure Renewal

Application: APRN with RN Compact License (not Kentucky) form, as applicable, and as required by 201 KAR 20:370, Section 1(1);

(c) Submit the current renewal application fee, as established in 201 KAR 20:240, Section 1(2)(l); and

(d) Maintain current certification by a recognized national certifying organization.

(3) An advanced practice registered nurse who fails to renew the registered nurse license or privilege or is otherwise unable to legally practice as a registered nurse shall not practice as or use the title of advanced practice registered nurse until:

(a) A current active license has been issued by the board or a privilege is recognized by the board; and

(b) The advanced practice registered nurse license has been reinstated.

(4) An advanced practice registered nurse shall provide evidence of current certification by a recognized national certifying organization upon recertification and at the request of the board.

Section 6. License Reinstatement. (1) If a nurse fails to renew the advanced practice registered nurse license as prescribed by KRS 314.042 and this administrative regulation, the license shall lapse on the last day of the licensure period.

(2) To be eligible for reinstatement of the advanced practice registered nurse license, the applicant shall:

(a) Submit a completed Application for Licensure as an Advanced Practice Registered Nurse form as required by 201 KAR 20:370, Section 1(1);

(b) Submit the current reinstatement application fee, as established in 201 KAR 20:240, Section 1(2)(m); and

(c) Maintain current certification by a recognized national certifying organization.

(3) If the applicant is applying for reinstatement of a license as an advanced practice registered nurse, the applicant shall also provide a:

(a) Completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

(b) Report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(c) Certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(d) Letter of explanation that addresses each conviction, if applicable.

(4) The license shall not be issued until a report is received from the FBI and any conviction is addressed by the board.

Section 7. Certification or Recertification. (1)(a) An advanced practice registered nurse shall maintain current certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation throughout the licensure period.

(b) The board shall conduct an audit to verify that an advanced practice registered nurse has met the requirements of subsection (1)(a) of this section.

(2)(a) A nurse who fails to attain current, active certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation shall not practice or use the title of advanced practice registered nurse (APRN) until current certification or recertification is obtained.

(b)1. An APRN whose certification or recertification lapses prior to the expiration of the APRN license and who does not provide evidence of current certification or recertification prior to its expiration date after a request by the board shall have the APRN license voided. This action shall not be considered to be a disciplinary action.

2. The APRN may request a hearing on this action by submitting the request in writing. If the action is upheld or not challenged, the APRN may seek reinstatement of the license in accordance with Section 6 of this administrative regulation, except as provided in subparagraph 3 of this paragraph.

3. If, after the APRN license has been voided, the APRN

provides evidence that the certification had not lapsed, then the APRN shall meet the requirements of Section 6 of this administrative regulation except for Section 6(4) of this administrative regulation. A license may be issued prior to receipt of the FBI report.

(3) An advanced practice registered nurse who is decertified by the appropriate national organization shall:

(a) Notify the board of that fact; and

(b) Not practice as or use the title of advanced practice registered nurse during the period of decertification.

Section 8. (1) An application shall be valid for a period of one (1) year from the date of submission to the board.

(2) After one (1) year from the date of application, the applicant shall be required to reapply.

Section 9. The requirements of this administrative regulation shall not prohibit the supervised practice of a nurse enrolled in:

(1) An accredited~~[A—postbasic]~~ educational program for preparation for advanced practice registered nursing; or

(2) An advanced practice registered nurse refresher course.

Section 10. A registered nurse who holds himself or herself out as a clinical nurse specialist or is known as a clinical nurse specialist shall be required to be licensed as an advanced practice registered nurse if his or her practice includes the performance of advanced practice registered nursing procedures.

Section 11. A nurse practicing as an advanced practice registered nurse who is not licensed as an advanced practice registered nurse by the board, an advanced practice registered nurse whose practice is inconsistent with the population focus~~[specialty]~~ to which he or she has been designated, or an advanced practice registered nurse who does not recertify and continues to practice as an advanced practice registered nurse shall be subject to the disciplinary procedures established in KRS 314.091.

Section 12. Dual designations. (1) An advanced practice registered nurse who wishes to practice in more than one (1) role designation shall complete an accredited educational~~[approved organized—postbasic]~~ program of study and clinical experience for each desired designation in compliance with the educational requirements established in KRS Chapter 314 and 201 KAR 20:062 and meet all the requirements for licensure for each designation.

(2) To apply for licensure for more than one (1) role designation, the applicant shall submit a separate application and fee for each desired designation.

(3) To renew each role designation, the APRN shall pay a separate licensure fee as set forth in 201 KAR 20:240, Section 1(2)(l).

(4) For the purposes of Section 7(2)(b) of this administrative regulation, if the APRN does not provide evidence of current recertification in a role designation, then that role designation shall be voided. The license shall not be voided if the other role designation is maintained. All other provisions of Section 7(2)(b) of this administrative regulation shall apply to the voided designation.

(5) Role designations shall be the Certified Registered Nurse Anesthetist, Certified Nurse Midwife, Certified Nurse Practitioner, and Clinical Nurse Specialist pursuant to KRS 314.042. Amended Administrative Regulation

SALLY BAXTER, President

APPROVED BY AGENCY: June 12, 2015

FILED WITH LRC: July 2, 2015 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 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. on August 31, 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 the licensure and credential requirements for advanced practice registered nurses (APRN).

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting requirements.

(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 makes several language changes that are necessitated by the passage of House Bill 402 in the 2015 Regular Session. For example, in addition to certified copies of court records, attested copies will now be acceptable.

(b) The necessity of the amendment to this administrative regulation: The law was changed and the administrative regulation needed to conform.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes recently passed require the changes.

(d) How the amendment will assist in the effective administration of the statutes: By making the necessary changes.

(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:

No action is necessary by the APRNs.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET

##### Board of Nursing (Amendment)

#### 201 KAR 20:062. Standards for advanced practice registered nurse (APRN) programs of nursing.

RELATES TO: KRS 314.011, 314.111, 314.131

STATUTORY AUTHORITY: KRS 314.111(3), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111(3) and 314.131(2) require the board to promulgate administrative regulations to set standards for the establishment and outcomes of nursing programs, to approve schools of nursing [and courses] preparing persons for advanced practice registered nurse (APRN) licensure, and to monitor standards for APRN competency under KRS Chapter 314. KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement KRS Chapter 314. This administrative regulation establishes APRN programs of nursing standards.

Section 1. Definitions. (1) "APRN program of nursing" means the educational unit that prepares a person for practice and licensure as an advanced practice registered nurse [and includes secondary or distance learning sites, if applicable].

(2) "APRN program coordinator" means that individual who is responsible for the oversight [organization] of the educational unit [component] and is licensed as an APRN in the designated role and in the same population focus as the program.

(3) "[Designated] Chief nursing academic officer" means the registered nurse [that individual] who has academic and administrative authority for the overall nursing program.

(4) "National nursing accrediting body" means [National League for Nursing Accreditation Commission (NLNAC), now known as] the Accreditation Commission for Education in Nursing (ACEN), [or]

the Commission for Collegiate Nursing Education (CCNE), the Commission on Nursing Education Accreditation (CNEA), the Council on Accreditation of Nurse Anesthesia Educational Programs (COA), or the Accreditation Commission on Midwifery Education (ACME).

Section 2. [Requirements for Advanced Practice Registered Nursing Programs. (1) An educational institution that offers an APRN program of nursing shall ensure that the program:

(a) Is offered by or affiliated with a college or university that is accredited under 201 KAR 20:260, Section 2(1);

(b) Is a formal educational program, that is part of a doctoral, master's program, or a post-master's program in nursing with a concentration in advanced practice registered nursing and population foci as required for licensure in KRS 314.011;

(c) Has presented evidence that it has applied for nursing program accreditation and meets accreditation standards; and

(d) Offers a curriculum that covers the scope of practice for both the category of advanced practice registered nurse as specified in KRS 314.011 and the population foci.

(2) The clinical practice component of the curriculum shall be congruent with current national professional organizations and nursing accrediting body standards applicable to the APRN role and population focus.

(3) The program shall notify the board of any changes in hours of clinical practice or accreditation status and respond to board requests for information.

(4) The program shall have financial resources sufficient to support the educational goals of the program.

(5) The program shall establish academic and professional standards for admission to the program, progression in the program, and graduation from the program that shall be consistent with sound educational guidelines and recognized standards of professional conduct.

(6) The program shall notify the board regarding any plans to expand the program to additional locations or increase the student enrollment by more than fifty (50) percent from the previously admitted cohort.

(7) Voluntary closure of a program shall be in accordance with 201 KAR 20:360, Section 5.

Section 3. Establishing a New APRN Program of Nursing. (1) An institution may receive consultation from the board prior to establishing an APRN program of nursing.

(2) An institution that desires to establish and conduct an APRN program of nursing shall be accredited as outlined in 201 KAR 20:260, Section 2(1)(a).

(3) An institution shall submit information in the form of a letter of intent to establish an APRN program of nursing along with the fee required by 201 KAR 20:240, Section 1(2)(f).

(4) When [if] the information is submitted to the board, the institution shall begin the application process with a national nursing accrediting body and the Council on Postsecondary Education, if applicable.

(5) The information shall be submitted to the board no less than twelve (12) months prior to the first intended admission of students.

(6) The information shall be completed under the direction of the registered nurse who shall serve as the [designated] chief nursing academic officer or the APRN program coordinator.

(7) [The institution shall not advertise or enroll students until the board has granted developmental approval status.]

(8) The information shall include:

(a) General information about the governing institution including the:

1. Mission;

2. Ownership;

3. [Method of financing];

4. Accreditation;

4.5. Enrollment;

5.6. Area served; and

6.7. Institutional faculty qualifications; and

8. Resources that are sufficient to support defined outcomes

and goals;

(b) ~~An organizational chart of the institution and a written plan which describes the organization of the program of nursing and its relationship to the institution;~~

(c) ~~A designation of the current or desired national nursing accrediting body to be used in the development of the program;~~

(d) ~~A description and rationale for the [proposed type of] APRN role and population foci program which includes [to include] the certificate or degree to be awarded [and the population foci];~~

(e) ~~Approval from the governing body of the institution proposing the APRN program of nursing or other empowered approval bodies as applicable;~~

(f) ~~A copy of the curriculum vitae of the registered nurse identified as the APRN program coordinator;~~

(g) ~~Results of a needs assessment, including availability of an adequate number of potential students and employment opportunities for program graduates;~~

(h) ~~Evidence of support from the community of interest;~~

(i) ~~A timeline for the admission of students, projected graduation of the first class, and any plans for expansion;~~

(j) ~~A description of physical or virtual resources adequate to meet the needs of the faculty and students; and~~

(k) ~~Evidence of a sound financial base and demonstrated financial stability available for planning, implementing, and maintaining the proposed program of nursing;~~

(l) ~~The philosophy of the APRN program and program outcomes for graduates;~~

(m) ~~Curriculum design for each identified track to include:~~

1. ~~Proposed course sequence;~~

2. ~~Description of courses; and~~

3. ~~Credit hours delineating those credits assigned to theory and practice;~~

(n) ~~The availability of clinical experiences sufficient to accommodate the number of students to include the total number of clinical hours designated for each track or population foci;~~

(o) ~~A five (5) year plan for recruiting and retaining qualified nurse faculty; and~~

(p) ~~Recruitment plan and five (5) year projection for student enrollment and policies and procedures for student selection and progression].~~

(8) If the information in the form of a letter of intent is approved by the board, the governing institution shall be notified in writing that it may move to the proposal phase. The proposal shall be submitted within one (1) year of the date of the approval of the information or it shall expire.

(9)(a) A completed program proposal shall be submitted to the board by the governing institution for approval at least one (1) year prior to the anticipated opening date.

(b) The program proposal shall include:

1. An organizational chart of the governing institution and a written plan which describes the organization of the program of nursing and its relationship to the governing institution;

2. A designation of the current or desired national nursing accrediting body to be used for the accreditation of the program;

3. A copy of the curriculum vitae of the APRN identified as the APRN program coordinator;

4. A timeline for the admission of students, projected graduation of the first class, and any plans for expansion;

5. The philosophy of the APRN program and program outcomes for graduates;

6. Curriculum design for each identified track to include:

a. Proposed course sequence;

b. Description of courses;

c. Credit hours delineating those credits assigned to theory and practice; and

d. The total number of clinical hours designated for each track or population foci;

7. A five (5) year plan for securing clinical sites and preceptors sufficient to accommodate the number of students;

8. A five (5) year plan for recruiting and retaining qualified nurse faculty; and

9. Recruitment plan and five (5) year projection for student enrollment and policies and procedures for student selection and

progression.

(10) The program shall not be announced or advertised, nor students admitted until the proposal has been approved and developmental status has been granted by the board.

(11)(9) Developmental status [approval] shall be the designation granted to an APRN program of nursing that has met all the requirements of this administrative regulation including evidence that it has applied for accreditation from a national nursing accrediting body. Developmental status [This designation] shall be for no more than a two (2) year period of time pending review and accreditation [approval] by a national nursing accrediting body.

(12)(40) When developmental status [approval] has been granted by the board, the program may proceed with implementation including the admission of students. It shall be the responsibility of the chief nursing academic officer [APRN program of nursing] to notify the board of the admission and graduation of the first class.

(13)(44) Developmental status [approval] of an APRN program shall expire [eighteen (18) months from the date of approval] if a class of students is not admitted within two (2) years of receiving developmental status.

(14)(42) All formal communication between the APRN program of nursing and the national nursing accrediting body shall be forwarded to the board within thirty (30) days of receipt.

(15)(43) The APRN program coordinator shall notify the board within thirty (30) [five (5) business] days of any change in accreditation status.

(16)(44) The APRN program coordinator shall notify the board of pending site visits by the national nursing accrediting body and shall provide to the board copies of any documentation submitted to the national nursing accrediting body within thirty (30) days of submission.

(17)(45) The APRN program coordinator shall provide a copy of the report of the national nursing accrediting body to the board within thirty (30) [ten (10)] days of its receipt by the program.

(18)(46) The decision to grant program [full] approval by the board shall be based on review of the following:

(a) Achievement and continued [full] approval by a national nursing accrediting body; and

(b) Reports of site visits conducted by a board representative [Site visit reports by the board representative conducted] to evaluate program compliance with administrative regulations.

(19)(47) The board may grant program [full] approval for a period of time not to exceed the approval period of the national nursing accrediting body.

Section 3. Compliance with National Nursing Accrediting Body Standards. An APRN program shall comply with the standards of its national nursing accrediting body and provide the board with copies of communications necessary to maintain compliance.

Section 4. Preceptor Standards. In addition to the standards of the national nursing accrediting body, the APRN program shall comply with the preceptor standards established in this section. (1) The APRN program shall secure all necessary preceptors to students enrolled in the program. A student shall not be required to obtain their own preceptor, but may have input into the process.

(2) During the student's enrollment in the program, the student shall have some clinical experience with a preceptor who is an APRN with the same role and population focus for which the student is preparing.

(3) The preceptor who is an APRN shall have at least one (1) year of clinical experience in the role and population focus for which the student is preparing.

(4)(a) A physician or a physician's assistant (PA) may serve as a preceptor.

(b) The physician or PA who serves as a preceptor shall have at least one (1) year of clinical experience and shall practice in the same or similar population focus for which the student is preparing.

(5) A preceptor shall not precept more than two (2) students at a time.

(6) The APRN program shall have a written plan for orienting and evaluating a preceptor.

(7) This section shall become effective on January 1, 2016.

Section 5.4. Administrative Structure of Program. (1) The designated chief nursing academic officer shall hold the following qualifications:

- (a) A current, active, unencumbered registered nurse license or privilege to practice in Kentucky;
- (b) A doctoral degree earned from a university accredited by the United States Department of Education;
- (c) Educational preparation or experience in teaching and learning principles for adult education, including curriculum development and administration;
- (d) At least two (2) years of clinical experience; and
- (e) Current knowledge of APRN practice.

(2) The qualifications for the APRN program coordinator shall include:

- (a) A current, active, unencumbered APRN license or privilege to practice in Kentucky;
- (b) A minimum of a master's degree in nursing or health-related field in the clinical specialty from an accredited college or university which accreditation is recognized by the U.S. Department of Education;
- (c) Educational preparation or experience in teaching and learning principles for adult education, including curriculum development and administration; and
- (d) At least two (2) years of clinical experience.

(3) The board shall be notified in writing of a vacancy or pending vacancy in the position of the APRN program coordinator within fifteen (15) days of the program of nursing's awareness of the vacancy or pending vacancy. If the APRN program coordinator vacates the position, the designated chief nursing academic officer shall submit to the board in writing:

- (a) The effective date of the vacancy;
- (b) The name of the APRN who has been designated to assume the administrative duties for the program and a copy of his or her curriculum vitae; and
- (c) Status reports from the APRN program of nursing national nursing accrediting body.

(4) If there shall be a lapse between the date of the vacancy and the date the newly appointed APRN program coordinator assumes duties, the designated chief nursing academic officer or the head of the governing institution shall submit a plan of transition to ensure the continuity of the program;

(5) Progress reports shall be submitted if requested by the board;

(6) The length of the appointment of an interim APRN program coordinator shall not exceed six (6) months.

(7) Additional six (6) month periods may be granted upon request to the board based on a documented inability to fill the position.

Section 5. Faculty, Adjuncts, and Clinical Preceptors. (1) The qualifications for nursing faculty within the program leading to licensure as an APRN shall be as follows:

(a) A current, active, unencumbered APRN license to practice in Kentucky, unless the nurse faculty member will teach solely on-line and will not physically practice in this state in which case the nurse faculty member shall hold a current, active, unencumbered APRN license in the state in which they are located.

(b) A minimum of a master's degree in nursing or health related field in the clinical specialty;

(c) Two (2) years of APRN clinical experience; and

(d) Current knowledge, competence, and certification as an APRN in the role and population foci consistent with teaching responsibilities.

(2) Adjunct clinical faculty employed solely to supervise clinical nursing experiences of students shall meet all the faculty qualifications for the program level they are teaching as designated in subsection (1) of this section.

(3) Other qualified individuals may teach a non-clinical course or assist in teaching a clinical course in an APRN program of

nursing within their area of expertise.

(4) Clinical preceptors may be used to enhance faculty-directed clinical learning experiences. Clinical preceptors shall have demonstrated competencies related to the area of assigned clinical teaching responsibilities and shall serve as a role model and educator to the student. Clinical preceptors shall be approved by faculty and meet the following requirements:

(a) Holds an unencumbered active license or multistate privilege to practice as a registered nurse and an advanced practice registered nurse or a physician in the state in which the preceptor practices or, if employed by the federal government, holds an unencumbered active registered nurse and an advanced practice registered nurse or a physician license in the United States; and

(b) Has a minimum of one (1) year full time clinical experience in current practice as a physician or as an APRN within the role and population focus.

(5) A clinical preceptor shall function as a supervisor and teacher and evaluate the student's performance in the clinical setting. The program faculty shall retain ultimate responsibility for student learning and evaluation.

(6) The preceptor may be a practicing physician or other licensed, graduate-prepared health care provider with comparable practice focus. A majority of the preceptors shall be nurses.

(7) A clinical preceptor who is an APRN shall hold:

(a) National certification in the advanced practice category in which the student is enrolled; or

(b) Current board licensure in the advanced practice category in which the student is enrolled.

(8) A complete list of faculty members, clinical faculty, adjuncts, and preceptor appointments shall be reported to the board in writing annually.

Section 6. Curriculum. (1) An educational program offered by an accredited college or university that offers a graduate degree or post-master's certificate with a concentration in the APRN role and at least one (1) population foci shall include the following components:

(a) Clinical supervision as specified by the national certifying organizations applicable to the APRN role and population focus established in 201 KAR 20:056, Section 3(2); and

(b) Curriculum that is congruent with:

1. AACN Essentials for Masters Education for Advanced Practice Nursing if the program grants a master's degree or post-master's certificate or AACN Essentials for Doctoral Education for Advanced Nursing Practice if the program grants a doctoral degree; or

2. NLNAC Standards and Criteria Master's and Post-Master's Certificate if the program grants a master's degree or post-master's certificate or NLNAC Standards and Criteria Clinical Doctorate if the program grants a doctoral degree.

(2) APRN programs preparing for two (2) population foci or combined nurse practitioner/clinical nurse specialist shall include content and clinical experience in both functional roles and population foci.

(3) Each instructional track shall have a minimum of 500 supervised clinical hours directly related to the role and population foci, including pharmacotherapeutic management of patients.

(4) The curriculum shall contain the following three (3) separate graduate level courses in addition to APRN core courses:

(a) Advanced physiology/pathophysiology, including general principles that apply across the lifespan;

(b) Advanced health assessment, which includes assessment of all human systems, advanced assessment techniques, concepts and approaches; and

(c) Advanced pharmacology, which includes pharmacodynamics, pharmacokinetics and pharmacotherapeutics of all broad categories of agents.

(5) Content specific to the role and population focus in the APRN core area shall be integrated throughout the other role and population didactic and clinical courses.

(6) The curriculum shall include:

(a) Diagnosis and management of diseases across practice

settings including diseases representative of all systems and caused by major morbidities;

(b) Preparation that provides a basic understanding of the principles for decision making in the identified role; and

(c) Role preparation in one (1) of the six (6) population foci of practice identified in KRS 314.011.

(7) Preparation in a specialty area of practice is optional, but if included, it shall build on the APRN role/population-focus competencies. Clinical and didactic coursework shall be comprehensive and sufficient to prepare the graduate to practice in the APRN role and population focus.

Section 7. Students. (1) A student entering into the APRN program shall have an active, unencumbered registered nurse license.

(2) A student who wishes to complete a clinical experience in this state but is enrolled in an out-of-state APRN program shall have an active, unencumbered RN license in another jurisdiction, either in the U.S. or in another country. The following criteria shall be met:

(a) The APRN program of nursing is accredited by a national nursing accrediting body;

(b) The graduate program advises the student of expectations regarding student practice and required supervision;

(c) The graduate program provides direct supervision of the clinical experience and informs faculty, preceptors and clinical facilities that the student is practicing under this limited exemption; and

(d) The student limits practice to what is required for completion of the graduate program requirements.

Section 8.] Ongoing Approval. (1)(a) The chief nursing academic officer shall notify the board within thirty (30) days of any change in the APRN program coordinator.

(b) Approved APRN programs of nursing accredited by a national nursing accrediting body may be subject to a site visit at intervals associated with their national nursing accreditation.

(2) The board requires continuous accreditation by a national nursing accrediting body.

(3) The board may perform a site visit of a program on an announced or unannounced basis.

(4) Factors that may indicate the need for a [focused] site visit and that jeopardize program approval status shall include:

(a) Reported deficiencies in compliance with this administrative regulation;

(b) Noncompliance with the governing institution or program of nursing's stated philosophy, mission, program design, objectives, outcomes, or policies;

(c) Ongoing[Continual] failure to submit records or reports to the board within the designated time frame;

(d) Failure to provide sufficient clinical learning opportunities including securing preceptors for students to achieve stated outcomes;

(e) Failure to comply with requirements of the board or to respond to recommendations of the board within the specified time;

(f) Failure to submit communication from the accrediting agencies within the time frames identified in Section 2[4] of this administrative regulation;

(g) Withdrawal of accreditation off[or] either the program of nursing, college, or university by a[or the] national or regional[nursing] accrediting body, or if accredited for less than the maximum accreditation period[, the program may require additional reports regarding noncompliance];

(h) Failure to obtain approval of a change that requires board approval prior to implementation;

(i) Providing false or misleading information to students or the public concerning the program of nursing; or

(j) A change in the ownership or organizational restructuring of the governing institution[; or

(k) Those necessary for the APRN program of national nursing accrediting body to evaluate compliance with referenced standards].

(5)[(4)] If the APRN program of nursing achieves

reaccreditation, it shall submit documentation from the national nursing accrediting body to the board for action. If[and] the board finds that all requirements have been met, the program shall continue to be eligible for[continuing-full] approval.[(5) The board may visit a program of nursing on an announced or unannounced basis.]

(6)[Board] Action following a site visit:

(a) The board shall evaluate a program of nursing in terms of its compliance with this administrative regulation.

(b) Following a site visit and prior to board consideration, a draft of the site visit report shall be made available to the chief nursing academic officer and to the APRN program coordinator for review and correction of factual data.

(c) The APRN program coordinator or designee[administration] shall be available during the discussion of the report at the board committee to provide clarification.

(d) Following the board's review and decision, a letter shall be sent to the chief nursing academic officer, the APRN program coordinator, and the head of the governing institution regarding[the approval status of the program of nursing and] any requirements to be met along with required timelines.

Section 6. Withdrawal of Approval of an APRN Program. (1) Approval of an APRN program may be withdrawn if:

(a) It loses its national nursing accreditation; or

(b) It is unable to or does not meet the requirements of this administrative regulation.

(2) The board shall send notice to the chief nursing academic officer, the APRN program coordinator, and the head of the governing institution of its intent to withdraw approval.

(3) Within thirty (30) days of receipt of this notice, the chief nursing academic officer may request an administrative hearing pursuant to KRS Chapter 13B. If an administrative hearing is not requested, approval shall be withdrawn and the program shall be closed. A closed program shall comply with 201 KAR 20:360, Section 4(5).

(4)(a) If a program requests an administrative hearing, that hearing shall be held within sixty (60) days of the request.

(b) The hearing shall be held before a hearing officer or before the full board, at the discretion of the board[(e) A program has the right at any time to present evidence to the board that any deficiencies have been corrected and may petition the board to restore full approval.

Section 9. Approval Status and Withdrawal of Approval. (1) The board shall approve an APRN program of nursing if the program meets the requirements of this administrative regulation. The board may grant developmental approval for a period of two (2) years or less to an APRN program of nursing.

(2) Full approval may be granted for the same period of time that is designated by the national nursing accrediting body.

(3)(a) The APRN program coordinator of a nursing program that has its continuing approval status rescinded by the board shall meet with representatives of the board to evaluate actions needed.

(b) Following this meeting, the program may request a hearing pursuant to KRS Chapter 13B by filing a written request with the board within thirty (30) days of service of the board's order rescinding continuing full approval status.

(4) Conditional approval shall be the designation granted to a program of nursing if one (1) or more of the standards have not been met.

(a) Following the decision of the board to place a program of nursing on conditional status, the program coordinator shall be notified of the areas of deficiency and the time frame allowed for corrective action to be implemented.

(b) The APRN program coordinator shall, within thirty (30) days of the notice of deficiencies being sent, file a plan to correct each of the deficiencies.

(c) The APRN program coordinator may, within thirty (30) days of the notice of the deficiencies, request to appear before the board to contest the board's determination of deficiencies.

(d) If the board's determination of deficiencies has not been contested or if the deficiencies being sent are upheld after a

~~request to contest them, the board may conduct periodic evaluations of the program of nursing during the time of correction to evaluate if deficiencies have been corrected.~~

~~(e) If the plan of compliance is not completed satisfactorily within the time frame set by the board and if the program of nursing has not been granted additional time for completion, the approval status of the program of nursing shall be adjusted to probational.~~

~~(5) Probational approval shall be the designation granted to a program of nursing if one (1) or more standards have continued to be unmet.~~

~~(a) Following the decision of the board to place a program of nursing on probational status, the program coordinator shall be notified of the continued areas of deficiency. A new student shall not be admitted until the time the program of nursing comes into compliance. This period of time shall not exceed one (1) academic year.~~

~~(b) The APRN program coordinator shall, within thirty (30) days of the notice of the deficiencies being sent, file a plan to correct each of the identified deficiencies.~~

~~(c) The APRN program coordinator may, within thirty (30) days, of the notice of the deficiencies, submit a request to appear before the board to contest the board's determination of deficiencies.~~

~~(d) If the board's determination of deficiencies has not been contested or if the deficiencies are upheld after a request to contest them, the board may conduct periodic evaluations of the program of nursing during the time of correction to evaluate if deficiencies have been corrected.~~

~~(6) If the program of nursing has not corrected the deficiencies within one (1) academic year of being placed on probational status, a hearing pursuant to KRS Chapter 13B shall be conducted to evaluate whether to withdraw approval of the program of nursing.~~

~~(7) If the board decides to withdraw approval of a program of nursing, upon the effective date of the decision the program of nursing shall be removed from the official approved status listing. A program of nursing whose approval has been withdrawn shall:~~

~~(a) Allow a student who is currently enrolled in a nursing class to complete the program of nursing; or~~

~~(b) Assist a currently enrolled student to transfer to an approved program of nursing.~~

~~(8) A program of nursing whose approval has been withdrawn but continues to operate pursuant to subsection (7) of this section shall be continuously monitored by the board until the program closes.~~

~~(9) The board may return an APRN program to full approval status if the program attains and maintains adherence to this administrative regulation.~~

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

~~(a) "AACN Essentials for Master's Education for Advanced Practice Nursing", 1996 Edition, American Association of Colleges of Nursing;~~

~~(b) "AACN Essentials for Doctoral Education for Advanced Nursing Practice", 2006 Edition, American Association of Colleges of Nursing;~~

~~(c) "NLNAC Standards and Criteria Master's and Post-Master's Certificate", 2008 Edition, National League for Nursing Accrediting Commission; and~~

~~(d) "NLNAC Standards and Criteria Clinical Doctorate", 2008 Edition, National League for Nursing Accrediting Commission.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m].~~

SALLY BAXTER, President

APPROVED BY AGENCY: June 12, 2015

FILED WITH LRC: July 2, 2015 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 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. on August 31, 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 standards for advanced practice registered nurses (APRN) education programs.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting 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: It updates the procedures for applying for initial approval of an APRN education program. It also recognizes that APRN programs are accredited and requires compliance with the accrediting body's standards. It includes additional requirements for preceptors.

(b) The necessity of the amendment to this administrative regulation: It is required by statute.

(c) How the amendment conforms to the content of the authorizing statutes: By setting current standards.

(d) How the amendment will assist in the effective administration of the statutes: By making the necessary changes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRN programs of nursing. There are currently twelve (12) programs 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 existing programs do not need to take any additional actions. New programs must comply with the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost would include the program's staff time, etc. Therefore, the cost is unknown.

(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 314.111, 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET

##### Board of Nursing (Amendment)

#### 201 KAR 20:070. Licensure by examination.

RELATES TO: KRS 194A.540, 214.615, 314.041, 314.051(3), (6), 314.470

STATUTORY AUTHORITY: KRS 314.041(2), 314.051(3), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Kentucky Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(2) requires an applicant for licensure as a registered nurse to pass an examination prescribed by the board. KRS 314.051(3) requires an applicant for licensure as a licensed practical nurse to pass an examination prescribed by the board. This administrative regulation establishes the requirements for the licensure of nurses by examination.

Section 1. Eligibility for Licensure by Examination for a Graduate of a Kentucky Program or Other State or Territorial Nursing Program. (1) To be eligible for licensure by examination, an applicant shall:

(a) Submit:

1. A properly executed application for licensure, as required by and incorporated by reference in 201 KAR 20:370, Section 1(1);

2. The licensure application fee as established in 201 KAR 20:240;

3. A completed Federal Bureau of Investigation (FBI) Applicant

Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

4. A report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

5. A certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3);~~and~~

6. A letter of explanation that addresses each conviction, if applicable;

7. A certified copy of any disciplinary action taken on any professional or business license in another jurisdiction with a letter of explanation or report any disciplinary action pending on any professional or business license in another jurisdiction; and

8. Evidence of completion of the jurisprudence examination required by KRS 314.041(4) for RN applications or KRS 314.051(4) for LPN applications;[-]

(b) Notify the board as soon as a new address is established after submitting the application;

(c) Submit a copy of a marriage certificate, divorce decree, Social Security card, or court order to change the applicant's name, if the applicant's name is changed after the original application is filed;

(d) While taking the examination, abide by and cooperate with security procedures adopted by the board; and

(e) Apply to take and pass the National Council Licensure Examination[-; and

~~(f) Meet the requirement for completion of an educational course on the human immunodeficiency virus and acquired immunodeficiency syndrome, as required by KRS 214.615].~~

(2) An application for licensure shall be valid for a period of one (1) year from the date the application is filed with the board office or until the board receives the results of the examination or until the provisional license expires, whichever comes first.

(3) The name of the applicant shall appear on the Certified List of Kentucky Program of Nursing Graduates as established in 201 KAR 20:260, the Certified List of Out-of-state Program of Nursing Graduates, or the applicant shall request that the program submit to the board an official transcript verifying completion of program requirements. The Certified List of Out-of-state Program of Nursing Graduates shall be submitted by the nurse administrator of the out-of-state program of nursing.

(4) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.

(5) An applicant shall not be licensed until a report is received from the FBI pursuant to the request submitted pursuant to subsection (1)(a)3 of this section and any conviction is addressed by the board.

Section 2. Retaking the Examination. (1) An examination candidate who fails to achieve a passing result may retake the examination after meeting the requirements of Section 1 of this administrative regulation.

(2) The applicant shall not be eligible to take the examination more often than once every forty-five (45) days.

Section 3. Release of Examination Results. The board shall release examination results to:

(1) The candidate;

(2) Other state boards of nursing;

(3) The National Council of State Boards of Nursing, Inc.;

(4) The candidate's program of nursing; and

(5) An individual or agency who submits an applicant's or licensee's written authorization for their release, if applicable.

Section 4. Provisional License. (1) An applicant shall request a provisional license by completing the application for licensure required by Section 1 of this administrative regulation.

(2)(a) The board shall issue the provisional license to the applicant after Section 1(1)(a) and (3) of this administrative regulation are met, but not until the report is received from the FBI and any conviction is addressed by the board.



(b) In the case of a graduate of a foreign nursing school, the board shall issue the provisional license after the requirements of 201 KAR 20:480, Section 1(1) and (4), are met.

(3) To qualify as [“]direct supervision[”] pursuant to KRS 314.041(5) and KRS 314.051(6), the nurse responsible for the applicant shall at all times be physically present in the facility and immediately available to the applicant while the applicant holds a provisional license.

(4) The nurse responsible for the applicant shall be currently licensed or privileged to practice as a nurse in Kentucky.

(5) Upon notification to the board that the applicant has failed the NCLEX examination, the provisional license shall be voided.

~~Section 5.[Practical Nurse Role Delineation Course. (1) A graduate of a board-approved registered nurse program who is unsuccessful on the National Council Licensure Examination for registered nurses may apply for licensure by examination as a licensed practical nurse pursuant to KRS 314.041(13).~~

~~(2)(a) Prior to applying for licensure as a practical nurse, the applicant seeking practical nurse licensure pursuant to KRS 314.041(13) shall complete a board-approved practical nursing role delineation course in accordance with this section.~~

~~(b) The applicant shall return the registered nurse provisional license, if applicable.~~

~~(3)(a) The course shall be taken only at an approved LPN program of nursing.~~

~~(b) The program of nursing shall seek approval of the course from the board.~~

~~(4) The course shall consist of at least eight (8) hours of didactic instruction and sixteen (16) hours of clinical instruction.~~

~~(5) At the conclusion of the course, the individual shall be able to make decisions and take actions that are consistent with the scope and standards of practical nursing practice, established policies, procedures, and licensing laws.~~

~~(6) The LPN program of nursing shall submit to the board a certified list of individuals who completed the course.~~

~~(7) After completion of the practical nurse role delineation course, the applicant shall comply with Section 1 of this administrative regulation.~~

~~Section 6.] Nurse Licensure Compact Provisions. (1) An applicant who is issued a license and who does not have permanent residency in Kentucky shall be issued a license that indicates on the license that it is only valid in Kentucky.~~

~~(2) The board may request that an applicant provide evidence of the applicant's state of residence.~~

~~Section 6.[7.] Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Certified List of Kentucky Program of Nursing Graduates", 6/10, Kentucky Board of Nursing; and~~

~~(b) "Certified List of Out-of-State Program of Nursing Graduates", 6/10, Kentucky Board of Nursing.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.~~

SALLY BAXTER, President

APPROVED BY AGENCY: June 12, 2015

FILED WITH LRC: July 2, 2015 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 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. on August 31, 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 the requirements for licensure by examination.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting requirements.

(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 makes several changes to the administrative regulation required by legislation passed by the 2015 Regular Session. It allows attested copies as well as certified copies of court records. It deletes the HIV/AIDS requirement and the LPN role delineation course requirement.

(b) The necessity of the amendment to this administrative regulation: The statutes were changed in 2015.

(c) How the amendment conforms to the content of the authorizing statutes: The changes are mandated by the new statutes.

(d) How the amendment will assist in the effective administration of the statutes: By complying with the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure by examination, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to comply with the new requirements.

(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 314.041, 314.051, and 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET

Board of Nursing  
(Amendment)

201 KAR 20:110. Licensure by endorsement.

RELATES TO: KRS 194A.540, 214.615, 314.031, 314.041, 314.051, 314.091, 314.103, 314.470, 314.991

STATUTORY AUTHORITY: KRS 314.041(7), 314.051(8), 314.101(4), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(7) and 314.051(8) authorize the board to issue a license to practice nursing as a registered nurse or a licensed practical nurse to an applicant who has passed the required examination or its equivalent and who was licensed to practice nursing in another jurisdiction. KRS 314.101(4) authorizes the board to issue a temporary work permit to a person who has completed the requirements for, applied for, and paid the fee for licensure by endorsement. This administrative regulation establishes the requirements for licensure by endorsement and establishes the requirements for a temporary work permit for an applicant to practice nursing while the application for a license is being processed.

Section 1. Eligibility for Licensure by Endorsement. (1) To be eligible for licensure by endorsement, an applicant shall:

(a)1. Have completed a state approved program of nursing equivalent to Kentucky requirements; or

2. Have completed that portion of a state-approved program of nursing that is equivalent to a Kentucky program of nursing;

(b) Have taken and passed the State Board Test Pool Examination or National Council Licensure Examination or an examination that is consistent with Section 4 of this administrative regulation;

(c) Complete the application form, as required by 201 KAR 20:370, Section 1(1);

(d) Submit the current fee for a licensure application, as

established by 201 KAR 20:240;

(e) Report and submit a certified or attested copy of each disciplinary action taken or pending on a nursing or other professional or business license by another jurisdiction and a letter of explanation;

(f) Submit a certified copy of the court record of each misdemeanor or felony conviction and a letter of explanation that addresses each conviction as required by 201 KAR 20:370, Section 1(3);

(g) Request the U.S. jurisdiction or territory or foreign country of initial licensure to submit to the board a verification of licensure by examination, which shall include the following information:

1.a. Name of the program of nursing completed and date of graduation; or

b. Name of the program of nursing attended and date of completion of the requirements for eligibility to take the licensure examination in that jurisdiction; and

2. A statement that the applicant's license has not been revoked, suspended, limited, probated, or otherwise disciplined by the licensing authority and is not subject to disciplinary action;

(h) Meet the requirement for completion of an educational course on the human immunodeficiency virus and acquired immunodeficiency syndrome, as required by KRS 214.615;

(i) Submit a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI;

(j) Submit evidence of completion of the jurisprudence examination required by KRS 314.041(4) for RN applications or KRS 314.051(4) for LPN applications as approved by the board; and

(k) Submit a report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application.

(2) An application shall be valid for a period of six (6) months, except as provided for in Section 5 of this administrative regulation. The applicant shall:

(a) Submit a copy of a marriage certificate, divorce decree, Social Security card, or court order to change the applicant's name, if the applicant's name is changed after the original application is filed; and

(b) Notify the board in writing as soon as a new address is established after submitting the application.

(3) After six (6) months, the applicant shall:

(a) Submit a new application;

(b) Submit the current licensure application fee; and

(c) Meet the requirements established in this section.

(4) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.

(5) An applicant shall not be licensed until a report is received from the FBI pursuant to the request submitted under subsection (1)(i) of this section and any conviction is addressed by the board.

Section 2. Nursing Practice and Continuing Education Requirements. (1) Except as provided in subsection (2) of this section, an applicant shall complete fourteen (14) contact hours in continuing education for each year since the last year in which the applicant is able to demonstrate at least 100 hours of practice.

(2) The requirement established in subsection (1) of this section shall not apply to an applicant who:

(a) Has been licensed for less than five (5) years from the date of initial licensure;

(b) Has been actively licensed and engaged in nursing practice for at least 500 hours during the preceding five (5) years; or

(c) Has not been engaged in nursing practice during the five (5) years preceding the date of the application. This applicant shall:

1. Complete a refresher course approved by the board, pursuant to 201 KAR 20:380, which shall have been completed within two (2) years of the date of the application; or

2. Complete at least 120 contact hours of continuing education earned within one (1) year of the date of the application.

(3) At least fourteen (14) contact hours shall have been earned within the twelve (12) months preceding the date of application for active Kentucky licensure status.

(4) Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting the requirements established in subsections (1) and (3) of this section.

Section 3. Temporary Work Permit. (1) An applicant for licensure by endorsement who meets the requirements of Section 1(1)(a), (b), (c), (d), (e), (f), (i), (j), and (k) of this administrative regulation shall be issued a temporary work permit, but not until the report is received from the FBI and any conviction is addressed by the board.

(2) A temporary work permit shall be valid for a period not to exceed six (6) months.

(3) An individual who practices as a nurse in Kentucky without a current temporary work permit prior to issuance of a current active license shall be considered to be practicing without a license in violation of KRS 314.031 and shall be subject to the penalties listed in KRS 314.091 and 314.991.

Section 4. Licensing Examination Standards. An applicant who has taken an examination other than the State Board Test Pool Examination or the National Council Licensure Examination shall provide evidence to the board that the examination met the following standards of equivalency:

(1) Accepted psychometric procedures shall be used in the development of the examination;

(2) The examination shall be available to the board in the English language;

(3) The examination test plan blueprint shall be available for board review and adequately identifies test content and content weighting;

(4) Test items shall be available for board review and demonstrate the testing of competency necessary for safe practice;

(5) At least one (1) of the reliability estimates for the examination shall be 0.80 or higher;

(6) The examination shall be revised after each administration to insure currency and security of content; and

(7) The examination shall be given under strict security measures.

Section 5. Applicants for LPN license pursuant to KRS 314.041(14). An applicant for an LPN license pursuant to KRS 314.041(14) shall meet the requirements of this administrative regulation.

Section 6. Nurse Licensure Compact Provisions. (1) An applicant who is issued a license and does not have permanent residency in Kentucky shall be issued a license that indicates on the license that it is only valid in Kentucky.

(2) The board may request that an applicant provide evidence of the applicant's state of residence.

SALLY BAXTER, President

APPROVED BY AGENCY: June 12, 2015

FILED WITH LRC: July 2, 2015 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 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. on August 31, 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 the requirements for licensure by endorsement.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting requirements.

(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 makes several changes to the administrative regulation required by legislation passed by the 2015 Regular Session. It allows attested copies as well as certified copies of court records.

(b) The necessity of the amendment to this administrative regulation: The statutes were changed in 2015.

(c) How the amendment conforms to the content of the authorizing statutes: The changes are mandated by the new statutes.

(d) How the amendment will assist in the effective administration of the statutes: By complying with the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure by endorsement, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to comply with the new requirements.

(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 314.041, 314.051, and 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET  
Board of Nursing  
(Amendment)**

**201 KAR 20:215. Continuing competency requirements.**

RELATES TO: KRS 218A.205(3)(h), 314.011(12), 314.073, 314.991(1)-(3)

STATUTORY AUTHORITY: KRS 218A.205(3)(h), 314.073, 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1), (2), and 314.073 require the Board of Nursing to promulgate administrative regulations to establish continuing competency requirements for nurses. This administrative regulation establishes the fees, procedures, and requirements for continuing competency for nurses.

Section 1. Definitions. (1) "Contact hour" means fifty (50) minutes of an approved, organized learning experience.

(2) "Earning period" means November 1 through October 31 of a current licensure period.

(3) "Preceptor" means an experienced and competent nurse who assumes responsibility to assist with the clinical practice experience of a nursing student or new employee by serving as a role model, teacher, and resource.

Section 2. (1) A licensee shall choose a method from Section 3 of this administrative regulation to validate his or her continued competency in nursing for each earning period.

(2) A licensee shall maintain the documentation of the method chosen.

(3) A licensee shall provide the documentation if directed by the board.

Section 3. Methods for continued competency validation are as follows:

(1) Fourteen (14) contact hours of continuing education which shall:

(a) Be from a provider approved by the board pursuant to 201 KAR 20:220 and earned during the licensure period; and

(b) Include the continuing education required by Section 5 of this administrative regulation;

(2) Current national certification or recertification and the continuing education required by Section 5 of this administrative regulation. The certification shall be related to the nurse's practice role and shall:

(a) Have been initially attained during the licensure period;

(b) If issued for a period of time as evidenced by an expiration date, have been in effect during the entire licensure period; or

(c) Have been recertified during the licensure period;

(3) The continuing education required by Section 5 of this administrative regulation and at least one (1) of the following during the licensure period:

(a) Completion of a research project that is nursing-related:

1. As principal investigator, coinvestigator, or project director;

2. That is qualitative or quantitative in nature;

3. That utilizes a research methodology;

4. That increases knowledge, causes an improved outcome, or changes behavior, and that is evidenced by an abstract of the project which includes a summary of the findings;

(b) Publication of a nursing-related article;

(c) A nursing continuing education presentation that is:

1. A presentation that is designed and developed by the presenter;

2. Presented to nurses or other health professionals; and

3. Evidenced by a program brochure, course syllabi, or a letter from the offering provider identifying the licensee's participation as the presenter of the offering;

(d) Participation as a preceptor for at least one (1) nursing student or new employee.

1. The preceptorship shall be for at least 120 hours.

2. There shall be a one (1) to one (1) ~~one-to-one~~ relationship between the preceptor and the student or employee.

3. The preceptor may precept more than one (1) student or employee during the 120 hours.

4. The preceptorship shall be evidenced by written documentation from the educational institution or preceptor's supervisor; or

(4)(a) Seven (7) hours of continuing education from a provider approved by the board pursuant to 201 KAR 20:220 and earned during the licensure period which shall include the continuing education required by Section 5 of this administrative regulation if applicable; and

(b) A nursing employment evaluation that is satisfactory for continued employment. The evaluation shall:

1. Cover a period of at least six (6) months during the earning period;

2. Be signed by the nurse's supervisor; and

3. Include the name, address, and telephone number of the employer.

(5) A nurse who renews a license for the first time following graduation from a prelicensure program of nursing shall utilize the following methods for continuing competency validation:

(a) If employed, either:

1. The provisions of subsection (4) of this section; or;

2. The provisions of subsection (4)(a) of this section and documentation of the nurse's completion of an orientation to the employer; or

(b) If not employed or is unable to provide proof of an orientation or an evaluation, the provisions of subsection (1) of this section.

Section 4. (1) A licensee shall provide documentation of the methods used to validate continued competency if the licensee is the subject of a disciplinary complaint.

(2) A licensee shall provide documentation of the methods used to validate continued competency if requested by the board pursuant to a random audit of licensees.

Section 5. ~~(1)[Registered nurses and licensed practical nurses shall earn a minimum of two (2) contact hours of HIV/AIDS education:~~

~~(a) Approved by the Cabinet for Health and Family Services pursuant to KRS 214.610; or~~

~~(b) Offered by a provider approved pursuant to 201 KAR 20:220.~~

~~(c) These contact hours shall be earned at least one (1) time every ten (10) years.~~

~~(2)](a) Advanced practice registered nurses shall earn a~~

minimum of five (5) contact hours in pharmacology.

(b) Advanced practice registered nurses with a Collaborative Agreement for Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS) shall earn, as a part of the requirement of paragraph (a) of this subsection, at least one and one-half (1.5) contact hours related to the use of the KASPER system, pain management, or addiction disorders.

(2)(3) Sexual assault nurse examiners shall earn the continuing education required by 201 KAR 20:411, Section 8.

(3)(4)(a) Registered nurses and licensed practical nurses licensed as of July 15, 2010 shall earn a minimum of one and one-half (1.5) contact hours in pediatric abusive head trauma as required by KRS 314.073(7) by December 31, 2013.

(b) Registered nurses and licensed practical nurses licensed after July 15, 2010 shall earn a minimum of one and one-half (1.5) contact hours in pediatric abusive head trauma as required by KRS 314.073(7) within three (3) years of licensure.

Section 6. (1)(a) A licensee shall maintain records to substantiate methods used to validate competency.

(b) All records shall be retained for at least five (5) years following the current licensure period, ~~except for HIV/AIDS education records which shall be maintained for twelve (12) years~~.

(2)(a) A licensee shall, upon request, furnish to the board or its staff, legible copies of the records required to be maintained by subsection (1) of this section.

(b) Copies shall be furnished within thirty (30) days of the date a written request is mailed by first class to the last known address of the licensee or applicant.

(c) Failure to furnish records as required by this administrative regulation shall be cause for the issuance of a complaint pursuant to 201 KAR 20:161 for failure to comply with KRS 314.073(2).

(3)(a) Except as provided by paragraph (b) of this subsection, if the board determines that a licensee has failed to comply with the continuing competency requirements, he shall be allowed to cure the noncompliance if he:

1. Meets the continuing competency requirements within ninety (90) days of notification of noncompliance;
2. Enters a consent decree with the board; and
3. Pays a civil penalty imposed by the board pursuant to KRS 314.991.

(b) The board shall issue a complaint pursuant to 201 KAR 20:161 if:

1. A licensee fails to furnish records as requested pursuant to subsection (2) of this section; or
2. There is evidence of fraud or deceit in procuring or attempting to procure a license to practice nursing.

(4)(a) Partial credit for attendance at a continuing education activity shall not be given.

(b) A licensee who attends continuing education activities, whether as a presenter, participant, or student, shall attend the entire offering to be eligible to receive the number of contact hours for which the activity has been approved.

(5) It shall be the responsibility of each licensee to select and participate in those continuing education activities that will meet the criteria for acceptable continuing education.

(6) A licensee shall not repeat a continuing education offering within a licensure period.

Section 7. (1) Successful completion of a postlicensure academic course at a college, university, or postsecondary vocational institution shall qualify as a continuing education activity obtained from an approved provider if relevant to nursing practice under subsection (3) of this section.

(2) Contact hours shall be calculated as follows:

(a) One (1) semester or trimester hour of academic credit shall equal fifteen (15) contact hours; or

(b) One (1) quarter hour of academic credit shall equal twelve (12) contact hours.

(3) The following courses shall be relevant to nursing practice:

(a) A nursing course, designated by a nursing course number, and beyond the prelicensure curriculum of the individual licensee; or

(b) An academic course that is applicable to the nurse's role and beyond the prelicensure curriculum of the individual licensee.

(4) A licensee may request course review for approval of applicable nursing content pursuant to Section 8 of this administrative regulation.

(5) If it is an academic course in which grades are given, the licensee shall achieve a grade of "C" or better, or a pass on a pass-fail grading system.

Section 8. (1) A licensee may request an individual review of a nonapproved continuing education activity completed during the earning period if, within thirty (30) days after the expiration of the immediate past licensure period, the licensee has:

(a) Requested the review by submitting an "Application for Individual Review"; and

(b) Paid a fee of ten (10) dollars.

(2) The review shall be based on the standards established by:

(a) Sections 2 through 7 of this administrative regulation; and

(b) 201 KAR 20:220.

(3) Approval by the board of a nonapproved continuing education activity shall:

(a) Qualify it as having been obtained from an approved provider for the licensee requesting the review; and

(b) Be limited to the particular offering upon which the request for individual review is based.

(4) The board may offer continuing education hours for programs sponsored by the board. These continuing education hours shall be deemed to have been obtained from an approved provider. The board shall comply with all applicable provider standards.

Section 9. Incorporation by Reference. (1) "Application for Individual Review", 9/2005, Kentucky Board of Nursing, is incorporated by reference.

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8 a.m. to 4:30 p.m.

SALLY BAXTER, President

APPROVED BY AGENCY: June 12, 2015

FILED WITH LRC: July 2, 2015 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 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. on August 31, 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 the requirements for continuing competency.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting requirements.

(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 makes several changes to the administrative regulation required by legislation passed by the 2015 Regular Session. It deletes the requirement of HIV/AIDS education.

(b) The necessity of the amendment to this administrative regulation: The statutes were changed in 2015.

(c) How the amendment conforms to the content of the authorizing statutes: The changes are mandated by the new statutes.

(d) How the amendment will assist in the effective administration of the statutes: By complying with the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for renewal of licensure, number approximately 80,000.

(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 comply with the new requirements.

(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 314.073 and 314.131.

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

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

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

years? None.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

##### 201 KAR 20:225. Reinstatement of license.

RELATES TO: KRS 164.772, 194A.540, 314.041(11), 314.042(6), 314.051(11), 314.071, 314.073, 314.075, 314.085(1), 314.091

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(11), 314.042(6), and 314.051(11) allow a person whose license has lapsed due to failure to renew to be able to reinstate the license. KRS 314.091 authorizes the board to discipline a licensee for a violation of the statutes or administrative regulations. This administrative regulation establishes procedures for reinstatement of a license that has lapsed or has been subject to disciplinary action.

Section 1. Reinstatement of Lapsed or Retired License. (1) A license shall be lapsed if it has expired because of the licensee's failure to:

(a) Submit a completed and timely application for renewal;

(b) Submit data required to enable the board to complete the processing of an application;

(c) Submit the current application fee; or

(d) Meet all requirements for renewal of a license, in accordance with KRS 314.071.

(2) A lapsed or retired license may be reinstated by:

(a) Submitting a completed application form required by 201 KAR 20:370, Section 1(1)(a) or (c);

(b) Paying the current application fee required by 201 KAR 20:240, Section 1(2)(g) or (m);

(c) Submitting a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application, the board receiving the report from the FBI, and any conviction is addressed by the board;

(d) Submitting a criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(e) Submitting a certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3);

(f) Submitting a letter of explanation that addresses each conviction, if applicable;

(g) Submitting a certified copy of any disciplinary action taken on a nursing or other professional or business license in another jurisdiction with a letter of explanation or report any disciplinary action pending on a nursing or other professional or business license in another jurisdiction; and

(h) Meeting all other requirements of this section.

(3)(a) If an individual applies for reinstatement of a lapsed license to active status, the applicant shall complete fourteen (14) contact hours of continuing education for each year since the date of last active licensure, if the date of last active licensure is within five (5) years of the application for reinstatement, but more than one (1) year from the date of last active licensure.

1. Fourteen (14) hours of continuing education shall have been earned within twelve (12) months of the date of the application.

2. Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting this requirement.

(b) If an applicant has not been engaged in nursing practice during the five (5) years preceding the date of the application, the applicant shall:

1. Complete a refresher course approved by the board, pursuant to 201 KAR 20:220[20:380]. The refresher course shall have been completed within two (2) years of the date of the application; or

2. Complete at least 120 contact hours of continuing education earned within one (1) year of the date of the application.

(c) An individual may use the continuing competency methods set out in 201 KAR 20:215, Section 3, for reinstatement if that individual allowed the license to lapse and applies for reinstatement of a lapsed license within one (1) year from the date of lapse.

(d) Continuing competency used for reinstatement pursuant to paragraph (c) of this subsection shall not be used for renewal of the license.

(4)(a) If the applicant has been currently licensed and actively engaged in nursing practice in another jurisdiction for at least 500 hours during the preceding five (5) years, the requirements of subsection (3) of this section shall not apply.

(b) The applicant shall submit evidence to verify active practice.

(5) In addition to the requirements of this administrative regulation, an applicant whose license has lapsed for one (1) year or more shall submit evidence of completion of the jurisprudence examination required by KRS 314.041(11) for registered nurses and KRS 314.051(11) for licensed practical nurses as approved by the board.

Section 2. Reinstatement of License Subject to Disciplinary Action. (1) If a license has been revoked, an individual may apply for reinstatement by:

(a) Completing the appropriate application required by 201 KAR 20:370, Section 1(1)(a) or (c);

(b) Paying the current application fee required by 201 KAR 20:240, Section 1(2)(g) or (m);

(c) Meeting the terms of the disciplinary order; and

(d) Retaking the licensure examination and achieving a passing score.

(2) A hearing shall be held to determine if the issuance of a license would no longer be a threat to public safety and health.

(3)(a) If a license has been suspended or voluntarily surrendered, an individual may apply for reinstatement by:

1. Completing an application required by 201 KAR 20:370, Section 1(1)(a) or (c);

2. Paying the fee required by 201 KAR 20:240, Section 1(2)(g) or (m); and

3. Notifying the board, in writing, that the requirements of the decision or agreed order have been met.

(b) If the decision or agreed order requires that a hearing be held, the individual shall notify the board, in writing, to request that a hearing be scheduled.

(4) An individual whose license has been suspended or voluntarily surrendered shall be required to comply with the continuing education requirements of KRS 314.073 for the period during which the license was suspended or surrendered.

(5)(a) If a license has been probated and the individual has allowed the license to expire prior to the end of the probationary period, and the individual later applies for reinstatement, the license shall be reinstated subject to the remaining probationary period.

(b) The individual shall comply with all requirements for reinstatement, in accordance with KRS 314.071.

(6)(a) A person may seek reinstatement of a license pursuant to subsection (3) of this section, if an order of immediate temporary suspension has been issued pursuant to:

1. KRS 314.085(1) because of a person's failure to obtain an

evaluation and the person subsequently obtains the evaluation;

2. KRS 314.075 because of a person's submission of a bad check and the person subsequently makes the check good; or

3. KRS 164.772 because of a notice from the Kentucky Higher Education Assistance Authority that a person is in default of a student loan and the Kentucky Higher Education Assistance Authority subsequently notifies the board that the person is no longer in default.

(b) A request for reinstatement of a license following the issuance of an order of immediate temporary suspension as listed in paragraph (a) of this subsection may be denied, if in the opinion of the board, continuance of the temporary suspension is necessary in order to protect the public.

Section 3. Miscellaneous Requirements. (1) (a) A copy of an official name change document shall be submitted by the applicant if making application, if applicable.

(b) Verification of the name change shall be made by submitting a copy of a:

1. Court order;

2. Marriage certificate;

3. Divorce decree; or

4. Social Security card.

(2) An individual whose license lapsed, was suspended, or voluntarily surrendered prior to July 15, 1996 shall earn three (3) hours of continuing education in domestic violence within three (3) years of reinstatement of the license as required by KRS 194A.540.

(3) An individual who holds a nursing license that was revoked by disciplinary order of the board prior to December 31, 1987 shall meet all requirements of Section 2 of this administrative regulation except Section 2(1)(d) of this administrative regulation.

(4) An individual whose license lapsed, was suspended, or voluntarily surrendered prior to July 15, 2010 shall earn one and one-half (1.5) hours of continuing education in pediatric abusive head trauma as required by KRS 314.073(7) within three (3) years of reinstatement of the license.

SALLY BAXTER, President

APPROVED BY AGENCY: June 12, 2015

FILED WITH LRC: July 2, 2015 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 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. on August 31, 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 the requirements for reinstatement of a license.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: By setting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting requirements.

(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 makes several changes to the administrative regulation required by legislation passed by the 2015 Regular Session. It allows attested copies of court records in addition to certified copies.

(b) The necessity of the amendment to this administrative regulation: The statutes were changed in 2015.

(c) How the amendment conforms to the content of the authorizing statutes: The changes are mandated by the new statutes.

(d) How the amendment will assist in the effective administration of the statutes: By complying with the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for reinstatement of licensure, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to comply with the new requirements.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

years? None.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

#### 201 KAR 20:230. Renewal of licenses.

RELATES TO: KRS 314.041, 314.051, 314.071, 314.073

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement the provisions of KRS Chapter 314. This administrative regulation establishes requirements and procedures for the renewal of licenses.

Section 1. Eligibility for Renewal of Licenses. To be eligible for renewal of licenses, applicants shall:

(1) Hold a valid and current license issued by the board;

(2) Submit a completed application form as required by 201 KAR 20:370, Section 1(1), to the board office electronically, or if mailed, postmarked no later than the last day of the licensure period;

(3) Submit the current fee required by 201 KAR 20:240;

(4) Have met requirements of 201 KAR 20:215, if applicable;

(5) Submit certified or attested copies of court records of any misdemeanor or felony convictions with a letter of explanation;

(6) Submit certified copies of any disciplinary actions taken in other jurisdictions with a letter of explanation or report any disciplinary action pending on nursing or other professional or business licenses in other jurisdictions; and

(7) Have paid all monies due to the board.

Section 2. The licensure period for renewal of licenses shall be as specified in 201 KAR 20:085.

Section 3. (1) After the end of the licensure period each year, the board shall randomly select a percentage of nurses who have successfully completed renewal of the license.

(2) Those selected shall be notified in writing that, within thirty (30) days, they shall submit a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI.

(3) The board shall review the report received from the FBI and shall take appropriate action regarding any criminal convictions.

SALLY BAXTER, President

APPROVED BY AGENCY: June 12, 2015

FILED WITH LRC: July 2, 2015 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 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. on August 31, 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 the requirements for renewal of a license.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting requirements.

(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 makes several changes to the administrative regulation required by legislation passed by the 2015 Regular Session. It allows attested copies of court records in addition to certified copies. It also implements a procedure for doing criminal background checks (CBC) of renewal applicants.

(b) The necessity of the amendment to this administrative regulation: The statutes were changed in 2015. The statute to allow CBCs was amended several years ago, but is being implemented now for renewals.

(c) How the amendment conforms to the content of the authorizing statutes: The changes are mandated by the statutes.

(d) How the amendment will assist in the effective administration of the statutes: By complying with the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for renewal of licensure, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to comply with the new requirements.

(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 314.103 and 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

##### 201 KAR 20:370. Applications for licensure.

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091, 314.103, 314.470

STATUTORY AUTHORITY: KRS 314.041, 314.042, 314.051, 314.071, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.041, 314.042, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS Chapter 314. This administrative regulation establishes requirements and procedures for licensure.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, retired licensure status, or for advanced practice registered nurse licensure, renewal, or reinstatement, an applicant shall:

(1) Submit the completed application form to the board office, as follows:

(a) For RN or LPN licensure by examination, endorsement, or reinstatement, Application for Licensure;

(b) For RN or LPN Renewal, Annual Licensure Renewal Application: RN or LPN;

(c) For licensure or reinstatement as an advanced practice registered nurse, Application for Licensure as an Advanced Practice Registered Nurse;

(d) For renewal as an RN and an APRN, Annual Licensure Renewal Application: RN and APRN;

(e) For licensure as an RN and as an APRN, Application for RN and APRN Licensure;

(f) For retired licensure status, Application for Retired Status;

(g) For APRN renewal with an RN Compact license, Annual Licensure Renewal Application: APRN with RN Compact License

(not Kentucky); or

(h) In addition to any other renewal form, for APRN renewal, APRN Practice Data;

(2) Submit the current application fee, as required by 201 KAR 20:240;

(3) Submit a certified or attested copy of the court record of each misdemeanor or felony conviction in this or any other jurisdiction and a letter of explanation that addresses each conviction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years;

(4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;

(5) Have paid all monies due to the board;

(6) Submit a copy of an official name change document (court order, marriage certificate, divorce decree, Social Security card), if applicable;

(7) Submit additional information as required by the board in 201 KAR Chapter 20;

(8) Meet the additional requirements for:

(a) Licensure by examination established by 201 KAR 20:070;

(b) Licensure by endorsement established by 201 KAR 20:110;

(c) Licensure by reinstatement established by 201 KAR 20:225;

(d) Licensure by renewal established by 201 KAR 20:230;

(e) Retired nurse or inactive licensure status established by 201 KAR 20:095; or

(f) Advanced practice registered nurse licensure, renewal, or reinstatement established by 201 KAR 20:056;

(9) If not a citizen of the United States, maintain proof of legal permanent or temporary residency under the laws and regulations of the United States; and

(10) Notify the board upon establishment of a new mailing address.

Section 2. A completed renewal application form and all information needed to determine that an applicant meets the requirements for renewal of licensure shall be postmarked or received by the board no later than the last day for renewal of license.

Section 3. An application shall lapse and the fee shall be forfeited if the application is not completed as follows:

(1) For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office;

(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office or the date the applicant fails the examination, whichever comes first; or

(3) For all other applications except renewal of license applications, within one (1) year from the date the application form is filed with the board office.

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

(a) "Application for Licensure", 06/2015[6/2014], Kentucky Board of Nursing;

(b) "Annual Licensure Renewal Application: RN or LPN", 06/2015[6/2014], Kentucky Board of Nursing;

(c) "Application for Licensure as an Advanced Practice Registered Nurse", 06/2015[6/2014], Kentucky Board of Nursing;

(d) "Annual Licensure Renewal Application: RN and APRN", 06/2015[6/2014], Kentucky Board of Nursing;

(e) "Application for RN and APRN Licensure", 06/2015[6/2014], Kentucky Board of Nursing;

(f) "Application for Retired Status", 8/2004, Kentucky Board of Nursing;

(g) "Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky)", 06/2015[6/2014], Kentucky Board of Nursing; and

(h) "APRN Practice Data", 6/2012, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SALLY BAXTER, President

APPROVED BY AGENCY: June 12, 2015

FILED WITH LRC: July 15, 2015 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 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. on August 31, 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 requirements for licensure and incorporates the various application forms.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting requirements.

(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 makes several changes to the administrative regulation required by legislation passed by the 2015 Regular Session. It allows attested copies of court records in addition to certified copies. It also incorporates new editions of the application forms.

(b) The necessity of the amendment to this administrative regulation: The statutes were changed in 2015.

(c) How the amendment conforms to the content of the authorizing statutes: The changes are mandated by the statutes.

(d) How the amendment will assist in the effective administration of the statutes: By complying with the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to comply with the new requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3): There is no new cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Nursing (Amendment)

#### 201 KAR 20:390. Nursing Incentive Scholarship Fund.

RELATES TO: KRS 314.011, 314.025, 314.026, 314.027  
STATUTORY AUTHORITY: KRS 314.026(1), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.025 through 314.027 authorize the Kentucky Nursing Incentive Scholarship Fund for Kentucky residents. KRS 314.026(1) requires the Board of Nursing to promulgate administrative regulations to implement and administer the scholarship fund. KRS 314.025 authorizes the Nursing Incentive Scholarship Fund to issue grants for nursing workforce competency development. This administrative regulation implements the Kentucky Nursing Incentive Scholarship Fund Program and establishes the requirements relating to the program. This administrative regulation establishes criteria for submitting grant requests.

Section 1. Definitions. (1) "Academic year" means:

(a) For a registered nursing or graduate nursing program, a twelve (12) month period beginning with a fall session; and

(b) For a practical nursing program, the completion of the required program.

(2) "Board" is defined by KRS 314.011(1).

~~(3) "Committee" means the Kentucky Nursing Incentive Scholarship Fund Grant Review Committee.~~

~~(4) "Kentucky resident" is defined by 13 KAR 2:045, Section 1(10).~~

~~(4) [(5)] "Program of nursing" means a prelicensure, BSN completion, or graduate nursing program.~~

~~(5) [(6)] "Successful academic progression" means, except during the last academic year preceding graduation[:],~~

(a) For a prelicensure or BSN completion nursing program, the completion of a minimum of fifteen (15) credit hours per academic year of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow continuation in a program of nursing; or

(b) For a graduate nursing program, the completion of a minimum of nine (9) credit hours per academic year of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow continuation in the graduate program.

Section 2. Application. (1) To be eligible for a nursing incentive scholarship, an applicant shall:

(a) Be a Kentucky resident; and

(b) Have been accepted for admission to a program of nursing.

(2) An applicant shall submit a completed Nursing Incentive Scholarship Application by June 1 to apply for a scholarship for the following academic year.

(3) An applicant shall attach to the Nursing Incentive Scholarship Application a copy of the Student Aid Report from the Free Application for Federal Student Aid (FAFSA) for the current year, if requesting preference for financial need.

~~Section 3. [The Committee. (1) A member of the committee shall serve for two (2) years and may be reappointed.~~

~~(2) The committee shall meet as needed to review grant requests submitted pursuant to Section 11 of this administrative regulation.~~

~~(3) A member of the committee shall:~~

~~(a) Serve without compensation; and~~

~~(b) Be reimbursed for actual and necessary expenses related to serving on the committee.~~

~~Section 4.] Criteria for Awards. The board shall consider the following criteria in evaluating an application and shall award points as follows:~~

~~(1) Preference categories as specified in KRS 314.025(2):~~

~~(a) Licensed practical nurses, twenty-five (25) points;~~

~~(b) Registered nurses pursuing graduate nursing education, twenty-five (25) points; and~~

~~(c) Financially-needy Kentucky residents, twenty-five (25) points. Financial need shall be determined by the annual FAFSA Pell Grant Indicator of Eligibility for Financial Aid.~~

~~(2) Potential for academic success, as follows: high school, vocational school, college, or university grade point average for whichever institution the applicant most recently attended:~~

~~(a) Three and five-tenths (3.5) to four (4.0), twenty-five (25) points;~~

~~(b) Three (3) to three and four-tenths (3.4), twenty (20) points; and~~

~~(c) Two and five-tenths (2.5) to two and nine-tenths (2.9), fifteen (15) points.~~

~~(3) Previous health care experience, either paid or volunteer, shall be equal to five (5) points for each year in which service is validated, to a maximum of twenty-five (25) points.~~

~~Section 4. [5.] Amount of Award. (1) The board shall be notified by the board's fiscal officer as to the current fund balance prior to~~

making an award.

(2)(a) The board shall first make awards to those recipients who:

1. Received an award in the previous year; and
2. Remain eligible to receive an award pursuant to Section ~~6~~[7] of this administrative regulation in the current year.

(b) If funds remain available after the awards are made pursuant to paragraph (a) of this subsection, the board shall make an award to other eligible applicants.

Section ~~5~~[6-] Procedure for Disbursement of Awards. (1) Disbursement of funds shall be made directly to the recipient.

(2) Disbursement shall be made annually.

(3) Each educational institution in which a student receiving a nursing incentive scholarship award is enrolled shall certify to the board no later than thirty (30) days from the beginning of each semester, that the recipient:

- (a) Has enrolled; and
- (b) Is in good standing in the nursing program.

Section ~~6~~[7-] Continuing Eligibility Criteria. (1) A recipient of a nursing incentive scholarship shall be eligible to continue to receive an award if the recipient:

(a) Maintains successful academic progression through the program; and

(b) Submits to the board a completed Nursing Incentive Scholarship Fund Application form by June 1.

(2) The educational institution shall immediately notify the board of a change in a recipient's enrollment status.

(3) An award recipient in a practical nursing program shall not be eligible for further awards from the Nursing Incentive Scholarship Fund while enrolled in that program.

Section ~~7~~[8-] Disbursement Contract. (1) Prior to disbursement of initial funds, the recipient shall sign a Nursing Incentive Scholarship Fund Contract.

(2) The recipient shall sign a Nursing Incentive Scholarship Fund Promissory Note for each year in which funds are disbursed.

Section ~~8~~[9-] Repayment and Deferral. (1) A recipient shall immediately become liable to the board to pay the sum of all scholarships received and the accrued interest on the scholarships if the recipient fails to complete the:

- (a) Nursing program in which he or she is enrolled within the time specified by the program of nursing; or
- (b) Required employment as specified in the contract.

(2) Written notification of demand for repayment shall be sent by the board to the scholarship recipient's last known address and shall be effective upon mailing.

(a) The board may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the board.

(b) Payments shall first be applied to interest and then to principal on the earliest unpaid contracts.

(3) Repayment may be deferred in the case of disability, major illness, or accident that prevents a recipient from completing a program of nursing or being employed as a nurse in Kentucky.

(4) A student enrolled in a program of nursing may defer repayment if the student fails to achieve successful academic progression.

(a) This deferment shall apply for one (1) academic year.

(b) If the student fails to achieve successful academic progression after that time, repayment shall be due.

(c) If the student achieves successful academic progression within the allotted time, he or she may apply for a continuation award pursuant to Section ~~6~~[7] of this administrative regulation.

(5)(a) If a deferment is requested, the recipient shall submit the request to the board on a Nursing Incentive Scholarship Fund Request for Deferment form.

(b) If the request for deferment is submitted pursuant to subsection (3) of this section, the Nursing Incentive Scholarship Fund Request for Deferment form shall be accompanied by a physician's statement.

(6) If a recipient fails to pass the licensure examination within two (2) years of graduation, the sum of all nursing incentive scholarships received by the recipient, and the accrued interest, shall become due and payable.

(7) If a court of competent jurisdiction determines that the recipient has defaulted and the funds are due and owing to the board, then the provisions of 201 KAR 20:370, Section 1(5), shall apply.

(8) An individual who has defaulted on a scholarship shall not be eligible to receive another scholarship until the defaulted scholarship has been repaid.

Section ~~9~~[10-] Verification. (1) Verification of employment as a nurse in Kentucky pursuant to the contract shall be submitted to the board when the recipient's employment commitment begins and when it is completed. A termination of employment prior to completion shall be reported to the board within thirty (30) days by the employer and the recipient.

(2) A recipient shall notify the board immediately of a change of name or address or enrollment status in school.

~~Section 10[11-] Grant Requests. (1) More than forty (40) percent of available revenues received from fines levied by the Cabinet for Health and Family Services shall not be expended for grants in any given year.~~

~~(2) The deadline for grant requests shall be May 1 and November 1 annually.~~

~~(3) The grant request shall include:~~

~~(a) A problem statement or purpose related to improving nursing workforce competency;~~

~~(b) The proposed workforce development activity and how it has general applicability to the entire nursing workforce in the state;~~

~~(c) The proposed timelines and outcomes;~~

~~(d) The outcome measurement criteria to be used;~~

~~(e) The amount requested with a supporting budget;~~

~~(f) Any matching or in-kind budget contributions to be received; and~~

~~(g) The preferred funding cycle of either all funds given initially or partial funds given initially and the remainder at specified intervals.~~

~~(4) The following shall be the reporting requirements for grants that are funded:~~

~~(a) An initial report shall be submitted to the board six (6) months following funding or at the midpoint of the grant timeline if that is sooner than six (6) months from the funding date or as directed by the board.~~

~~(b) Interim reports shall be submitted at six (6) month intervals or as required by the board for the duration of the project funded.~~

~~(c) A final report shall be submitted to the board within three (3) months of completion of the project. The final report shall document outcome achievements and their relationship to the funds spent.~~

~~(5) Any money that is unused for the purpose of the grant shall be returned to the fund, unless otherwise directed by the board.~~

Section ~~12~~-. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Nursing Incentive Scholarship Fund Application", 12/01;

(b) "Nursing Incentive Scholarship Fund Request for Deferral", 10/96;

(c) "Nursing Incentive Scholarship Fund Contract", 10/13; and

(d) "Nursing Incentive Scholarship Fund Promissory Note", 10/13[.].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8:30 a.m. to 4:30 p.m.

SALLY BAXTER, President

APPROVED BY AGENCY: June 12, 2015

FILED WITH LRC: July 2, 2015 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on August 24, 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. on August 31, 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 requirements for applying for and awarding of the Nursing Incentive Scholarships.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting requirements.

(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 makes several changes to the administrative regulation required by legislation passed by the 2015 Regular Session. It deletes references to the awarding of grants or to committees.

(b) The necessity of the amendment to this administrative regulation: The statutes were changed in 2015.

(c) How the amendment conforms to the content of the authorizing statutes: The changes are mandated by the statutes.

(d) How the amendment will assist in the effective administration of the statutes: By complying with the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for scholarships, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to comply with the new requirements.

(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 314.025, 314.026, 314.027, and 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Board of Examiners of Psychology

##### 201 KAR 26:115. ~~[Definition of]~~ Psychological testing.

RELATES TO: KRS 319.010

STATUTORY AUTHORITY: KRS 319.032(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(b) requires the Board of Examiners of Psychology to promulgate administrative regulations to establish and define the scope of practice within the field of psychology. This administrative regulation establishes parameters of psychological testing.

Section 1. Definition. "Psychological testing" means the administration and interpretation[use] of one (1) or more editions of standardized measurement instruments, devices, or procedures including the use of computerized psychological tests, to observe or record human behavior, and which require the application of appropriate normative data for interpretation or classification and includes the use of standardized instruments for the purpose of the evaluation, diagnosis and treatment of mental and emotional disorders and disabilities, the evaluation [or—assessment] of cognition[cognitive and] intellectual abilities, attention, memory, personality and emotional states and traits, and neuropsychological functioning. Psychological testing includes those tests listed in Section 2 of this administrative regulation and other tests in those categories used to evaluate similar functions.

Section 2. Psychological Tests. Psychological tests may

include:

(1) Individual tests for the evaluation of cognition[cognitive] and intellectual abilities, examples of which are:

- (a) The Wechsler series;
- (b) The Stanford-Binet;[and]
- (c) The Kaufman series[Assessment Battery for Children];
- (d) The Woodcock-Johnson Tests of Cognitive Ability; and
- (e) The Differential Abilities Scales;

(2) Individual tests for the evaluation of attention, in addition to those included in neuropsychological testing, examples of which are:

- (a) Brief Test of Attention;
- (b) Ruff #2 and #7 Selective Attention Test;
- (c) Conners Continuous Performance Test;
- (d) Test of Variables of Attention;
- (e) Test of Visual Attention; and
- (f) Gordon Diagnostic System;

(3) Individual tests for the evaluation of memory, in addition to those included in neuropsychological testing, examples of which are:

- (a) Hopkins Verbal Learning Test;
- (b) Ruff Light Trail Learning Test;
- (c) California Verbal Learning Test;
- (d) Rev Auditory Verbal Learning Test;
- (e) Wechsler Memory Scale; and
- (f) Test of Memory and Learning;

(4)[(2) Individual, objective, and projective tests of personality and emotional states and traits, examples of which are:

- (a) The Minnesota Multiphasic Personality Inventory; and
- (b) The Millon Clinical Multiaxial Inventory;
- (c) The Millon Adolescent Clinical Inventory; and
- (d) Projective techniques including:
  - 1. The Rorschach Ink Blots;
  - 2. Thematic Apperception Test; and
  - 3. The Holtzman Ink Blots; and

(3)] Individual tests for the evaluation of neuropsychological functioning, examples of tests and functions[which] are:

- (a) The Halstead-Reitan Battery;
- (b) The Luria-Nebraska Battery;
- (c) The ["]Lezak and[or] Kaplan Batteries[Battery"]; [and]
- (d) The NEPSY; and
- (e) Individual tests for the evaluation of memory, working memory, visual skills, visuospatial skills, attention, sensorimotor abilities, symptom validity, or executive functioning; and

(5) Individual tests for the evaluation of personality and emotional states and traits, examples of which are:

- (a) The Minnesota Multiphasic Personality Inventory series;
- (b) The Millon Clinical Multiaxial Inventory series;
- (c) The Personality Assessment Inventory;
- (d) The Personality Inventory for Children;
- (e) The NEO Personality Inventory;
- (f) Ink blot tests including the Rorschach and the Holtzman;
- (g) Apperception tests including the Thematic Apperception Test, the Children's Apperception Test, and the Roberts2 Test; and
- (h) Sentence completion tests including the Rotter and the Reynolds.

Section 3. Services that are Described as "Psychological Testing"[~~shall only be administered and interpreted by persons credentialed by this board or who meet the formal academic training and experience qualifications described above and who are otherwise exempt by statute.~~]

(1) For the purposes of KRS 319.915(3) and this administrative regulation, symptomatic and behavioral assessment shall be construed as screening instruments and checklists and shall not include those psychological tests defined in Section 2 of this administrative regulation[Persons credentialed by this board, as well as other licensed or certified professionals, may also use tests of language, education, and achievement, as well as tests of abilities, interests, and aptitudes. With the exception of the test categories and psychological tests listed in Section 2 of this administrative regulation, the use of these other tests is not exclusively within the scope of this administrative regulation].

(2)[~~Members of other professions shall not train or supervise any person in performing psychological testing.~~]

(3)] The practice of psychology shall be construed within the meaning of the definition contained in KRS 319.010(7) without regard to if payment is received for services rendered.

(3)[(4)] Services that are described as "psychological testing and treatment" shall be administered to minor children only upon the notification of and the granting of written permission by the parent or legal guardian, unless otherwise required by the courts subject to specific state or federal law.

(4) Persons licensed under KRS Chapter 319 may provide training in the administration of psychological testing and the interpretation of raw test data only for persons credentialed under KRS Chapter 319 or students in psychology as described in KRS 319.015(4).

(5) Members of other professions shall not train or supervise any person in performing psychological testing.

OWEN T. NICHOLS, Psy.D., MBA, ABPP, ABMP, Chairperson

APPROVED BY AGENCY: July 10, 2015

FILED WITH LRC: July 15, 2015 at 8 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2015, at 10:00 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 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 August 31, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Chessica Loud, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8812, fax (502) 696-5898.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Louden

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation governs psychological testing.

(b) The necessity of this administrative regulation: This regulation is necessary to establish what is considered to be a psychological test and individuals qualified to perform psychological tests.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute regarding psychological testing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in establishing what is considered to be a psychological test and individuals qualified to perform psychological tests.

(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 clarify specific assessment tests that are considered psychological test.

(b) The necessity of the amendment to this administrative regulation: There have been numerous questions concerning what tests are considered to be psychological tests within the 201 KAR 26:115. This amendment should resolve those questions.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate

regulations regarding the requirements for certification.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in establishing what is considered to be a psychological test and individuals qualified to perform psychological tests.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 1021 licensed psychologists and 369 licensed psychological associates.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no actions needed to be taken for compliance of 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 is no cost associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Board licensees and other credentialed mental health professionals will have a clearer understanding what instruments are considered psychological tests.

(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 operations are funded by fees paid by credential holders 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 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 increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.032(1)(b).

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Kentucky Board of Examiners of Psychology (Amendment)

#### 201 KAR 26:121. Scope of practice and dual licensure[credentialing].

RELATES TO: KRS 319.032(1)(b), 319.050(7)

STATUTORY AUTHORITY: KRS 319.032(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(b) requires the board to promulgate administrative regulations establishing and defining scope of practice within the field of psychology. This administrative regulation establishes the required scope of practice for licensed psychologists who hold the health service provider designation, licensed psychologists, certified psychologists, certified psychologists with autonomous functioning, licensed psychological associates, and licensed psychological practitioners. It also provides guidance about scope of practice for license[credential] holders of this board who also hold mental health credentials from another regulatory board.

Section 1. A license[credential] holder shall not practice or present himself or herself outside the area or areas of competency specified in the application for a license[credential] and approved by the board based upon examination and review of qualifications, training, and experience, unless the credential holder has obtained additional education, training, experience, or supervision appropriate to the new practice area.

Section 2. Scope of Practice. (1) A licensed psychologist who holds the health service provider designation, a licensed psychologist, a certified psychologist with autonomous functioning, a certified psychologist, a licensed psychologist associate, or a licensed psychological practitioner may:

(a) Work in various health care service delivery settings; and

(b) Provide one (1) or more of the following direct or supportive services:

1. Diagnosis of an emotional, mental,~~or~~ nervous, or addictive disorder, including mental health conditions[~~substance abuse~~] or an adjustment problem of an individual or group through the use of psychological testing or other techniques[technique];

2. Evaluation or assessment of the functioning of an individual, group, or organization;

3. Treatment and amelioration of an emotional, mental,~~or~~ nervous, or addictive disorder, including mental health conditions[~~substance abuse~~], or an adjustment problem of an individual or group;

4. Intervention or a preventive technique that facilitates the functioning of an individual, group, or organization;

5. Consultation services;

6. Program planning or development services;

7. Evaluation of a psychological or human service program; or

8. Supervision of health service delivery by a licensed psychologist who holds the health service provider designation, as described in 201 KAR 26:171.

(2) All license[credential] holders from this board shall restrict their practice to the delivery of specific services for which they are competent based on professional education, training, and experience.

Section 3. Dual Credentialing. (1) An individual who holds both a license[credential] to practice psychology from this board and a mental health credential from another regulatory board authorized

by a Kentucky statute shall:

(a) ~~Maintain separate and distinct practices in relation to each credential;~~

(b) ~~Inform the recipient of a particular service under which license[credential] the provider is practicing;~~

~~[(c) Demonstrate that representations about the practice, including letterhead, signs, invoices, and advertisements, and the activities of the practice, are designed to maintain those distinctions;] and~~

~~(b) [(d)] Not deliver psychological services as defined by KRS 319.010 under the auspices of another credential, recognizing that some activities are exempted by KRS 319.015.~~

(2) Psychological testing as defined by 201 KAR 26:115[.] shall not be delivered under a credential other than a license~~[that]~~ issued by the Board of Examiners of Psychology.

OWEN T. NICHOLS, Psy.D., MBA, ABPP, ABMP, Chairperson

APPROVED BY AGENCY: July 10, 2015

FILED WITH LRC: July 15, 2015 at 8 a.m.

**PUBLIC HEARING AND COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on August 27, 2015, at 10:00 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 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 August 31, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

**CONTACT PERSON:** Chessica Loudon, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8812, fax (502) 696-5898.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Loudon

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation governs the scope of practice for a psychologist and how to handle a situation where an individual is licensed by this board and another mental health regulatory board.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the scope of practice for a psychologist and how to handle a situation where an individual is licensed by this board and another mental health regulatory board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with the authorizing statute regarding dual licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in establishing the scope of practice for a psychologist and how to handle a situation where an individual is licensed by this board and another mental health regulatory board.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes the requirement for a license holder of the board to maintain a separate and distinct practice in relation to his practice under a license issued this board and another mental health regulatory board.

(b) The necessity of the amendment to this administrative regulation: The board recognizes that there is not a need for a licensed psychologist to differentiate the licensee's practice from that of a practice under a credential issued by another mental

health regulatory board.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for certification.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in establishing the scope of practice for a psychologist and how to handle a situation where an individual is licensed by this board and another mental health regulatory board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 1,021 licensed psychologists and 369 licensed psychological associates.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no actions needed to be taken for compliance of 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 is no cost associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and credential holders benefit by having the definitions of terms used within the regulations to clarify the regulations and put the licensee on clear notice.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders 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 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 increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.032(1)(b), 319.050(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? 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 Examiners of Psychology  
(Amendment)**

**201 KAR 26:175. Continuing education.**

RELATES TO: KRS 319.032(1)(f), 319.050, 319.053, 319.064, 319.071

STATUTORY AUTHORITY: KRS 319.032(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(f) requires the board to promulgate an administrative regulation establishing a requirement for continuing education as a condition for renewal of a license. This administrative regulation establishes the continuing education requirements for renewal of a license.

Section 1. Definitions. (1) "Continuing education" means participation in an approved program beyond the basic educational requirements that meet the requirements established in Section 2(1) of this administrative regulation.

(2) "Continuing education (CE) hour" means a fifty-five (55) minute clock hour of instruction.

Section 2. (1) ~~Each license holder shall document the completion of at least thirty (30) continuing education hours approved by the board within each three (3) year renewal period. Commencing on the first license renewal date after June 30, 2013, each~~ license holder shall document the completion of at least thirty-nine (39) continuing education hours approved by the board within ~~each~~ the three (3) year renewal period ~~and for each subsequent renewal period~~.

(2) A person holding a license shall complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management within the first year of licensure and every six (6) years thereafter as required by KRS 210.366.

(a) A person holding a license shall be exempted from the requirement to complete a continuing education course in suicide assessment, treatment, and management if the licensee:

1. Is a graduate of a psychology program accredited by the American Psychological Association;

2. Holds board certification from the American Board of Professional Psychology; or

3. Completed a three (3) semester hour graduate course in suicide and crisis assessment, prevention, and intervention during the course of the licensee's graduate education.

(b) A person holding a license shall be exempted from the requirement to complete a continuing education course in suicide assessment, treatment, and management if the licensee:

1. Is primarily employed in a clinical setting accredited by the Joint Commission or another nationally accrediting healthcare entity that requires the completion of a suicide risk assessment with each patient being seen within the setting;

2. Teaches a graduate-level psychology course in suicide and crisis assessment, prevention, and intervention; or

3. Teaches a continuing education course in suicide and crisis assessment, prevention, and intervention at least once during the six (6) year period.

(c) The continuing education course in suicide assessment,

treatment, and management shall be approved in accordance with Section 3 of this administrative regulation.

(3) The continuing education shall:

(a) Provide specific content planned and evaluated to improve the license holder's professional competence;

(b) Make possible the acquisition of new skills and knowledge required to maintain competence;

(c) Strengthen the habits of critical inquiry and balanced judgment; and

(d) Include a minimum of three (3) hours in either ethical practice or risk management with each three (3) year renewal period.

(4) [(3)] Continuing educational hours shall not carry over from one (1) renewal period to the next.

(5) [(4)] (a) Except as provided in paragraph (b) of this subsection, a licensed psychologist with the health service provider designation who provides supervision to an applicant for licensure, or a certified psychologist or a licensed psychological associate shall include as part of the thirty (30) hours of continuing education required by subsection (1) of this section a minimum of three (3) continuing education hours in the area of supervision theory or techniques for each three (3) year renewal period.

(b) The requirement established in paragraph (a) of this subsection shall begin with the renewal period immediately following the period in which the original supervisory training required by 201 KAR 26:171, Section 4(1) and (2), is received.

Section 3. Hours required to satisfy the continuing education requirement shall be completed and reported at the time of license renewal. The license holder shall:

(1) Maintain and provide adequate records including certificates of attendance and documentation of completion of the required continuing education hours ~~and~~ or

(2) Provide documentation through a board-approved registry which shall certify the name and license number of the license holder, date and title of each program and the number of hours earned, and confirmation that the programs were given by a board-approved provider.

Section 4. All continuing education activities approved by the board shall be accepted toward the continuing education requirements for renewal of a license. A license holder shall determine prior to attending a specific continuing education program that the program:

(1) Has been approved by the board; or

(2) Is offered or sponsored by an organization approved by the board to sponsor continuing education programs.

Section 5. Approved Sponsoring Organizations and Approved Programs. (1) Participation in a continuing education program that is offered or sponsored by an organization listed in this subsection shall be accepted toward the requirement for continuing education established in Section 2(1) of this administrative regulation:

(a) The American Psychological Association ~~and~~ American Medical Association ~~and~~ American Psychiatric Association ~~and~~ National Association of Social Workers, or an affiliated state chapter;

(b) A recognized state, regional, national, or international psychological association; or

(c) A state or provincial psychology licensure board ~~and~~;

(2) The following programs shall be approved for continuing education:

(a) A course for graduate-level academic credit or a workshop in psychology or psychiatry offered by a national, regional, or state accredited academic institution or an affiliated hospital or medical center;

(b) The Kentucky Mental Health Institute or the Kentucky School of Alcohol and Other Drug Studies sponsored by the Kentucky Department for Behavioral Health, Developmental and Intellectual Disabilities;

(c) Interactional videoconferencing, internet-based course or a home study course provided by an organization listed in subsection (1) of this section.

(3)(a) The board may approve an organization that is not listed in subsection (1) of this section~~[5(1) of this administrative regulation]~~ as a sponsor of continuing education for a twelve (12) month period if the organization:

1. Files a written request for approval;
2. Pays an initial application fee of \$250; and
3. Proposes to sponsor continuing education programs that meet the requirements established in Sections 2(1) and 6 of this administrative regulation.

(b) An approved sponsor shall submit an annual report of the continuing education programs offered during that year.

(c) A sponsor that is approved pursuant to paragraph (a) of this subsection may request renewal of its approval for subsequent years by filing a \$150 renewal fee annually.

(4)(a) The board may approve a specific continuing education program that is not listed in subsection (2) of this section~~[5(2) of this administrative regulation]~~ if the sponsor of the program:

1. Files a written request for approval;
2. Pays an application fee of fifty (50) dollars; and
3. Provides information about a continuing education program that it proposes to sponsor which meets the requirements established in Sections 2(1) and 6 of this administrative regulation.

(b) The approval of a program pursuant to paragraph (a) of this subsection shall permit the sponsor to offer the program one (1) time. The sponsor shall submit a request for renewal and a ten (10) dollar renewal fee for each subsequent request to offer the same approved program.

Section 6. A continuing education program which satisfies the requirements for license renewal shall meet the following criteria:

- (1) The program shall be:
  - (a) Offered or sponsored by an organization which has been approved by the board; or
  - (b) A specific program approved by the board;
- (2) The program shall:
  - (a) Have a clearly-stated purpose and defined content area; and
  - (b) Be consistent with the overall goals of continuing education as defined in Section 1 of this administrative regulation;
- (3) A presenter shall be a professional qualified in the defined content area;
- (4) The program's time shall be clearly stated. Actual contact time shall be a minimum of one (1) continuing education hour;
- (5) Attendance shall be recorded by the program's sponsor;
- (6) Documentation of completion shall be provided to the participant;
- (7) A participant shall complete an evaluation of the program.

Section 7. Equivalencies. (1) A graduate-level psychology course taken at an accredited academic institution shall earn continuing education hours on the following basis:

- (a) Each one (1) hour semester course shall be the equivalent of fifteen (15) continuing education hours for the purposes of meeting the requirements of this administrative regulation; and
- (b) Each one (1) hour quarter course shall be the equivalent of nine (9) continuing education hours for the purposes of meeting the requirements of this administrative regulation.

(2) A person who teaches a three (3) hour semester or quarter graduate-level course in psychology at an accredited academic institution shall:

- (a) Earn six (6) continuing education hours for teaching the course; and
- (b) Not receive:
  1. Credit more than once for teaching a particular course during a renewal period; and
  2. More than nine (9) total continuing education hours for these teaching activities.

(3) A person who teaches an approved continuing education workshop or program shall:

- (a) Earn continuing education hours on a one (1) to one (1) basis; and
- (b) Not receive:
  1. Credit more than once for teaching a particular workshop or

program during a renewal period; and

2. More than nine (9) total continuing education hours for these teaching activities.

(4) A person who completes home study or internet-based courses shall not receive:

(a) Credit for repeating a specific study course during a renewal period; and

(b) More than twelve (12) total continuing education hours through home study or internet-based courses in a renewal period.

(5) A person who participates in videoconferencing in an interactive setting shall:

(a) Earn one (1) continuing education hour for each clock hour of participation; and

(b) Not receive more than twenty-four (24) continuing education hours through interactive videoconferencing participation.

OWEN T. NICHOLS, Psy.D., MBA, ABPP, ABMP, Chairperson

APPROVED BY AGENCY: July 10, 2015

FILED WITH LRC: July 15, 2015 at 8 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2015, at 10:00 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 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 August 31, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Chessica Loudon, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8812, fax (502) 696-5898.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Loudon

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation governs the continuing education of a credential holder.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the scope of practice for a psychologist and how to handle a situation where an individual is licensed by this board and another mental health regulatory board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation is in conformity with the authorizing statute regarding continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in establishing the scope of practice for a psychologist and how to handle a situation where an individual is licensed by this board and another mental health regulatory board.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes the requirement for a license holder of the board to maintain a separate and distinct practice in relation to his practice under a license issued this board and another mental health regulatory board.

(b) The necessity of the amendment to this administrative

regulation: The board recognizes that there is not a need for a licensed psychologist to differentiate the licensee's practice from that of a practice under a credential issued by another mental health regulatory board.

(c) How the amendment conforms to the content of the authorizing statutes: The administrative regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for certification.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in establishing the scope of practice for a psychologist and how to handle a situation where an individual is licensed by this board and another mental health regulatory board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 1,021 licensed psychologists and 369 licensed psychological associates.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no actions needed to be taken for compliance of 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 is no cost associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and credential holders benefit by having the definitions of terms used within the regulations to clarify the regulations and put the licensee on clear notice.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders 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 required to implement the changes made by this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This administrative regulation does not distinguish between similarly situated individuals on the basis of any factor.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.032(1)(b), 319.050(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? 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 Examiners of Psychology (Amendment)

**201 KAR 26:200. Definitions of terms used by the Board of Examiners of Psychology[Psychologists] for meeting education[educational] requirements for licensure as a licensed psychologist.**

RELATES TO: KRS 319.050

STATUTORY AUTHORITY: KRS 319.032, 319.050(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.050(2)(b) requires that to obtain licensure, a psychologist shall have a doctoral degree in psychology from a regionally accredited educational institution. This administrative regulation defines terms as they relate to licensed psychologists.

Section 1. A doctoral degree in psychology acceptable to the board shall:

(1) Be from a recognized institution of higher learning as defined in this administrative regulation;

(2) Be clearly identified by the granting institution as a psychology program wherever the program may be administratively housed;

(3) Be specified in pertinent institutional catalogs and brochures as intended to educate and train professional psychologists;

(4) Require a dissertation for the degree as psychological in method and content and an expected product of doctoral training in psychology;

(5) Stand as a recognizable, coherent, organized entity within the institution;

(6) Require within the psychology faculty clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

(7) Be an integrated, organized sequence of study;

(8) Require an identifiable psychology faculty and a psychologist responsible for the program;

(9) Require an identifiable body of students who are matriculated in that program for a degree; and

(10) Require in areas of training for psychologists who deliver or supervise psychological health services, the program includes educational experiences with titles such as practicum, internship, or field training.

Section 2. (1) In determining the acceptability of curricular experiences and course work, the following factors shall be considered:

(a) The curriculum shall encompass a minimum of three (3) academic years of full-time graduate study.

(b) A minimum of one (1) full academic year shall be spent in residence at the institution. The year in residence shall consist of a minimum of 250 contact hours or its equivalent of curricular experiences and course work delivered through face-to-face in person context with other students and with faculty of the

institution, without regard to the specific physical location in which the course work is conducted.

(c) In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence in each of the following content areas. This shall be met by including a minimum of three (3) or more graduate semester hours (five (5) or more graduate quarter hours) in each of these four (4) areas:

1. Biological bases of behavior, including the subject matters of physiological psychology, comparative psychology, neuropsychology, sensation and perception, and psychopharmacology;

2. Cognitive-affective bases of behavior, including the subject matters of learning, thinking, motivation, and emotion;

3. Social bases of behavior, including the subject matters of social psychology group process and organizational psychology and systems;

4. Individual differences, including the subject matters of personality theory, human development, and abnormal psychology.

(d) In addition to the core program, the curriculum shall include appropriate course work~~(coursework)~~ in accordance with subsection (1) of this section~~[2(1) of this administrative regulation]~~ in the specialty area of training. For candidates who seek to deliver or supervise psychological health services, that training shall include specific training in diagnosis, psychological testing,~~[and]~~ assessment of individual differences, and the design and implementation of appropriate intervention techniques, such as psychotherapy, counseling, and consultation.

(2) At the discretion of the board, any deficiency in course work or other requirements may be corrected by appropriate remedial work.

Section 3. A regionally accredited educational institution means accreditation by any one (1) of the following: Southern Association of Colleges and Schools, Middle States Association of Colleges and Schools New England Association of Colleges and Schools, North Central Association of Colleges and Schools, North Western Association of Schools and Colleges, and Western Association of Schools and Colleges.

Section 4. Accreditation means accreditation by one (1) of the aforementioned associations at Level 4 (doctoral degree granting accreditation) or at Level 5 (graduate or professional degree granting accreditation).

OWEN T. NICHOLS, Psy.D., MBA, ABPP, ABMP, Chairperson

APPROVED BY AGENCY: July 10, 2015

FILED WITH LRC: July 15, 2015 at 8 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2015, at 10:00 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than 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 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 August 31, 2015. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Chessica Loudon, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8812, fax (502) 696-5898.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Loudon

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the requirement that an applicant must have graduated with a doctoral degree in psychology from a regionally accredited educational institution and had a minimum of one (1) full academic year shall be spent in residence.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the educational requirements for licensure as a licensed psychologist.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation is in conformity with the authorizing statute regarding the educational requirements for licensure as a licensed psychologist.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in establishing the educational requirements for licensure as a licensed psychologist.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies what the board means by a minimum of one (1) full academic year shall be spent in residence.

(b) The necessity of the amendment to this administrative regulation: There has never been a definition of clarification of what the board means by a minimum of one (1) full academic year shall be spent in residence.

(c) How the amendment conforms to the content of the authorizing statutes: The administrative regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for certification.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist an applicant in determining when the applicant has satisfied the requirement of a minimum of one (1) full academic year shall be spent in residence.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 1,021 licensed psychologists and 369 licensed psychological associates.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no actions needed to be taken for compliance of 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 is no cost associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will benefit by having the requirement of a minimum of one (1) full academic year shall be spent in residence clarified.

(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 operations are funded by fees paid by credential holders 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 required to implement the changes made by this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This administrative regulation does not distinguish between similarly situated individuals on the basis of any factor.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.032, 319.050(2)(b).

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET

##### Board of Licensure of Marriage and Family Therapists (Amendment)

#### 201 KAR 32:060. Continuing education requirements.

RELATES TO: KRS 194.540, 210.366, 335.340

STATUTORY AUTHORITY: KRS 335.320(4), (9), 335.340(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.340(7) authorizes the board to promulgate administrative regulations to establish the fees and other requirements for a permit as a marriage and family therapist and associate[requiring marriage and family therapists to complete continuing education requirements as a condition of renewal of their license]. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Accrual of Continuing Education Hours; Computation of Accrual. (1) Effective January 1, 2017, a minimum of fifteen (15) approved continuing education hours shall be accrued by each licensee and a minimum of ten (10) approved continuing education hours shall be accrued by each associate during each[the] one (1) year renewal period[licensure period for renewal].

(2) All hours shall be in [or related to] the field of marriage and family therapy as defined in KRS 335.300(4) and shall relate to the professional application of psychotherapeutic and systems theories and techniques in the delivery of services to individuals, couples, and families.

(3) Three (3) hours of the fifteen (15) hours required by subsection (1) of this section shall be accrued in the field[fields] of professional ethics.

(4) Every six (6) years licensees and associates shall be required to show proof of completion of six (6) of the hours of continuing education on suicide assessment, treatment, and management as required by KRS 210.366. These hours shall be in addition to the requirements set forth in subsection (1) of this section unless preapproved by the board as meeting the requirements set forth in subsection (2) of this section or meets requirements of Section 2 of this administrative regulation.

(5) Within three (3) years of initial licensure or certification, all mental health professionals shall successfully complete a three (3) hour training which covers dynamics of domestic violence, elder abuse, neglect, and exploitation; effects of domestic violence and elder abuse, neglect, and exploitation on adult and child victims; legal remedies for protection; lethality and risk issues; model protocols for addressing domestic violence and elder abuse, neglect, and exploitation; available community resources and victim services and reporting requirements as required by KRS 194.540.

Section 2. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license or permit shall be directly related to the professional growth and development of marriage and family therapy practitioners and associates. They may be earned by completing any of the~~following~~ educational activities established in this subsection.[:]

(1) Programs not requiring board review and approval. Programs from the following sources shall be deemed to be relevant to the practice of marriage and family therapy and shall be approved without further review by the board:

(a) Programs provided or approved by the American Association for Marriage and Family Therapy (AAMFT) and its state affiliates;

(b) Academic courses as defined in 201 KAR 32:010; and

(c) Continuing education programs offered by Commission on Accreditation for Marriage and Family Therapy Education accredited institutions.

(2) Programs requiring board review and approval. Programs from the following sources shall be reviewed and may be determined to be relevant and therefore subsequently approved by the board:

(a) Relevant programs may include online study courses, manualized training, and face-to-face workshops.[including home study courses and in-service training provided] by other organizations, educational institutions, or other service providers approved by the board;

(b) Relevant programs or academic courses presented by the licensee. Presenters of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course; and

(c) Relevant publications in a professionally recognized or juried publication. Credit shall not be granted except for those publications that were published within the one (1) year period immediately preceding the renewal date. A licensee shall earn one-half (1/2) of the continuing education hours required for a relevant publication. More than one (1) publication shall not be counted during each renewal period~~]; and~~

~~(d) Related areas not specifically a part of the field of marriage and family therapy may be approved for up to two (2) continuing education hours out of the fifteen (15) required if the board believes the related areas may serve to enhance the licensee's ability to practice].~~

Section 3. Continuing Education Sponsors. (1) Any entity seeking to obtain approval of a continuing education program prior to its offering shall pay the fee as established in 201 KAR 32:030, Section 7, and submit an ["Application for Continuing Education Sponsor Approval"] to the board at least sixty (60) days in advance of the program. The application shall include the:

- (a) Type of learning activity;
- (b) Subject matter;
- (c) Names and qualifications of the instructors; and
- (d) Number of continuing education hours offered.

(2) A continuing education activity shall be qualified for preapproval if the board determines the activity being presented:

- (a) Is an organized program of learning;
- (b) Pertains to subject matters which integrally relate to the practice of marriage and family therapy;
- (c) Contributes to the professional competency of the licensee or associate; and
- (d) Is conducted by individuals who have educational training or experience acceptable to the Board.

Section 4. Responsibilities and Reporting Requirements of Licensees and Associates. (1) Licensees and associates shall:

- (a) Be responsible for obtaining required continuing education hours;
- (b) Identify personal continuing education needs;
- (c) Take the initiative in seeking continuing professional education activities to meet these needs; and
- (d) Seek ways to integrate new knowledge, skills, and attitudes.

(2) Each person holding a license or permit shall:

(a) [A licensee shall be responsible for obtaining required continuing education hours. He shall identify his own continuing education needs, take the initiative in seeking continuing professional education activities to meet these needs, and seek ways to integrate new knowledge, skills and attitudes. Each person holding licensure shall:

(4)] Select approved activities by which to earn continuing education hours;

(b) An individual licensee or associate seeking to obtain approval of a continuing education program for which the sponsor has not applied or been approved by the board may submit an application to the board for consideration. The application shall include the:

1. Agenda that is detailed, timed, and includes topics and presenters;
2. Presenter(s) bio which contains education;
3. Credentials of all presenters;
4. All presenters' experience related to topic;
5. Description of training; and
6. Objectives and goals;

(c) [(2) Submit to the board when applicable a request for approval for continuing education activities not approved by the board as set forth in Section 3 of this administrative regulation;

(3)] Maintain records of continuing education hours. Each licensee and associate shall maintain, for a period of one (1) year from the date of renewal, all documentation verifying successful completion of continuing education hours. During each [licensure] renewal period, up to fifteen (15) percent of all licensees and associates shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period. Verification of continuing education hours shall not otherwise be reported to the board;

(d) [(4)] Document attendance and participation in a continuing education activity in the form of official documents including transcripts, certificates, or affidavits signed by instructors [receipts for fees paid to the sponsor, or less formal evidence including written summaries of experiences that are not otherwise formally or officially documented in any way]. The type of documentation required shall vary depending on the specific activity submitted to the board for approval; and

(e) [(5)] Fully comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 335.340(7) and may result in the refusal to renew, suspension, or revocation of the license or permit [licensure].

Section 5. Carry-over of Continuing Education Hours, Prohibited. There shall not be a carry-over of continuing education hours earned in excess of those required under Section 1 of this

administrative regulation into the immediately following [licensure] renewal period.

Section 6. Board to Approve Continuing Education Hours; Appeal When Approval Denied. In the event of denial, in whole or part, of any application for approval of continuing education hours, the licensee or associate shall have the right to request reconsideration by the board of its decision. The request shall be in writing and shall be received by the board within thirty (30) days after the date of the board's decision denying approval of continuing education hours.

Section 7. Waiver or Extensions of Continuing Education. (1) The board may, in individual cases involving medical disability, illness, or undue hardship as determined by the board, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the same or make the required reports.

(2) A request for waiver or extension shall be in writing[,] and submitted within the [ninety (90)-day license] renewal grace period.

(3) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the licensee or associate [and shall be] accompanied by a verifying document signed by a licensed physician and shall be received by the board within the grace period.

(4) A waiver of the minimum continuing education requirements or an extension of time within which to fulfill the continuing education requirements may be granted by the board for a period of time not to exceed one (1) calendar year.

(5) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee or associate shall reapply for the waiver or extension in writing prior to the expiration of the previous extension or waiver.

Section 8. Incorporation by Reference. (1) "Application for Continuing Education Program Sponsor Approval", 10/2011 Edition, Board of Marriage and Family Therapists, is incorporated by reference.

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

MARY BADAMI, Chairperson

APPROVED BY AGENCY: July 15, 2015

FILED WITH LRC: July 15, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2015 at 10:00 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 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 August 31, 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: Nicole S. Biddle, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, (502) 696-5300, (502) 564-6801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nicole S. Biddle

(1) Provide a brief summary of: This regulation sets forth the continuing education requirements of Marriage and Family Therapy licensees and associates, including required training in suicide assessment, treatment, and management.

(a) What this administrative regulation does: This regulation sets forth the continuing education requirements of Marriage and Family Therapy licensees and associates, including required training in suicide assessment, treatment, and management.

(b) The necessity of this administrative regulation: These changes are required under KRS 210.366 and KRS 194.540.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation sets forth the requirements in Section 1.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the procedure for acquiring continuing education hours required by statute.

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

(a) How the amendment will change this existing administrative regulation: This regulation requires additional suicide and domestic violence training under KRS 210.366 and KRS 194.540.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because it sets forth the required continuing education course for licensees and associates.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide licensees and associates with additional required hours of suicide and domestic abuse training.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Licensed marriage and family therapists and licensed marriage and family therapist associates.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees and associates shall be required to show proof of completion of six (6) hours every six (6) years in the field of suicide assessment, treatment and management and three (3) hours within three (3) years of licensure of domestic violence training as set forth in KRS 194.540.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to licensees and associates.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The new amendment will provide necessary training for licensees and associates.

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the registration 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 is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The regulation did not establish any fees or increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the

criteria apply to all licensees

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 Licensure for Marriage and Family Therapists is housed for administrative purposes within the Public Protection Cabinet Office of Occupations and Professions.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.320(9), 335.320(4), 335.340(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. Expenditures will not be affected by:

(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 from this regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? 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 (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

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

**301 KAR 1:015. Boat and motor restrictions.**

RELATES TO: KRS 150.090, 150.625, 150.990, 235.010(4), 235.990

STATUTORY AUTHORITY: KRS 150.620, 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.620 authorizes the department to promulgate administrative regulations governing lands and waters the department has acquired. KRS 235.280 authorizes the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of this state. This administrative regulation limits the size of boats and motors on small lakes for safety reasons and to minimize interference with other users.

Section 1. Definition. "Idle speed" means the slowest possible speed at which maneuverability can be maintained.

Section 2. (1) On a lake established in subsection (2) of this section, a person shall not operate ~~on a lake listed in subsection (2) of this section;~~ a:

(a) House boat;

(b) Monohull boat with a center line length exceeding twenty-two (22) feet; or

(c) Pontoon boat with a float or decking exceeding twenty-two (22) feet, except for:

1. Guist Creek Lake, where a pontoon boat with a float or decking up to twenty-four (24) feet may be operated; or

2. On~~In~~ a lake established in clauses a. through c. of this subparagraph, where a pontoon boat with a float or decking up to thirty (30) feet may be operated:

a. Cedar Creek Lake;

- b. Lake Beshear; or
- c. Lake Malone.

(2) List of lakes:

- (a) Arrowhead Slough, Ballard County;
- (b) Beaver Creek Lake, Anderson County;
- (c) Beaver Dam Slough, Ballard County;
- (d) Bert Combs Lake, Clay County;
- (e) Big Turner Lake, Ballard County;
- (f) Boltz Lake, Grant County;
- (g) Briggs Lake, Logan County;
- (h) Bullock Pen Lake, Grant County;
- (i) Burnt Pond, Ballard County;
- (j) Burnt Slough, Ballard County;
- (k) Butler Lake, Ballard County;
- (l) Carnico Lake, Nicholas County;
- (m) Carpenter Lake, Daviess County;
- (n) Carter Caves Lake, Carter County;
- (o) Cedar Creek Lake, Lincoln County;
- (p) Corinth Lake, Grant County;
- (q) Cross Slough, Ballard County;
- (r) Cypress Slough, Ballard County;
- (s) Deep Slough, Ballard County;
- (t) Dennie Gooch Lake, Pulaski County;
- (u) Elmer Davis Lake, Owen County;
- (v) Fishpond Lake, Letcher County;
- (w) Goose Lake, Muhlenberg County;
- (x) Greenbo Lake, Greenup County;
- (y) Guist Creek Lake, Shelby County;
- (z) Happy Hollow Lake, Ballard County;
- (aa) Island Lake, Ohio County;
- (bb) Kentucky River WMA, Boone Tract Lakes, Henry County;
- (cc) Kincaid Lake, Pendleton County;
- (dd)[(ee)] Kingdom Come Lake, Harlan County;
- (ee)[(dd)] Kingfisher Lakes, Daviess County;
- (ff)[(ee)] Lake Beshear, Caldwell County;
- (gg)[(ff)] Lake Chumley, Lincoln County;
- (hh)[(gg)] Lake Malone, Muhlenberg County;
- (ii)[(hh)] Lake Mauzy, Union County;
- (jj)[(ii)] Lake Reba, Madison County;
- (kk)[(jj)] Lake Washburn, Ohio County;
- (ll)[(kk)] Lebanon City Lake, Marion County;
- (mm)[(ll)] Lincoln Homestead Lake, Washington County;
- (nn)[(mm)] Little Green Sea, Ballard County;
- (oo)[(nn)] Little Turner Lake, Ballard County;
- (pp)[(oo)] Long Pond, Ballard County;
- (qq)[(pp)] Marion County Lake, Marion County;
- (rr)[(qq)] Martin County Lake, Martin County;
- (ss)[(rr)] McNeely Lake, Jefferson County;
- (tt)[(ss)] Metcalfe County Lake, Metcalfe County;
- (uu)[(tt)] Mill Creek Lake, Wolfe County;
- (vv)[(uu)] Mitchell Lake, Ballard County;
- (ww)[(vv)] Pan Bowl Lake, Breathitt County;
- (xx)[(ww)] Pikeville City Lake, Pike County;
- (yy)[(xx)] Sandy Slough, Ballard County;
- (zz)[(yy)] Shanty Hollow Lake, Warren County;
- (aaa)[(zz)] Shelby Lake, Ballard County;
- (bbb)[(aaa)] South Lake, Ohio County;
- (ccc)[(bbb)] Spurlington Lake, Taylor County;
- (ddd)[(ccc)] Swan Lake, Ballard County;
- (eee)[(ddd)] Twin Pockets Slough, Ballard County; or
- (fff)[(eee)] Wilgreen Lake, Madison County.

- (3) Length restrictions in this section shall not apply to a canoe.

(4) A person shall not operate a [?]personal watercraft on Cedar Creek Lake pursuant to [as defined in] KRS 235.010(4)[on Cedar Creek Lake].

Section 3. (1) A person shall not operate a boat:

- (a) Motor without an underwater exhaust; or
- (b) Faster than idle speed while passing a boat with an occupant actively engaged in fishing, except in a designated skiing zone.

(2) The requirements established in subsection (1) of this section shall apply on:

- (a) Beaver Lake, Anderson County;
- (b) Boltz Lake, Grant County;
- (c) Bullock Pen Lake, Grant County;
- (d) Carnico Lake, Nicholas County;
- (e) Cedar Creek Lake, Lincoln County;
- (f) Corinth Lake, Grant County;
- (g) Elmer Davis Lake, Owen County;
- (h) Greenbo Lake, Owen County;
- (i) Guist Creek Lake, Shelby County;
- (j) Kincaid Lake, Pendleton County;
- (k) Lake Beshear, Caldwell County;
- (l) Lake Malone, Muhlenberg[Muhlenburg] County;
- (m) Pan Bowl Lake, Breathitt County;
- (n) Shanty Hollow Lake, Warren County;
- (o) Swan Lake, Ballard County; and
- (p) Wilgreen Lake, Madison County.

Section 4. A person shall not operate an electric or an internal combustion boat motor on:

- (1) Dennie Gooch Lake, Pulaski County;
- (2) Kingdom Come Lake, Harlan County; or
- (3) Lake Chumley, Lincoln County.

Section 5. A person shall not operate an internal combustion boat motor and shall only be allowed to use an electric trolling motor on:

- (1) Arrowhead Slough, Ballard County;
- (2) Beaver Dam Slough, Ballard County;
- (3) Bert Combs Lake, Clay County;
- (4) Big Turner Lake, Ballard County;
- (5) Briggs Lake, Logan County;
- (6) Burnt Pond, Ballard County;
- (7) Burnt Slough, Ballard County;
- (8) Butler, Ballard County;
- (9) Carpenter Lake, Daviess County;
- (10) Carter Caves Lake, Carter County;
- (11) Cross Slough, Ballard County;
- (12) Cypress Slough, Ballard County;
- (13) Deep Slough, Ballard County;
- (14) Fishpond Lake, Letcher County;
- (15) Happy Hollow Lake, Ballard County;
- (16) Kentucky River WMA, Boone Tract Lakes, Henry County;
- (17) Kingfisher Lake, Daviess County;
- (18)[(17)] Lake Mauzy, Union County;
- (19)[(18)] Lake Reba, Madison County;
- (20)[(19)] Lake Washburn, Ohio County;
- (21)[(20)] Lebanon City Lake, Marion County;
- (22)[(21)] Lincoln Homestead Lake, Washington County;
- (23)[(22)] Little Green Sea, Ballard County;
- (24)[(23)] Little Turner Lake, Ballard County;
- (25)[(24)] Long Pond, Ballard County;
- (26)[(25)] Marion County Lake, Marion County;
- (27)[(26)] Martin County Lake, Martin County;
- (28)[(27)] McNeely Lake, Jefferson County;
- (29)[(28)] Metcalfe County Lake, Metcalfe County;
- (30)[(29)] Mill Creek Lake, Wolfe County;
- (31)[(30)] Mitchell Lake, Ballard County;
- (32)[(31)] Pikeville City Lake, Pike County;
- (33)[(32)] Sandy Slough, Ballard County;
- (34)[(33)] Shelby Lake, Ballard County;
- (35)[(34)] Spurlington Lake, Taylor County; or
- (36)[(35)] Twin Pockets Slough, Ballard County.

Section 6. A person shall not operate a motorboat faster than idle speed on:

- (1) Carnico Lake, Nicholas County;
- (2) Goose Lake, Muhlenberg County;
- (3) Greenbo Lake, Greenup County;
- (4) Island Lake, Ohio County;
- (5) South Lake, Ohio County;
- (6) Pan Bowl Lake, Breathitt County; or
- (7) Wilgreen Lake, Madison County.



Section 7. A person operating a boat motor greater than ten (10) horsepower shall not exceed idle speed on:

- (1) Beaver Lake, Anderson County;
- (2) Boltz Lake, Grant County;
- (3) Bullock Pen Lake, Grant County;
- (4) Corinth Lake, Grant County;
- (5) Elmer Davis Lake, Owen County;
- (6) Herb Smith-[/Cranks Creek Lake, Harlan County;
- (7) Kincaid Lake, Pendleton County;
- (8) Martins Fork Lake, Harlan County;
- (9) Shanty Hollow Lake, Warren County; or
- (10) Swan Lake, Ballard County.

GREGORY K. JOHNSON, Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: July 10, 2015

FILED WITH LRC: July 14, 2015 at 4 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on August 24, 2015, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through August 31, 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 limits the size of boats and motors on small lakes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide reasonable protection and safety for individuals boating on these small lakes and to minimize interference with other users.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.620 authorizes the department to promulgate administrative regulations governing lands and waters it has acquired. KRS 235.280 authorizes the Department to promulgate administrative regulations to govern the fair, reasonable, equitable and safe use of all waters of the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation helps fulfill the purpose of KRS 150.620 and 235.280 by providing fair, reasonable, equitable, and safe use of small lakes in the state.

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

(a) How the amendment will change this existing administrative regulation: This amendment will require the use of trolling motors only on all lakes that are part of the Boone Tract of Kentucky River WMA in Henry County.

(b) The necessity of the amendment to this administrative regulation: KDFWR recently obtained several lakes on this WMA tract and based on their small size, it is necessary for the department to limit boat speed and noise for the benefit and safety of anglers using the lakes.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who fish the lakes on the Boone Tract of Kentucky River WMA 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: People fishing the Boone Tract Lakes of Kentucky River WMA will only be able to operate a boat by the use of a trolling motor.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to individuals as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All individuals fishing the Boone Tract lakes of Kentucky River WMA will benefit from increased safety and less disturbance on the lakes.

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

(a) Initially: There will be no cost initially to implement this administrative regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals will be treated the same.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.620 authorizes the department to promulgate administrative regulations governing lands and waters it has acquired. KRS 235.280 authorizes the Department to promulgate administrative regulations to govern the fair, reasonable, equitable and safe use of all waters of the state.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue will not be generated by this administrative regulation for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue will not be generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first

year? There will be no cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

**301 KAR 1:201. Taking of fish by traditional fishing methods.**

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.470  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470 authorizes the department to promulgate administrative regulations for creel and size limits for fish. This administrative regulation establishes fish size limits, daily creel limits, and possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure, bare hook, or fly made of wood, metal, plastic, feathers, preserved pork rind, or a similar inert material.

(2) "Chumming" means placing substances in the water for the purpose of attracting fish to a particular area.

(3) "Culling" means releasing a previously caught fish that an angler has kept as a part of a daily creel limit and replacing it with another fish of the same species.

(4) "Daily creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) calendar day while fishing.

(5) "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams.

(6) "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.

(7) "Processed fish" means a fish that has been gutted and head removed.

(8) "Release" means to return a fish to the water from which it was taken immediately after removing the hook.

(9) "Single hook" means a hook with no more than one (1) point.

(10) "Size limit" means the minimum legal length of a fish that is measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

(11) "Slot limit" means a size range of a fish species that shall be released by an angler.

(12) "Traditional fishing methods" means the act of taking or attempting to take for noncommercial purposes any freshwater fish species using:

(a) Hook and line in hand; or

(b) Rod in hand.

(13) "Unprocessed fish" means the whole fish prior to being processed.

Section 2. Statewide Limits and Requirements. (1) A person taking fish from public or private waters using traditional fishing methods shall observe the following daily creel limits and size limits, except as established in Section 3 of this administrative regulation or pursuant to 301 KAR 1:180.

(a) Black bass daily creel limit, six (6).

1. Largemouth bass and smallmouth bass size limit, twelve (12) inches.

2. Kentucky bass and Coosa bass, no size limit;

(b) Rock bass daily creel limit, fifteen (15);

(c) Sauger, walleye, and their hybrids daily creel limit, singly or in combination, six (6); size limit, walleye and their hybrids, fifteen (15) inches; no size limit for sauger;

(d) Muskellunge daily creel limit, one (1); size limit, thirty (30) inches;

(e) Chain pickerel daily creel limit, five (5); no size limit;

(f) White bass and hybrid striped bass daily creel limit, singly or in combination, fifteen (15); size limit, no more than five (5) fish in a daily creel limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer;

(g) Striped bass daily creel limit, five (5); size limit, fifteen (15) inches;

(h) Crappie daily creel limit, thirty (30); no size limit;

(i) Trout.

1. No culling statewide.

2. Rainbow trout and brown trout daily creel limit, singly or in combination, eight (8), no more than three (3) of which shall be brown trout.

3. No size limit on rainbow trout.

4. Twelve (12) inch size limit on brown trout.

5. Brook trout, catch and release only;

(j) Redear sunfish daily creel limit, twenty (20); no size limit; and

(k) Yellow bass daily creel limit, thirty (30); no size limit.

(2) The possession limit shall be two (2) times the daily creel limit, except as established in Section 3 of this administrative regulation.

(3) A person shall release grass carp caught from a lake owned or managed by the department.

(4) A person shall release any:

(a) Lake sturgeon; or

(b) Alligator gar.

(5) A person shall release fish:

(a) Below the minimum size limits established by this administrative regulation;

(b) Within a protected slot limit established by this administrative regulation; or

(c) Of a particular species if a person already possesses the daily creel limit for that species.

(6) A person shall not possess more than one (1) daily creel limit of processed or unprocessed fish while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(7) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily creel limit of tournament caught fish:

(a) At the weigh-in site;

(b) At the release site; or

(c) While transporting live fish from a remote weigh-in site back to the water body of origin for release.

(8) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily creel limit of unprocessed tournament caught fish that expired at the sites established in subsection (7) of this section for subsequent disposal by one (1) of the following methods established in paragraphs (a) through (c) of this subsection:

(a) Bagged, sealed, and placed in a garbage dump;

(b) Donated to a charity for the purposes of human consumption; or

(c) Transferred to a conservation officer or another agent of the department.

(9) A person shall not remove the head or tail of any fish for which a size limit or daily creel limit exists while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(10) A person may possess sport fish below the size limit or beyond the possession limit if the person:

## VOLUME 42, NUMBER 2 – AUGUST 1, 2015

(a) Obtains the fish from a licensed fish propagator or other legal source; and

(b) Retains a receipt or other written proof that the fish were legally acquired.

(11) A person shall release all caught trout unless the person:

(a) Has a valid trout permit;

(b) Is exempted from trout permit requirements pursuant to KRS 150.170(2); or

(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

(12) A person fishing in an artificial bait-only area shall not attach any of the following items established in paragraphs (a) through (h) of this subsection to the artificial bait:

(a) An insect;

(b) Minnow;

(c) Fish egg;

(d) A worm;

(e) Corn;

(f) Cheese;

(g) Cut bait; or

(h) A similar organic bait substance including dough bait and putty or paste-type bait designed to attract fish by taste or smell.

(13) The fishing season shall be open year round.

Section 3. Exceptions. All other provisions of this administrative regulation shall apply to the bodies of water listed in this section, with the exceptions established in subsections (1) through (77)(76) of this section:

(1) ~~AJ Jolly Lake. A person shall release all flathead catfish;~~

(2) Bad Branch, Letcher County. A person shall only fish with artificial bait with a single hook;

(2)(3) Barkley Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, ten (10) inches; daily creel limit, twenty (20).

(c) Sauger size limit, fourteen (14) inches;

(3)(4) Barren River Lake.

(a) Crappie size limit, nine (9) inches.

(b) Largemouth and smallmouth bass size limit, fifteen (15) inches, except that a person may keep one (1) bass under fifteen (15) inches within a daily creel limit.

(c) Barren River Lake shall extend up:

1. Barren River to the Highway 100 bridge;

2. Long Creek to the Highway 100 bridge;

3. Beaver Creek to the Highway 1297 bridge;

4. Skaggs Creek to the Mathews Mill Road bridge; and

5. Peter Creek to the Peter Creek Road bridge;

(4)(5) Beaver Lake, Anderson County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Channel catfish size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad as bait;

(5)(6) Bert Combs Lake, Clay County. A person shall not possess shad or use shad as bait;

(6)(7) Beshears Lake, Caldwell County. Channel catfish size limit, twelve (12) inches;

(7)(8) Boltz Lake, Grant County.

(a) A person shall not possess shad or use shad as bait.

(b) Channel catfish size limit, twelve (12) inches;

(8)(9) Briggs Lake, Logan County. A person shall not possess shad or use shad as bait;

(9)(40) Buckhorn Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Muskellunge size limit, thirty-six (36) inches.

(c) Crappie size limit, nine (9) inches;

(10)(41) Bullock Pen Lake, Grant County. Channel catfish size limit, twelve (12) inches;

(11)(42) Carnico Lake, Nicholas County. Largemouth bass size limit, fifteen (15) inches;

(12)(43) Carpenter Lake, Daviess County. A person shall not possess shad or use shad as bait;

(13)(44) Carr Creek Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, nine (9) inches;

(14)(45) Carter Caves State Park Lake, Carter County.

(a) Fishing shall be during daylight hours only.

(b) Largemouth bass.

1. There shall be a slot limit between twelve (12) and fifteen (15) inches.

2. The daily creel limit shall not include more than one (1) fish greater than fifteen (15) inches.

(c) A person shall not possess shad or use shad as bait;

(15)(46) Cave Run Lake.

(a) Largemouth bass. There shall be a slot limit between thirteen (13) and sixteen (16) inches.

(b) Smallmouth bass size limit, eighteen (18) inches.

(c) Muskellunge size limit, thirty-six (36) inches;

(16)(47) Cedar Creek Lake, Lincoln County.

(a) Largemouth bass size limit, twenty (20) inches; daily creel limit, one (1).

(b) Channel catfish size limit, twelve (12) inches; ~~-(e) A person shall not possess shad or use shad as bait;~~

(17)(48) Chimney Top Creek, Wolfe County. Brown trout size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only;

(18)(49) Corinth Lake, Grant County.

(a) A person shall not possess shad or use shad as bait.

(b) Channel catfish size limit, twelve (12) inches;

(19)(20) Cumberland Lake shall extend up:

(a) The Cumberland River to Cumberland Falls;

(b) The Big South Fork to Devils Jump;

(c) The Rockcastle River to The Narrows; and

(d) The Laurel River to Laurel River Dam:

1. Largemouth bass size limit, fifteen (15) inches.

2. Smallmouth bass size limit, eighteen (18) inches.

3. Striped bass size limit, twenty-two (22) inches; daily creel limit, two (2).

4. Crappie size limit, ten (10) inches;

(20)(24) Cumberland River downstream from Barkley Lake Dam. Sauger size limit, fourteen (14) inches;

(21)(22) Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries, except for a portion of Hatchery Creek in Russell County as established in subsection (37)(38) of this section.

(a) Brown trout size limit, twenty (20) inches; daily creel limit one (1).

(b) Brook trout size limit, fifteen (15) inches; daily creel limit one (1).

(c) Rainbow trout. There shall be a slot limit between fifteen (15) and twenty (20) inches; daily creel limit five (5), which shall not include more than one (1) fish greater than twenty (20) inches.

(d) A trout permit shall be required to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.

(e) Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle;

(22)(23) Dale Hollow Lake.

(a) Smallmouth bass. There shall be a slot limit between sixteen (16) and twenty-one (21) inches. The daily creel limits shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.

(b) Walleye and any walleye hybrid daily creel limit, five (5); size limit, sixteen (16) inches.

(c) Sauger daily creel limit, ten (10); size limit, fourteen (14) inches.

(d) Rainbow trout and brown trout, no size limit; daily creel limit, seven (7), singly or in combination.

(e) Largemouth bass size limit, fifteen (15) inches.

(f) Black bass aggregate daily creel limit, five (5), no more than two (2) of which shall be smallmouth bass.

(g) Crappie size limit, ten (10) inches; daily creel limit, fifteen (15);

- ~~(23)~~~~(24)~~ Dewey Lake.
- (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
- (b) Blue and channel catfish aggregate creel limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.
- ~~(c)~~ Muskellunge size limit, thirty-six (36) inches;
- ~~(24)~~~~(25)~~ Dix River for two (2) miles downstream from Herrington Lake Dam. A person shall only fish with artificial bait;
- ~~(25)~~~~(26)~~ Doe Run Lake, Kenton County.
- (a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
- (b) Channel catfish daily creel limit, four (4).
- (c) A person shall not possess shad or use shad as bait;
- ~~(26)~~~~(27)~~ Dog Fork, Wolfe County. A person shall only fish with an artificial bait with a single hook;
- ~~(27)~~~~(28)~~ Elkhorn Creek downstream from the confluence of the North and South forks to the first shoal located 3,400 feet above its confluence with the Kentucky River, as posted with signs. Largemouth bass and smallmouth bass.
- (a) There shall be a slot limit between twelve (12) and sixteen (16) inches.
- (b) The daily creel limit shall not include more than two (2) fish greater than sixteen (16) inches;
- ~~(28)~~~~(29)~~ Elmer Davis Lake, Owen County.
- (a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.
- (b) Channel catfish size limit, twelve (12) inches.
- (c) A person shall not possess shad or use shad as bait;
- ~~(29)~~~~(30)~~ Fishtrap Lake.
- (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
- (b) Crappie size limit, nine (9) inches.
- (c) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches;
- ~~(30)~~~~(31)~~ Floyd's Fork Creek, from Highway 60 downstream to Bardstown Road in Jefferson County. Largemouth and smallmouth bass size limit, fifteen (15) inches; daily creel limit, one (1);
- ~~(31)~~~~(32)~~ Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish, daily limit, five (5); size limit, fifteen (15) inches;
- ~~(32)~~~~(33)~~ General Butler State Park Lake, Carroll County.
- (a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
- (b) Channel catfish daily creel limit, four (4).
- (c) A person shall not possess shad or use shad as bait;
- ~~(33)~~~~(34)~~ Grayson Lake. Largemouth bass and smallmouth bass size limit, fifteen (15) inches;
- ~~(34)~~~~(35)~~ Greenbo Lake, Greenup County.
- (a) A person shall not possess shad or use shad as bait.
- (b) Bluegill and sunfish daily and possession limit, fifteen (15) fish;
- ~~(35)~~~~(36)~~ Green River Lake.
- (a) Crappie size limit, nine (9) inches.
- (b) Muskellunge size limit, thirty-six (36) inches;
- ~~(36)~~~~(37)~~ Guist Creek Lake, Shelby County. Channel catfish size limit twelve (12) inches;
- ~~(37)~~~~(38)~~ Hatchery Creek, Russell County.
- (a) A person fishing for trout in the upper rip-rap area of the creek shall follow the size and creel limits for trout for the Cumberland River below Wolf Creek Dam established in subsection ~~(21)~~~~(22)~~ of this section.
- (b) A person fishing for trout in the lower portion of the creek, as denoted by signs, shall:
1. Only use artificial bait; and
  2. Release all trout;
- ~~(38)~~~~(39)~~ Jerrico Lake, Henry County.
- (a) Largemouth bass size limit, fifteen (15) inches.
- (b) A person shall not possess shad or use shad as bait;
- ~~(39)~~~~(40)~~ Kentucky Lake and the canal connecting Kentucky and Barkley lakes.
- (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
- (b) Crappie size limit, ten (10) inches; daily limit, twenty (20).
- (c) Sauger size limit, fourteen (14) inches;
- ~~(40)~~ Kentucky River WMA, Boone Tract, Benjy Kinman Lake.
- ~~(a)~~ Largemouth bass. Catch and release only.
- ~~(b)~~ Crappie daily creel limit, fifteen (15).
- ~~(c)~~ Sunfish daily creel limit, fifteen (15).
- ~~(d)~~ Catfish daily creel limit, four (4);
- ~~(41)~~ Kentucky River WMA, Boone Tract, excluding Benjy Kinman Lake.
- ~~(a)~~ Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1).
- ~~(b)~~ Crappie daily creel limit, fifteen (15).
- ~~(c)~~ Sunfish daily creel limit, fifteen (15).
- ~~(d)~~ Catfish daily creel limit, four (4);
- ~~(42)~~ Kincaid Lake, Pendleton County. Channel catfish size limit, twelve (12) inches;
- ~~(43)~~~~(42)~~ Lake Blythe, Christian County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;
- ~~(44)~~~~(43)~~ Lake Malone, Muhlenberg and Logan County.
- (a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.
- (b) Channel catfish size limit, twelve (12) inches;
- ~~(45)~~~~(44)~~ Lake Mingo, Jessamine County. A person shall not possess shad or use shad as bait;
- ~~(46)~~~~(45)~~ Lake Pollywog, Grant County. A person shall not possess shad or use shad as bait;
- ~~(47)~~~~(46)~~ Lake Reba, Madison County.
- (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches; daily creel limit three (3).
- (b) Channel and blue catfish size limit, twelve (12) inches.
- (c) A person shall not possess shad or use shad as bait;
- ~~(48)~~~~(47)~~ Lake Shelby, Shelby County.
- (a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
- (b) Channel catfish daily creel limit, four (4).
- (c) A person shall not possess shad or use shad as bait;
- ~~(49)~~~~(48)~~ Laurel River Lake.
- (a) Largemouth bass size limit, fifteen (15) inches.
- (b) Smallmouth bass size limit, eighteen (18) inches; daily creel limit, two (2).
- (c) Crappie size limit, nine (9) inches; daily creel limit, fifteen (15);
- ~~(50)~~~~(49)~~ Lebanon City Lake (Fagan Branch), Marion County. Largemouth bass and smallmouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;
- ~~(51)~~~~(50)~~ Leary Lake, Grant County.
- (a) A person shall not fish except during daylight hours.
- (b) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
- (c) Channel catfish daily limit, four (4);
- ~~(52)~~~~(51)~~ Lincoln Homestead Lake, Washington County.
- (a) A person shall not fish except during daylight hours.
- (b) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
- (c) Channel catfish daily creel limit, four (4).
- (d) A person shall not possess shad or use shad as bait;
- ~~(53)~~~~(52)~~ Marion County Lake.
- (a) Largemouth bass size limit, fifteen (15) inches.
- (b) A person shall not possess shad or use shad as bait;
- ~~(54)~~~~(53)~~ McNeely Lake, Jefferson County.
- (a) Channel and blue catfish size limit, twelve (12) inches.
- (b) A person shall not possess shad or use shad as bait;
- ~~(55)~~~~(54)~~ Mill Creek Lake, Powell County.
- (a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
- (b) A person shall not possess shad or use shad as bait;
- ~~(56)~~~~(55)~~ New Haven Optimist Lake, Nelson County.
- (a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
- (b) Channel catfish daily creel limit, four (4).
- (c) A person shall not possess shad or use shad as bait;
- ~~(57)~~~~(56)~~ Nolin River Lake shall extend up Bacon Creek to

Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches except that the daily creel limit may contain one (1) bass under fifteen (15) inches.

(b) Crappie size limit, nine (9) inches;

~~(58)({67})~~ Ohio River.

(a) Walleye, sauger, and any hybrid thereof, no size limit; daily creel limit, ten (10), singly or in combination.

(b) White bass, striped bass, and any hybrid thereof, daily creel limit, thirty (30), no more than four (4) in the daily creel limit shall be fifteen (15) inches or greater.

(c) The blue catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer.

(d) The channel catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be twenty-eight (28) inches or longer.

(e) The flathead catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer;

~~(59)({68})~~ Otter Creek, Meade County.

(a) Smallmouth and largemouth bass. There shall be a slot limit between twelve (12) and sixteen (16) inches.

(b) Daily limit shall not include more than one (1) smallmouth or largemouth bass over sixteen (16) inches;

~~(60)({69})~~ Paint Creek between upper Highway 460 Bridge and Highway 40 Bridge, Johnson County. Trout size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only;

~~(61)({60})~~ Paintsville Lake.

(a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.

(b) Smallmouth bass size limit, eighteen (18) inches;

~~(62)({61})~~ Parched Corn Creek, Wolfe County. A person shall only fish with an artificial bait with a single hook;

~~(63)({62})~~ Pennyrile Lake, Christian County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

~~(64)({63})~~ Pikeville City Lake, Pike County. A person shall release largemouth bass;

~~(65)({64})~~ Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932. A person shall only fish with an artificial bait with a single hook;

~~(66)({65})~~ Reformatory Lake, Oldham County. Channel and blue catfish size limit, twelve (12) inches;

~~(67)({66})~~ Rough River Lake.

(a) Crappie size limit, nine (9) inches.

(b) Largemouth bass and smallmouth bass size limit, fifteen (15) inches, except that the daily creel limit may contain one (1) bass under fifteen (15) inches;

~~(68)({67})~~ Shanty Hollow Lake, Warren County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Channel catfish size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad as bait;

~~(69)({68})~~ Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall only fish with an artificial bait with a single hook;

~~(70)({69})~~ Sportsman's Lakes, Franklin County. A person shall not possess or use shad as bait;

~~(71)({70})~~ Spurlington Lake, Taylor County. A person shall not possess shad or use shad as bait;

~~(72)({71})~~ Sympson Lake, Nelson County. Largemouth bass size limit, fifteen (15) inches;

~~(73)({72})~~ Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Blue and channel catfish:

1. Aggregate daily creel limit of fifteen (15); and

2. Only one (1) fish of either species in the aggregate daily creel limit shall be longer than twenty-five (25) inches.

(c) Crappie size limit, nine (9) inches; daily creel limit, fifteen (15);

~~(74)({73})~~ Tennessee River downstream from Kentucky Lake

Dam. Sauger size limit, fourteen (14) inches;

~~(75)({74})~~ Trammel Creek, Allen County. Brown trout size limit, sixteen (16) inches; daily creel limit, one (1);

~~(76)({75})~~ Wood Creek Lake. Largemouth and smallmouth bass size limit, fifteen (15) inches; and

~~(77)({76})~~ Yatesville Lake: Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

#### Section 4. Creel and Size Limits for Waters Containing Rockcastle Strain Walleye. (1) Rockcastle Strain Walleye Waters.

(a) Barren River and tributaries upstream from Lock and Dam 1, including Barren River Lake;

(b) Cumberland River and tributaries above Cumberland Falls;

(c) Kentucky River and tributaries upstream from Lock and Dam 14;

(d) Middle Fork Kentucky River and tributaries;

(e) North Fork Kentucky River below Carr Creek Dam and tributaries;

(f) South Fork Kentucky River and tributaries;

(g) Levisa Fork River and tributaries upstream from Fishtrap Lake, including Fishtrap Lake;

(h) Martins Fork Lake;

(i) Rockcastle River and tributaries; and

(j) Wood Creek Lake.

(2) There shall be a slot limit between eighteen (18) and twenty-six (26) inches and a daily creel limit of two (2) for walleye in the waters established in subsection (1) of this section.

Section 5. Seasonal Catch and Release for Trout. (1) There shall be a catch and release trout season from October 1 through March 31 for the bodies of water established listed in subsection (3) of this section.

(2) A person shall:

(a) Only use artificial bait; and

(b) Release all trout.

(3) The streams established in paragraphs (a) through (n) of this subsection shall be open for the catch and release trout season:

(a) Bark Camp Creek in Whitley County;

(b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;

(c) Big Bone Creek within Big Bone Lick State Park in Boone County;

(d) Cane Creek in Laurel County;

(e) Casey Creek in Trigg County;

(f) Clear Creek from mouth upstream to 190 Bridge in Bell County;

(g) East Fork of Indian Creek in Menifee County;

(h) Elk Spring Creek in Wayne County;

(i) Floyd's Fork Creek in Jefferson County from Highway 60 downstream to Bardstown Road;

(j) Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;

(k) Middle Fork of Red River in Natural Bridge State Park in Powell County;

(l) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park;

(m) Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County; and

(n) Trammel Creek in Allen County.

(4) There shall be a seasonal catch and release trout season for Swift Camp Creek in Wolf County from October 1 through May 31.

Section 6.[5-] Special Limits for Fishing Events. (1) The commissioner may establish special limits for fishing events including:

(a) Size limits for selected species;

(b) Daily creel limits for selected species;

(c) Eligible participants; and

(d) Dates and times of special limits.

(2) An event sponsor shall post signs informing anglers of any special limits for a minimum of twenty-four (24) hours before the

event.

Section 7.[6:] Creel and Size Limits for Special Lakes and Ponds. (1) The requirements established in paragraphs (a) through (d) of this subsection shall apply to all bodies of water established[listed] in subsection (2) of this section:

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1);

(b)[~~Channel~~] Catfish daily creel limit, four (4);

(c) Sunfish or bream daily creel limit, fifteen (15); and

(d) Rainbow trout daily creel limit, five (5).

(2) Special lakes and ponds:

(a) Alexandria Community Park Lake, Campbell County;

(b) Anderson County Community Park Lake, Anderson County;

(c) Bloomfield Park Lake, Nelson County;

(d) Bob Noble Park Lake, Nelson County;

(e) Brickyard Pond, Knox County;

(f) Camp Ernst, Boone County;

(g) Carlson Lake, Meade County in Fort Knox;

(h) Cherokee Park Lake, Jefferson County;

(i) Dickerson Lake, Meade County in Fort Knox;

(j) Easy Walker Park Pond, Montgomery County;

(k) Fisherman's Park lakes, Jefferson County;

(l) Kingdom Come State Park Lake, Harlan County;

(m) Jacobsen Park Lake, Fayette County;

(n) James D. Beville Park Lake, Grayson County;

(o) Lake Mingo, Jessamine County;

(p) Lake Pollywog, Grant County;

(q) Lower Sportsman's Lake, Franklin County;

(r) Lusby Lake, Scott County;

(s) Madisonville City Park lakes, Hopkins County;

(t) Martin County Lake, Martin County;

(u) Maysville-Mason County Recreation Park Lake, Mason County;

(v) Middleton Mills Long Pond, Kenton County;

(w) Middleton Mills Shelterhouse Pond, Kenton County;

(x) Mike Miller Park Lake, Marshall County;

(y) Miles Park lakes, Jefferson County;

(z) Millennium Park Pond, Boyle County;

(aa) Panther Creek Park Lake, Daviess County;

(bb) Prisoners Lake, Kenton County;

(cc) Scott County Park Lake, Scott County;

(dd) Southgate Lake, Campbell County;

(ee) Three Springs Lake, Warren County;

(ff) Tom Wallace Park Lake, Jefferson County;

(gg) Upper Sportsman's Lake, Franklin County;

(hh) Watterson Park Lake, Jefferson County;

(ii) Waverly Park Lake, Jefferson County;

(jj) Waymond Morris Park Lake, Daviess County;

(kk) Whitehall Park Lake, Madison County; and

(ll) Yellow Creek Park Lake, Daviess County.

GREGORY K. JOHNSON, Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: July 10, 2015

FILED WITH LRC: July 14, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2015, at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through August 31, 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 size limits, daily creel limits, and possession limits for sport fish that may be taken from Kentucky waters.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the sport fish populations of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470 authorizes the department to establish creel and size limits for fish.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by limiting the number and size of fish that may be taken from Kentucky's waters. This will ensure that Kentucky's valuable sport fish populations are maintained at high levels.

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

(a) How the amendment will change this existing administrative regulation: This amendment will remove harvest restrictions on flathead catfish at A.J. Jolly Lake, allow gizzard shad to be used as bait at Cedar Creek Lake, establish a thirty-six (36)-inch minimum size limit on muskie at Dewey Lake, establish creel and size limits for bass, crappie, sunfish and catfish at lakes on the Kentucky River WMA Boone Tract, establish walleye creel and size limits for those water bodies containing Rockcastle strain native walleye, and clean up wording addressing catfish creel limits on the special lakes and ponds which are part of the Department's Fishing in Neighborhoods program.

(b) The necessity of the amendment to this administrative regulation: Flathead catfish at A.J. Jolly Lake had been protected from harvest during a research project looking at the use of flathead catfish to control stunted bluegill populations. The research project has concluded with no positive impacts by the flathead catfish. As a result, a harvest restriction on this species is not needed. The use of gizzard shad at Cedar Creek Lake was prohibited to prevent establishment of this species in the lake. Gizzard shad have subsequently appeared in the lake and there is now no reason to limit their use as bait. The minimum size limit on muskie at Dewey Lake is needed to adequately protect fish so they can reach trophy size. The Department recently acquired several new lakes on the Boone Tract of the Kentucky River WMA. Based on fish population assessments, the proposed regulations are needed to protect and develop sustained, quality fisheries at these lakes. The Department is currently attempting to restore a native species of walleye in several water bodies across the state. Protective regulations are needed to allow these fish to reach maturity before they are harvested. The special lakes in the Fishing in Neighborhoods program are supported through stocking, but do have existing fish populations as well. Channel catfish are stocked, but blue and flathead catfish are present. The original intention of the regulation was to allow four (4) catfish in aggregate to be harvested per day. Currently, as written, the regulation only restricts harvest of channel catfish, with unlimited harvest of other catfish species.

(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 anglers fishing at the water bodies and for the species identified in 2(a) above 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: Anglers will need to comply with the changes identified in 2(a).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost incurred by the anglers identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anglers who fish at the water bodies and for the fish the species identified in 2(a) above will benefit in the long run from higher quality sport fisheries and better angling opportunities.

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

(a) Initially: There will be no initial cost 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 funding source for this program is the State Game and Fish Fund.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals fishing in Kentucky are treated equally with these amendments.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the Department to promulgate administrative regulations to regulate bag, creel, and possession limits of game and fish. KRS 150.470 authorizes the department to promulgate creel and size limits for fish.

(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 direct revenue. It is unknown if this administrative regulation could indirectly increase any fishing license sales 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? There will be no direct revenue generated in subsequent years, and it is unknown if fishing license sales will be indirectly increased because of this amendment.

(c) How much will it cost to administer this program for the first year? There will be no initial cost to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost 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:

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (Amendment)

#### 505 KAR 1:100. Department of Juvenile Justice Policies and Procedures: admissions.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.069, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.069, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

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

(a) The "Department of Juvenile Justice Policy and Procedures Manual: Admissions", July 1, 2015[April 15, 2009], which includes the following:

- 200 Definitions[Classification] (Amended 7/01/15[4/15/09]);
- 200.1 Classification[Day Treatment Admissions] (Amended 7/01/15[4/15/09]);
- 201 Day Treatment Admissions (Added 7/01/15);
- 202 Youth Placement Priority[Waiting List] (Amended 7/01/15[4/15/09]);
- 204 Daily Census and Population (Amended 7/01/15[4/15/09]);
- 206 Administrative Transfers (Amended 7/01/15[4/15/09]);
- 208 Youth Rights [/Orientation] (Amended 7/01/15[4/15/09]);
- 209 Youth Access to Outside Investigative Agencies (Amended 7/01/15[04/15/09]);
- 210 Interstate Referrals (Amended 7/01/15[4/15/09]);
- 211 Interstate Runaways, Escapees and Absconders (Amended 7/01/15[4/15/09]);
- 212 Interstate Purchase of Care (Amended 7/01/15[4/15/09]);
- 213 Interstate Travel (Amended 7/01/15[4/15/09]);
- 214 Interstate Revocations and Case Closure (Amended 7/01/15[4/15/09]); and
- 217 Advanced Care Unit Admissions and Release (Amended 7/01/15[04/15/09]); and

(b) The "Classification and Placement Manual", Amended 7/01/15[05/12/09];

(c) The "Youth Level of Service/Case Management Inventory (YLS/CMI), User's Manual", 01/13/06;

(d) The "Child and Adolescent Service Intensity Instrument (CASII)", also known as "Child and Adolescent Level of Care Utilization System (CALOCUS)", 01/13/06;

(e) The "Estimate of Risk of Adolescence Sex Offense Recidivism (ERASOR)", 01/13/06; and

(f) The "Juvenile Sex Offender Assessment Protocol (J-SOAP)", 01/13/06].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

BOB D. HAYTER, Commissioner

APPROVED BY AGENCY: June 30, 2015

FILED WITH LRC: July 1, 2015 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2015 at 10:00 a.m., at the Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by, Wednesday, August 20, 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 this date, the hearing may be cancelled. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday, August 31, 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: LaDonna Koebel, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: LaDonna Koebel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the policies and procedures governing the operation of the Department of Juvenile Justice including the classification and placement of juveniles committed to the Department.

(b) The necessity of this administrative regulation: To conform to the requirements of SB 200 "2014" and the amendments to the Unified Juvenile Code as well as KRS 15A.065, 15A.0652 and 15A.069.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation governs the management, policy and coordination of all matters relating to the classification, evaluation, and placement of juveniles committed to or detained by the Department of Juvenile Justice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to the Department of Juvenile Justice employees and the residential as to the classification, placement and transportation of youth.

(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 shall bring the Department of Juvenile Justice into compliance with statutory amendments to the Unified Juvenile Code as established through SB 200 "2014".

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065, 15A.0652 and 15A.069.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments establish and amend practices and procedures relating to the classification, evaluations, and placement of juveniles committed to the Department of Juvenile Justice.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will help the Department of Juvenile Justice classify and place youth within the new statutory mandates under SB 200 and KRS 635.060 [effective

July 1, 2015].

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1,400 employees of the Department in community and residential settings, approximately 2,267 youth in all programs, and all visitors and volunteers to Department of Juvenile Justice facilities

(4) Provide analysis of how the entities identified in question (3) will be impacted by the implementation of this administrative regulation, if new, or by the change if it is an amendment, including: To ensure youth are placed in the least restrictive placement based on their assessed risk and treatment needs, and to provide a clearer understanding of the policies and procedures by employees and residents regarding the classification, placement, and timeframes for commitment and out of home treatment.

(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: Community staff will administer a risk and needs assessment on all adjudicated youth, residential staff and the community will have a clear understanding of the classification and placement of youth in the least restrictive placement based on their treatment needs and level risk to reoffend which is commensurate with the severity of the committing offense.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Estimated costs to the Department of Juvenile Justice to implement all policy revisions to come into compliance with the provisions of SB 200 "2014" are estimated as follows:

Salaries & Staffing Costs: Approximately \$847,591.00

Training Costs: Approximately \$300,000.00

Validation of Risk Assessment tools: Approximately \$250,000.00

CourtNet Access to AOC data to complete risk assessments: \$28,200.00

Approximate Total Estimated Costs: \$1,425,791.00

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Youth who are committed to the Department of Juvenile Justice will remain in placement and commitment to the Department for shorter periods of time and in the least restrictive placement which can meet their treatment needs consistent with the severity of their committing offense. The benefit to the revised classification and placement is to reduce the length of stay in out of home placements for youth, reduce the costs of out of home placements by the Department, and reduce recidivism by returning lower level offending youth to the community sooner. A child who is adjudicated for an offense that would be a misdemeanor if committed by an adult, other than an offense for which a child has been declared a juvenile sex offender or an offense involving a deadly weapon may only be committed for a period not to exceed twelve (12) months, and may only receive treatment in an out of home placement for up to four (4) months [unless treatment needs require additional treatment in an out of home setting, not to exceed the maximum length of commitment]. A child who is adjudicated for an offense that would be a Class D felony if committed by an adult, other than an offense for which a child has been declared a juvenile sex offender or an offense involving a deadly weapon may only be committed for a period not to exceed eighteen (18) months, and may only receive treatment in an out of home placement for up to eight (8) months [unless treatment needs require additional treatment in an out of home setting, not to exceed the maximum length of commitment].

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

(a) Initially: Approximately \$1,425,791.00

(b) On a continuing basis: \$925,791.00

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Department of Juvenile Justice General Funds and Restricted Funds if necessary.

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



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

(9) Tiering: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as the Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department of Juvenile Justice

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065(1), KRS 15A.0652, KRS 15A.0654, KRS 15A.067, KRS 15A.069, KRS 600.040, KRS 605.080, KRS 605.090, KRS 605.095, KRS 605.100, KRS 605.110, KRS 605.150, KRS 610.100, KRS 635.095, KRS 635.100, KRS 635.060, KRS 635.520, KRS 640.120, KRS 645.250

(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 revised administrative regulations will only impact the Department of Juvenile Justice. The anticipated expenditures associated with implementing the provisions of SB 200 "2014" and revisions to the Unified Juvenile Code are approximately \$1,425,791.00 for the first year and \$925,791.00 annually thereafter.

(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? Response: 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? Response: None

(c) How much will it cost to administer this program for the first year? The anticipated expenditures associated with implementing the provisions of SB 200 "2014" and revisions to the Unified Juvenile Code are approximately \$1,425,791.00 for the first year and \$925,791.00 annually thereafter.

(d) How much will it cost to administer this program for subsequent years? The anticipated expenditures associated with implementing the provisions of SB 200 "2014" and revisions to the Unified Juvenile Code are approximately \$1,425,791.00 for the first year and \$925,791.00 annually thereafter.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (Amendment)

**505 KAR 1:110. Department of Juvenile Justice Policy[Polices] and Procedures Manual: program services.**

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7),

635.500, 635.505(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy[Polices] and Procedures Manual: Program Services", July 1, 2015~~[October 14, 2014]~~, is incorporated by reference and includes the following:

- 300 Definitions (Amended 7/01/15~~[10/14/14]~~);
- 300.1 Programs and Services (Amended 7/01/15~~[10/14/14]~~);
- 300.2 Correspondence to the Court System (Amended 7/01/15~~[10/14/14]~~);
- 301 Intake and Orientation (Amended 7/01/15~~[10/14/14]~~);
- 301.1 Youth's Personal Property, Dress Code, and Facility Issued Property (Amended 7/01/15~~[10/14/14]~~);
- 301.2 Hair and Grooming (Amended 7/01/15~~[10/14/14]~~);
- 302 Individual Treatment Plan and Aftercare Plan (Amended 7/01/15~~[10/14/14]~~);
- 303 Treatment Team Composition, Function, and Responsibility (Amended 7/01/15~~[10/14/14]~~);
- 306 Treatment Track and Level[Phase] System (Amended 7/01/15~~[05/14/14]~~);
- 307 Counseling Services (Amended 7/01/15~~[10/14/14]~~);
- 308 Advanced Care Unit (Amended 7/01/15~~[10/14/14]~~);
- 309 Family Engagement (Amended 7/01/15~~[05/14/14]~~);
- 310 Family and Community Contacts: Mail, Telephone, and Visitation (Amended 7/01/15~~[10/14/14]~~);
- 311 Cadet Leadership and Education Program (C.L.E.P.) (Added 7/01/15);
- 314 Youth Council (Amended 7/01/15~~[05/14/14]~~);
- 315 Use of Non-Governmental Funds and Youth Activity Funds Account (Amended 7/01/15~~[10/14/14]~~);
- 316 Youth Allowances and Work Details (Amended 7/01/15~~[10/14/14]~~);
- 317 Recreation (Amended 7/01/15~~[10/14/14]~~);
- 318 Behavior Management (Amended 7/01/15~~[10/14/14]~~);
- 318.1 Graduated Responses, Sanctions, and Incentives[Discipline] (Amended 7/01/15~~[10/14/14]~~);
- 318.2 Disciplinary Review (Amended 7/01/15~~[10/14/14]~~);
- 318.3 Discipline: Level 5[V] Youth Development Center (Amended 7/01/15~~[10/14/14]~~);
- 319 Staff Requirements for the Supervision of Youth (Amended 7/01/15~~[10/14/14]~~);
- 319.1 Facility Capacities (Amended 7/01/15~~[05/14/14]~~);
- 320 Transportation of Youth (Amended 7/01/15~~[05/14/14]~~);
- 321 Incident Reporting (Amended 7/01/15~~[10/14/14]~~);
- 322 Drug Screening and Testing (Amended 7/01/15~~[10/14/14]~~);
- 323 Isolation (Amended 7/01/15~~[10/14/14]~~);
- 324 Restraints (Amended 7/01/15~~[10/14/14]~~);
- 325 Searches (Amended 7/01/15~~[10/14/14]~~);
- 326 Contraband, Seizure, and Chain of Custody (Amended 7/01/15~~[10/14/14]~~);
- 327 Escape and Absent Without Leave (Amended 7/01/15~~[10/14/14]~~);
- 328 Individual Client Records (Amended 7/01/15~~[10/14/14]~~);
- 329 Progress Notes (Amended 7/01/15~~[10/14/14]~~);
- 330 Log and Shift Reports (Amended 7/01/15~~[05/14/14]~~);
- 331 Grievance Procedure (Amended 7/01/15~~[10/14/14]~~);
- 332 Authorized Leave: [Off-grounds—Activities,] Day Releases[, and Furloughs; Supervised Off-grounds Activities (Amended 7/01/15~~[10/14/14]~~);
- 333 Day Treatment Admissions (Amended 7/01/15~~[Added 05/14/14]~~);
- 334 Youth Development Centers Educational and

- 334.1 Vocational Programming, Assessment, and Transition (Amended 7/01/15[05/14/14]);  
Day Treatments: Educational Programming, Assessment, and Transition (Amended 7/01/15[05/14/14]);
- 334.2 Group Homes: Educational Services (Amended 7/01/15[10/14/14]);
- 335 Youth Development Center Educational and Vocational Records; Day Treatment Educational Records (Amended 7/01/15[05/14/14]);
- 339 Youth Development Center and Day Treatment Instructional Staffing (Amended 7/01/15[05/14/14]);
- 341 Youth Development Center and Day Treatment Evaluation of Integrated Educational and Vocational Plan (Amended 7/01/15[Added 05/14/14]);
- 343 Technical Education Safety (Amended 7/01/15[05/14/14]);
- 344 Library Services (Amended 7/01/15[10/14/14]);
- 345 Religious Programs (Amended 7/01/15[10/14/14]);
- 346.1 Youthful Offenders (Amended 7/01/15[Added 05/14/14]);
- 347.1 Educational and Meritorious Good Time Credit for Youthful Offenders (Amended 7/01/15[10/14/14]);
- 351 Youthful Offender Parole (Amended 7/01/15[10/14/14]); and
- 352 Youthful Offender Transfer (Amended 7/01/15[05/14/14]).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

BOB D. HAYTER, Commissioner

APPROVED BY AGENCY: June 30, 2015

FILED WITH LRC: July 1, 2015 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2015 at 10:00 a.m., at the Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by, Wednesday, August 20, 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 this date, the hearing may be cancelled. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday, August 31, 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: LaDonna Koebel, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: LaDonna Koebel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the policies and procedures governing the operation of the Department of Juvenile Justice including the rights and responsibilities of the Department of Juvenile Justice employees, treatment providers and the residential population, and implements revisions to Department residential treatment programs to come into compliance with revisions to the Unified Juvenile Code under SB 200 (2014).

(b) The necessity of this administrative regulation: To conform to the requirements of SB 200 (2014) and the amendments to the Unified Juvenile Code.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: The administrative regulation governs every aspect of program services within residential and day treatment programs in the Department.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to the Department of Juvenile Justice employees, the residential and community population as to their duties, rights, privileges and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment will bring the Department of Juvenile Justice into compliance with the amendments to the Juvenile Code, KRS Chapter 635 as amended by SB 200 [2014].

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065 and 15A.067, and to bring the Department into compliance with SB 200 [2014].

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or authorized representative to implement practices and procedures to ensure the safe and efficient operation of Department residential and day treatment programs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will restructure residential treatment programs within the Department of Juvenile Justice to ensure that public offenders will be able to complete treatment in shorter timeframes consistent with the requirements of SB 200 [2014] and KRS 635.060 [effective July 1, 2015].

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 1,335 employees of residential programs, 353 youth in DJJ residential programs, and all visitors and volunteers to DJJ facilities.

(4) Provide analysis of how the entities identified in question (3) will be impacted by the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The amendments provide policies and procedures which provide for reduced timeframes in out of home placement by restructuring the residential treatment for public offenders, ensuring use of graduated sanctions, and less out of home treatment for the lowest level offenders.

(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: DJJ residential programs will need to update their facility Standard Operating Procedures to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each program will absorb the cost of updating procedures and training staff on updated policies. Estimated costs to the Department of Juvenile Justice to implement all policy revisions to come into compliance with the provisions of SB 200 [2014] are estimated as follows:

Salaries & Staffing Costs: Approximately \$847,591.00

Training Costs: Approximately \$300,000.00

Validation of Risk Assessment tools: Approximately \$250,000.00

CourtNet Access to AOC data to complete risk assessments: \$28,200.00

Approximate Total Estimated Costs: \$1,425,791.00

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Youth who are committed to the Department of Juvenile Justice will remain in placement and commitment to the Department for shorter periods of time and in the least restrictive placement which can meet their treatment needs consistent with the severity of their committing offense. The benefit to the revised policies for the residential population is to reduce the length of stay in out of home placements for youth, reduce the costs of out of home placements by the Department, and reduce recidivism by returning lower level offending youth to the community sooner. Under the provisions of SB 200 [2014], a child who is adjudicated for an offense that would be a

misdeemeanor if committed by an adult, other than an offense for which a child has been declared a juvenile sex offender or an offense involving a deadly weapon may only be committed for a period not to exceed twelve (12) months, and may only receive treatment in an out of home placement for up to four (4) months [unless treatment needs require additional treatment in an out of home setting, not to exceed the maximum length of commitment]. A child who is adjudicated for an offense that would be a Class D felony if committed by an adult, other than an offense for which a child has been declared a juvenile sex offender or an offense involving a deadly weapon may only be committed for a period not to exceed eighteen (18) months, and may only receive treatment in an out of home placement for up to eight (8) months [unless treatment needs require additional treatment in an out of home setting, not to exceed the maximum length of commitment].

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

(a) Initially: Approximately \$1,425,791.00

(b) On a continuing basis: \$925,791.00

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Department of Juvenile Justice General Fund and Restricted Funds if necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) Tiering: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as the Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department of Juvenile Justice

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065(1), KRS 15A.0652, KRS 15A.0654, KRS 15A.067, KRS 600.040, KRS 605.090, KRS 605.095, KRS 605.100, KRS 605.110(3), KRS 605.150, KRS 635.060, KRS 635.095, 635.100, 635.520, KRS 640.120, KRS 645.250

(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 revised administrative regulations will only impact the Department of Juvenile Justice. The anticipated expenditures associated with implementing the provisions of SB 200 [2014] and revisions to the Unified Juvenile Code are approximately \$1,425,791.00 for the first year and \$925,791.00 annually thereafter.

(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 anticipated expenditures associated with implementing the provisions of SB 200 [2014] and revisions to the Unified Juvenile Code are approximately \$1,425,791.00 for the first year and \$925,791.00 annually thereafter.

(d) How much will it cost to administer this program for subsequent years? The anticipated expenditures associated with implementing the provisions of SB 200 [2014] and revisions to the Unified Juvenile Code are approximately \$1,425,791.00 for the first year and \$925,791.00 annually thereafter.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Juvenile Justice (Amendment)

#### 505 KAR 1:130. Department of Juvenile Justice Policies and Procedures: juvenile services in community.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, 635.100[(7)], 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095, 635.100, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy and Procedures Manual: Juvenile Services in Community", July 1, 2015[February 10, 2014], is incorporated by reference and includes the following:

600 Definitions (Amended 7/01/15[2/10/14]);

601 Initial Contact &[and] Court Support for Public Offenders (Amended 7/01/15[2/10/14]);

601.1 Initial Contact &[and] Court Support for Youthful Offenders (Amended 7/01/15[11/14/13]);

601.2 Case Management Screens and Assessments (Added 7/01/15);

602 Individual Client Record (Amended 7/01/15[11/14/13]);

603 Service Complaints (Amended 7/01/15[11/14/13]);

604 Case Planning and Participation in Treatment Planning[Individual Treatment Plan] (Amended 7/01/15[11/14/13]);

605 Community Supervision (Amended 7/01/15[2/10/14]);

606 Probation of Public Offenders (Amended 7/01/15[11/14/13]);

607 Commitment of Public Offenders (Amended 7/01/15[11/14/13]);

608 Drug Screening and Confirmation Testing (Amended 7/01/15[11/14/13]);

609 Youth's[Children's] Benefits (Amended 7/01/15[11/14/13]);

609.1 Title IV-E Federal Foster Care Maintenance Payments (Amended 7/01/15[2/10/14]);

609.2 Trust Funds (Amended 7/01/15[11/14/13]);

610 Transportation of Committed Youth (Amended 7/01/15[11/14/13]);

610.1 Out-of-State Travel (Amended 7/01/15[2/10/14]);

611 Electronic Monitoring (Amended 7/01/15[11/14/13]);

612 Authorized Leave for Public Offenders and Youthful Offenders in Placement (Amended 7/01/15[11/14/13]);

613 Supervised Placement Revocation (Amended 7/01/15[11/14/13]);

[614 Intensive Aftercare Program (Amended 11/14/13)]

615 Juvenile Intensive Supervision Team (JIST) (Amended

- 7/01/15[44/44/43]);
- 616 Youthful Offenders-Confined, Shock Probated, and Transferred to the Department of Corrections (Amended 7/01/15[44/44/43]);
- 616.1 Probation of Youthful Offenders (Amended 7/01/15[44/44/43]);
- 616.2 Parole of Youthful Offenders (Amended 7/01/15[44/44/43]);
- 617 Incident Reports (Amended 7/01/15[44/44/43]);
- 618 AWOL or Escape (Amended 7/01/15[44/44/43]);
- 620 Use of Self-Protection Skills[Force and Searches] (Amended 7/01/15[44/44/43]);
- 621 Mental or Behavioral Health Services, Referrals, and Psychiatric Hospitalization (Amended 7/01/15[44/44/43]);
- 622 Community Mental Health Operations (Amended 7/01/15[44/44/43]); and
- 623 Health and Safety for Community and Mental Health Services (Amended 7/01/15[240/44]).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

BOB D. HAYTER, Commissioner

APPROVED BY AGENCY: June 30, 2015

FILED WITH LRC: July 1, 2015 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2015 at 10:00 a.m., at the Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by, Wednesday, August 20, 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 this date, the hearing may be cancelled. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday, August 31, 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: LaDonna Koebel, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: LaDonna Koebel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the policies and procedures governing the community operations of the Department of Juvenile Justice including the assessment, supervision and case management of juveniles probated or committed to the Department.

(b) The necessity of this administrative regulation: To conform to the requirements of SB 200 "2014" and the amendments to the Unified Juvenile Code as well as KRS 15A.065, 15A.0652, KRS 15A.067, KRS 605.150, KRS 635.095 and KRS 635.100.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation governs every aspect of the program services for the community population of the Department of Juvenile Justice.

(d) How this administrative regulation currently assists, or will assist, in the effective administration of the statutes: By providing clear and concise direction and information to the Department of Juvenile Justice employees and the community population as to their duties, rights, privileges, and responsibilities.

(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 shall bring the Department of Juvenile Justice into compliance with statutory amendments to the Unified Juvenile Code as established through SB 200 "2014".

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065, KRS 15A.0652, 15A.067, 605.150, 635.095 and 635.100 and come into compliance with statutory amendments to the Unified Juvenile Code as established through SB 200 "2014".

(c) How the amendment conforms to the content of the authorizing statutes: The policy revisions update the practices or procedures to ensure youth committed or probated to the Department of Juvenile Justice are properly served. Revises timeframes for supervision and commitment and responsibilities of community and mental health staff.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will help the Department of Juvenile Justice to operate consistent with statutory revisions implanted under SB 200 "2014" and amendments to KRS Chapter 635 which become effective July 1, 2015.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 250 employees of the Department of Juvenile Justice, approximately 1,800 youth in all programs, and all visitors and volunteers to 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: By providing and implementing these policies and procedures, the Department of Juvenile Justice will be providing services more effectively and consistently. Policy amendments will ensure that youth are placed and supervised in the least restrictive placement based on their assessed risk and treatment needs, and to provide staff a clearer understanding of the timeframes for commitment and out of home treatment.

(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: Community staff will administer a risk and needs assessment on all adjudicated youth. Agency employees will provide services to the youth in the community and all programs in accordance with the procedures outlined in the regulation and the materials incorporated by reference.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Estimated costs to the Department of Juvenile Justice to implement all policy revisions to come into compliance with the provisions of SB 200 "2014" are estimated as follows:

Salaries & Staffing Costs: Approximately \$847,591.00

Training Costs: Approximately \$300,000.00

Validation of Risk Assessment tools: Approximately

\$250,000.00

CourtNet Access to AOC data to complete risk assessments: \$28,200.00

Approximate Total Estimated Costs: \$1,425,791.00

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Youth who are committed to the Department of Juvenile Justice will remain in placement and commitment to the Department for shorter periods of time and in the least restrictive placement which can meet their treatment needs consistent with the severity of their committing offense. The benefit to the revised classification and placement is to reduce the length of stay in out of home placements for youth, reduce the costs of out of home placements by the Department, and reduce recidivism by returning lower level offending youth to the community sooner.

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

(a) Initially: Approximately \$1,425,791.00

(b) On a continuing basis: \$925,791.00

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Juvenile Justice General Fund and Restricted

Funds if necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None.

(8) State whether or not this administrative regulation established any fees, or directly or indirectly, increased any fees: None

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated, as well as the Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department of Juvenile Justice

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.065, KRS 15A.0652, KRS 15A.067, KRS 15A.160, KRS 15A.210, KRS 15A.305(5), KRS 200.115, KRS 605.150, KRS 635.060, KRS 635.095, KRS 635.100, KRS 640.120, and KRS 645.250.

(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 revised administrative regulations will only impact the Department of Juvenile Justice. The anticipated expenditures associated with implementing the provisions of SB 200 "2014" and revisions to the Unified Juvenile Code are approximately \$1,425,791.00 for the first year and \$925,791.00 annually thereafter.

(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 revised administrative regulations will only impact the Department of Juvenile Justice. The anticipated expenditures associated with implementing the provisions of SB 200 "2014" and revisions to the Unified Juvenile Code are approximately \$1,425,791.00 for the first year and \$925,791.00 annually thereafter.

(d) How much will it cost to administer this program for subsequent years? The revised administrative regulations will only impact the Department of Juvenile Justice. The anticipated expenditures associated with implementing the provisions of SB 200 "2014" and revisions to the Unified Juvenile Code are approximately \$1,425,791.00 for the first year and \$925,791.00 annually thereafter.

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

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

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

Other Explanation: This administrative regulation will provide a clear and concise policies and procedures for all youth receiving services from the Department of Juvenile Justice, and reflect the treatment and practice of the agency.

#### PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (Amendment)

#### 804 KAR 4:015. Interlocking substantial interest between licensees prohibited.

RELATES TO: KRS 243.030, 243.040, 243.110, 244.240, 244.590

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. The control of alcoholic beverages in the Commonwealth of Kentucky, as codified in Chapters 241 - 244 of the Kentucky Revised Statutes, has been established by the Kentucky legislature as a "three tiered" system. The three (3) tiers of this system are designated as manufacturer[producer][producers], wholesaler[wholesale]/distributor, and retailer[retail]. Each of these three (3) levels operates[operate] separately and apart from each other for the purpose of control. In order for this control to be effectively administered by this board, it is necessary to prevent any type of interlocking substantial interest by and among[between] the three (3) separate levels. The purpose of this administrative regulation is to describe[clarify—the] interlocking substantial interests which will be prohibited by this board.

Section 1. Definitions. As used in this administrative regulation unless otherwise specified: (1) "Manufacturer" means any person who is a distiller, rectifier, blender, winery, brewer, or who produces alcoholic beverages. ["Manufacturers" include distillers, rectifiers, blenders, wineries, and brewers] whether located within or without this state.

(2) "Retailer" means any person who sells alcoholic beverages at retail, whether located within or without this state, excepting manufacturers with limited retail privileges.

(3) "Substantial interest" means:

(a) A direct or indirect ownership interest in, or membership in, a business, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or other legal entity, which amounts to five (5) percent or greater of the total ownership or membership interests;

(b) A common officer, director, or manager in a business, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or other legal entity;

(c) A common owner, partner, or member, including an immediate family member, the aggregate share of which is five (5) percent or greater of the total ownership of, or membership in, a business, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or other legal entity;  
or

(d) Any other direct or indirect interest which provides an ability to control decisions by a business, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or other legal entity.

(4) "Wholesaler" means any person who is a wholesaler, distributor, or who sells alcoholic beverages at wholesale. ["Wholesalers" include wholesalers of distilled spirits and wine and distributors of malt beverages], located within this state.

Section 2. No manufacturer, or their immediate family members,[of distilled spirits or wine] shall have or acquire a substantial interest[a financial interest, directly or indirectly, by stock ownership, or through interlocking directors in a corporation,] in the establishment, maintenance, or operation of[the] the business of a[liquor and wine] wholesaler or a retailer. No manufacturer, or their immediate family members, shall have or acquire, by ownership, leasehold, mortgage, or otherwise, directly or indirectly, a financial interest in the premises of a retailer.

Section 3. No[manufacturer or] wholesaler, or their immediate family members, shall have or acquire a substantial interest[a financial interest, directly or indirectly, by stock ownership, or

through interlocking directors in a corporation, or otherwise,] in the establishment, maintenance, or operation of [in] the business of a manufacturer or retailer. No [A manufacturer or] wholesaler, or their immediate family members, shall have or [not] acquire, by ownership, leasehold, mortgage, or otherwise, directly or indirectly, a financial interest in the premises of a retailer.

Section 4. No retailer, or their immediate family members, shall have or acquire a substantial interest in the establishment, maintenance, or operation of the business of a manufacturer or wholesaler.

Section 5. The malt beverage administrator and[or] distilled spirits administrator shall[may] examine the ownership and management of new applicants or existing licensees to determine the presence of any substantial[an interlocking] interest herein prohibited prior to issuance or renewal of licenses.

Section 6.[5.] This administrative regulation shall not apply to licenses issued prior to December 1, 1976.

FREDERICK A. HIGDON, Commissioner

AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: June 23, 2015

FILED WITH LRC: June 23, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2015 at 9:30 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 through the end of the day on August 31, 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 addresses impermissible interlocking interests.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to define impermissible substantial interlocking interests between the various tiers of Kentucky's three-tier alcohol distribution system.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060 authorizes the board to promulgate regulations relating to the supervision and control of the manufacture, sale, transportation, and trafficking of alcoholic beverages, and all other matters over which the board has jurisdiction.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation will assist the board and the licensees with determining what interactions are impermissible as between the tiers.

(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 adds definitions and it also defines

what interests are impermissible among the three tiers.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with statutory changes which take effect on June 24, 2015.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment addresses activities that the board is directly authorized to regulate pursuant to KRS 241.060.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist the board and the licensees with determining what interlocking substantial interests are impermissible as between the tiers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees were previously affected by this regulation. The amendments will specifically address interlocking substantial interests that are impermissible between malt beverage producers and distributors.

(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 licensees will have to ensure that they are in compliance with the statutory requirements which pertain to their license in order for their license to be renewed.

(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? There is no expected impact on any unit, part or division of state or local government.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate administrative regulations and KRS 243.110 establishes incompatible license types.

(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 4:400. ABC basic application and renewal form incorporated by reference.**

RELATES TO: KRS 164.772, 241.060(1), 243.090, 243.380, 243.390

STATUTORY AUTHORITY: KRS 241.060(1), 243.380, 243.390

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for and revocation of licenses. KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the license application form. This administrative regulation prescribes the basic forms to be used to apply for and renew an alcoholic beverage license.

Section 1. An applicant for an alcoholic beverage license shall complete and submit to the Department of Alcoholic Beverage Control the Basic Application for Alcoholic Beverage License, with the exception of an applicant for:

(1) A special agent/solicitor license, out-of-state producer/supplier of distilled spirits/wine license, or out-of-state producer/supplier of malt beverage license;

(2) A temporary license; or

(3) An extended hours, supplemental bar, special Sunday, or sampling license.

Section 2. In addition to the Basic Application for Alcoholic Beverage License required by Section 1 of this administrative regulation, an applicant shall complete and submit to the Department of Alcoholic Beverage Control the special application form required by 804 KAR 4:410 if applicable.

Section 3. A licensee who is renewing a license pursuant to KRS 243.090 shall complete and submit to the Department of Alcoholic Beverage Control the Application for License Renewal.

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

(a) "Basic Application for Alcoholic Beverage License", June 2015~~[September 2014]~~; and

(b) "Application for License Renewal", June 2015~~[February 2014]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of

Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site, <http://www.abc.ky.gov/>.

FREDERICK A. HIGDON, Commissioner

AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: June 23, 2015

FILED WITH LRC: June 23, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2015 at 9:30 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 through the end of the day on August 31, 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 incorporates the forms the department uses to issue and renew alcoholic beverage licenses.

(b) The necessity of this administrative regulation: This regulation is necessary because the department is required by statute to set forth what information is needed to obtain or renew an alcoholic beverage license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 243.380 and 243.390 require the department to set forth what information is required to obtain or renew a license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation clarifies what information needs to be provided to the department in order to obtain or renew an alcoholic beverage license. By incorporating the application and renewal application, the information that is required to apply for, or renew, an alcoholic beverage license is ascertainable.

(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 replaces the prior renewal form with the current version, which has had questions added to it. The basic application was also amended to add a few additional questions and this amendment will replace the old application with a revised version.

(b) The necessity of the amendment to this administrative regulation: The renewal application needed to be amended to reflect current statutory changes and the amended form needs to be incorporated into the administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 243.380 and 243.390 require the department to set forth what information is required to obtain or renew a license.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation clarifies what information needs to be provided to the department in order to obtain or renew an alcoholic beverage license. By incorporating the application and renewal application, the

information that is required to apply for, or renew, an alcoholic beverage license is ascertainable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any person or entity who wishes to obtain or renew an alcoholic beverage license 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: The required actions are no different than the process the licensees and applicants currently follow to obtain or renew an alcoholic beverage license. They will have to complete and submit the application as they are currently required to do.

(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? The Department of Alcoholic Beverage Control is the only government agency 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. 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 4:410. Special applications and registration forms incorporated by reference.

RELATES TO: KRS 241.060(1)

STATUTORY AUTHORITY: KRS 241.060(1), 243.380, 243.390

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for licensing. This administrative regulation incorporates by reference special application forms for specific licenses and required registration forms.

Section 1. Special application forms. An applicant applying for an alcoholic beverage license not included in 804 KAR 4:400 shall complete and submit to the Department of Alcoholic Beverage Control the applicable special application form for the specific license type for which the application is made. The special application forms are listed below:

(1) Special Agent/Solicitor, Out-of-State Producer/Supplier of Distilled Spirits/Wine, Out-of-State Producer/Supplier of Malt Beverage Application;

(2) Special Temporary License Application;

(3) Supplemental License Application; or

(4) Distiller's License: Change of License Application.

Section 2. Registration Forms. An applicable licensee shall complete and submit the following registration forms:

(1) Microbrewer's Retail Gross Receipts Report to Distributor to be submitted to the Department of Revenue; or

(2) Product Registration Online to be completed electronically at:

(a) <https://www.productregistrationonline.com/GetStarted/Ky#selectPermit>;

(b) <https://www.productregistrationonline.com/distributor/login>;

or

(c) <https://www.productregistrationonline.com/producer/login>.

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

(a) "Special Agent/Solicitor, Out-of-State Producer/Supplier of Distilled Spirits/Wine, Out-of-State Producer/Supplier of Malt Beverage Application", September 2014;

(b) "Special Temporary License Application", September 2014;

(c) "Supplemental License Application", June 2015[July 2014];

(d) "Microbrewer's Retail Gross Receipts Report to Distributor", June 2015[2013];

(e) "Product Registration Online", September 2014;[and]

(f) "Distiller's License: Change of License Application", July 2014;

(g) "Dormancy Request for Quota Retail Licenses", June 2013;

(h) "Amendment to Application Authorization Form", July 2014;

(i) "ABC Retailer Sampling Request", June 26, 2013;

(j) "Request for Minors on Premises", June 2013;



## VOLUME 42, NUMBER 2 – AUGUST 1, 2015

(k) "Affidavit of Ownership", June 2013;

(l) "Affidavit of Non-Transfer", June 2013;

(m) "Notice of Surrender of License(s)", June 2013;

(n) "Request to Participate in the Master File Licensing Process";

(o) "Application Request for Approval of Partial Transfer of Ownership to my Original Application", June 2013; and

(p) "Remittance Form", 3/27/2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site, <http://www.abc.ky.gov>.

FREDERICK A. HIGDON, Commissioner

AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: July 10, 2015

FILED WITH LRC: July 10, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on August 27, 2015 at 9:30 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 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 through the end of the day on August 31, 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 incorporates by reference special application forms for specific licenses and required registration form.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to notify applicants and licensees of the forms used by the department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060 authorizes the board to promulgate administrative regulations relating to the licensing of alcoholic beverages.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation will assist applicants and licensees in determining which forms the department uses in the alcoholic beverage licensing process.

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

(a) How the amendment will change this existing administrative regulation: The amendment incorporates forms the department uses and specifically changes the tax rate on the Microbrewer's Retail Gross Receipts Report to Distributor.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with statutory changes.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with the tax rate specified in KRS 243.884.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will bring the department's form into compliance with the rate specified in KRS 243.884.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All microbrewery licensees will be 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 licensees will have to complete the Microbrewer's Retail Gross Receipts Report to Distributors form, a process they are already required to complete.

(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): The tax rate is less than it was previously, so the licensees benefit from that tax rate change.

(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? The Department of Alcoholic Beverage Control and the Department of Revenue are expected to be 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 241.060(1) authorizes the board to promulgate administrative regulations and KRS 243.884 sets the tax rate.

(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. This amendment changes the tax rate licensees pay to the Department of Revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The revenue generated is dependent on the sales of the microbrewers.

(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 is dependent on the sales of the microbrewers.

(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 (+/-): This amendment changes the tax rate listed on a form generated by the Department of Alcoholic Beverage Control. The tax amount is set by statute (KRS 243.884) and the tax is paid directly to the Department of Revenue. The amount of revenue generated by the tax is wholly dependent on the sales of the microbrewers and is not likely to be a static number.

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 9:040. Quota retail package licenses.**

RELATES TO: KRS 241.060, 241.065, [241.075,] 242.125, 243.030

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(2) authorizes the board to limit in its sound discretion the number of licenses of each kind or class to be issued in this state or any political subdivision, and restrict the locations of licensed premises. This administrative regulation establishes quota retail liquor package licenses in cities that have become wet pursuant to KRS 242.125 separately from their respective counties which remain dry.

Section 1. Establishment of general city quotas. (1) Except as provided in subsection (2) of this section and Section 4 of this administrative regulation, the number of quota retail package licenses issued by the department in a city of the commonwealth which becomes wet separately by virtue of a KRS 242.125 local option election ~~held after January 1, 2013,~~ shall be a number equal to one (1) for every 2,300 persons resident in the city.

(2) The minimum number of quota retail package licenses issued by the department in a city shall be two (2) licenses.

(3) The estimates of population for Kentucky cities prepared by the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, shall be used in every year except a census year to determine the number of licenses prescribed by this administrative regulation. The United States Government census figures of population shall be used in a census year.

Section 2. Requests for Specific City Quota. (1) Three (3) or more years after the certification of a wet election pursuant to KRS 242.125 by a city, the city may file a request to the board seeking a specific city quota to increase the number of quota retail package licenses for the city.

(2) Before seeking this request, the city shall publish a notice in the newspaper used by the city for legal notices advising the general public of the city's intent to request additional city quota licenses from the board.

(3) A city's request to the board for a specific increased quota shall include:

(a) A certified copy of a city's governing body government resolution approving the request;

(b) A certified copy of the notice referenced in subsection (2) of this section; and

(c) An explanation why the city meets the criteria for a quota increase in conformity with Section 3 of this administrative regulation.

(4) Upon receiving a city request satisfying subsection (3) of

this section, the board may promulgate, in conformity with KRS Chapter 13A, an amendment to Section 4 of this administrative regulation which sets a higher specific quota for the city.

(5) The specific city quota for quota retail package licenses set by the board in subsection (4) of this section shall not exceed a ratio of one (1) for every 1,500 persons resident in the city.

(6) This section does not guarantee that a city will receive the requested specific city quota even if the board promulgates an initial amendment pursuant to subsection (4) of this section. The city shall bear the burden of showing the requested increase is necessary due to a change in circumstances from the previous request and that current needs are not being met by the current license holders.

(7) If the board rejects a request made under this section, the board shall notify the city of its decision by registered mail at the address given in the request. Within thirty (30) days after the date of the mailing of the notice, the city may indicate, in writing, its desire for an administrative hearing before the board regarding its request. The hearing shall be conducted in accordance with the provisions of KRS Chapter 13B.

(8) Following an initial request for an increase under subsection (1) of this section, a city may file an additional request to the board once every three (3) years from the date of the denial or establishment of a specific city quota. The procedures established in subsections (1) through (7) of this section shall be followed.

Section 3. Criteria for Consideration. (1) The board shall consider the following information in its determination of a city's request for an increased quota made under Section 2(3) of this administrative regulation:

(a) Population served by the city;

(b) Total retail sales of the city for the most recent past fiscal year;

(c) Retail sales per capita for the most recent past fiscal year;

(d) Total alcohol sales in the city for the most recent fiscal year;

(e) Tourist destinations in the area, if applicable; and

(f) Other economic and commercial data offered to show the city's capacity to support additional licenses.

(2) The board shall grant the request if the factors considered under subsection (1) of this section justify the requested increase.

Section 4. Establishment of Specific City Quotas. (1) Pikeville, which repealed prohibition on April 12, 1983, shall have a quota of thirteen (13) quota retail package licenses.

(2) Madisonville, which repealed prohibition on March 10, 1992, shall have a quota of seven (7) quota retail package licenses.

(3) Central City, which repealed prohibition on July 10, 2002, shall have a quota of four (4) quota retail package licenses.

(4) Dawson Springs, which repealed prohibition on February 5, 2008, shall have a quota of two (2) quota retail package licenses.

(5) Lancaster, which repealed prohibition on August 19, 2008, shall have a quota of three (3) quota retail package licenses.

(6) Paintsville, which repealed prohibition on June 9, 2009, shall have a quota of three (3) quota retail package licenses.

(7) Danville, which repealed prohibition on March 2, 2010, shall have a quota of six (6) quota retail package licenses.

(8) Earlington, which repealed prohibition on March 29, 2011, shall have a quota of two (2) quota retail package licenses.

(9) Manchester, which repealed prohibition on June 21, 2011, shall have a quota of two (2) quota retail package licenses.

(10) Elizabethtown, which repealed prohibition on October 4, 2011, shall have a quota of twelve (12) quota retail package licenses.

(11) Radcliff, which repealed prohibition on October 4, 2011, shall have a quota of nine (9) quota retail package licenses.

(12) Vine Grove, which repealed prohibition on October 4, 2011, shall have a quota of two (2) quota retail package licenses.

(13) Guthrie, which repealed prohibition on October 4, 2011, shall have a quota of two (2) quota retail package licenses.

(14) Junction City, which repealed prohibition on October 4, 2011, shall have a quota of two (2) quota retail package licenses.

(15) Corbin, which repealed prohibition on February 14, 2012, shall have a quota of three (3) quota retail package licenses.

(16) Somerset, which repealed prohibition on June 26, 2012, shall have a quota of five (5) quota retail package licenses.

(17) Whitesburg, which repealed prohibition on June 26, 2012, shall have a quota of two (2) quota retail package licenses.

(18) Murray, which repealed prohibition on July 17, 2012, shall have a quota of seven (7) quota retail package licenses.

(19) Franklin, which repealed prohibition on July 17, 2012, shall have a quota of three (3) quota retail package licenses.

(20) LaGrange, which repealed prohibition on July 24, 2012, shall have a quota of three (3) quota retail package licenses.

(21) Georgetown, which repealed prohibition on July 31, 2012, shall have a quota of twelve (12) quota retail package licenses.

(22) Princeton, which repealed prohibition on August 7, 2012, shall have a quota of two (2) quota retail package licenses.

(23) Bowling Green, which requested a quota increase on May 18, 2015, shall have a quota of forty-one (41) quota retail package licenses.

Section 5. Quota Vacancies. (1) On or before January 1 of each year, the Department of Alcoholic Beverage Control shall request from the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, population estimates as of that date for all wet cities located in dry counties.

(2) If a city's population has increased and the city no longer has one (1) quota retail package license for every 2,300 persons resident in the city, the Department of Alcoholic Beverage Control shall increase the city's quota to maintain the 1:2,300 ratio.

(3) If a quota retail package license vacancy is created under Section 1, 2, or 5(2) of this administrative regulation or it occurs for any other reason, the Department of Alcoholic Beverage Control shall within sixty (60) days arrange for the newspaper used for city legal notices to advertise the vacancy and provide information about applying for it.

(4) The Department of Alcoholic Beverage Control shall accept applications for a quota retail package license vacancy not later than thirty (30) days following the date on which the public notice required by subsection (3) of this section is published.

(5) A licensee that holds a quota retail package license shall assume the business risk that the number of quota licenses might be increased.

Section 6. Quota Reductions. (1) This administrative regulation shall not prohibit renewal or approved transfer of an existing quota retail package license issued in a wet city situated in a dry county.

(2) Except for cities with specific quotas under Section 2 of this administrative regulation, if a city has in existence more than one (1) quota retail package license for every 2,300 persons resident in the city, the number of licenses shall be reduced as they expire or are surrendered or revoked.

Section 7. No Separate City Quota in Wet County. If a dry county in which a wet city is located becomes wet, the quota established for that entire county by 804 KAR 9:010 shall supersede and replace any separate city quota under this administrative regulation.

FREDERICK A. HIGDON, Commissioner

AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: July 1, 2015

FILED WITH LRC: July 2, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on August 27, 2015 at 9:30 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 through the end of the day on August 31, 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 sets specific quotas for retail package licenses for cities pursuant to KRS 242.125, and sets forth the criteria needed for consideration if a city desires an increase in its quota.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set specific quotas for retail package licenses in cities and to outline the process by which a city can request an increase.

(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 lists specific quotas for cities which makes it clear what number of licenses are available.

(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 adds a quota increase for the city of Bowling Green.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for Bowling Green to get the additional licenses it requested.

(c) How the amendment conforms to the content of the authorizing statutes: The increased allowance of licenses fits within the mandated prescriptions of KRS 241.065.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the city of Bowling Green in getting the additional licenses it requested.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The city of Bowling Green is affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The city will not have to take any additional steps to comply with this amendment.

(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 will be minimal financial benefits from the licensing fees of the extra available licenses.

(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? The city of Bowling Green requested this amendment and is expected to be impacted by this amendment. The Department of Alcoholic Beverage Control will also be impacted as it will have to review additional license applications.

(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.

(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? Minimal revenue will be generated by this administrative regulation in the form of additional licensing fees.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Minimal revenue is expected to be generated by this administrative regulation in the form of additional licensing fees.

(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 9:050. Quota retail drink licenses.

RELATES TO: KRS 241.060, 241.065,[241.075:] 242.125, 242.127, 242.129, 243.030, 243.230

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(2) authorizes the board to limit the number of licenses of each kind or class to be issued in this state or any political subdivision, and restrict the locations of licensed premises. This administrative regulation establishes quota retail drink licenses in cities that have become wet pursuant to KRS 242.125 separately from their respective counties that remain dry.

Section 1. Establishment of General City Quotas. (1) Except as provided in subsection (2) of this section and Section 4 of this administrative regulation, the number of quota retail drink licenses issued by the department in a city of the commonwealth which becomes wet separately by virtue of a KRS 242.125 local option election~~[held after January 1, 2013,]~~ shall be one (1) for every 2,500 persons resident in the city.

(2) The minimum number of quota retail drink licenses issued by the department in a city shall be two (2) licenses.

(3) A wet fourth class city shall not receive any quotas under this section unless a majority of the votes cast in an election held under KRS 242.127 and KRS 242.129 are in favor of the sale of distilled spirits and wine by the drink for consumption on the premises.

(4) The estimates of population for Kentucky cities prepared by the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, shall be used in every year except a census year to determine the number of licenses prescribed by this administrative regulation. The United States Government census figures of population shall be used in a census year.

Section 2. Requests for Specific City Quota. (1) Three (3) or more years after the certification of a wet election pursuant to KRS 242.125 by a first, second, or third class city, or pursuant to KRS 242.127 and 242.129 for a fourth class city, the city may file a request to the board seeking a specific city quota to increase the number of quota retail drink licenses for the city.

(2) Before seeking this request, the city shall publish a notice in the newspaper used by the city for legal notices advising the general public of the city's intent to request additional city quota licenses from the board.

(3) A city's request to the board for a specific increased quota shall include:

(a) A certified copy of a city's governing body government resolution approving the request;

(b) A certified copy of the notice referenced in subsection (2) of this section; and

(c) An explanation why the city meets the criteria for a quota increase in conformity with Section 3 of this administrative regulation.

(4) Upon receiving a city request satisfying subsection (3) of this section, the board may promulgate, in conformity with KRS Chapter 13A, an amendment to Section 4 of this administrative regulation which sets a higher specific quota for the city.

(5) The specific city quota for quota retail drink licenses set by the board in subsection (4) of this section shall not exceed a ratio of one (1) for every 1,500 persons resident in the city.

(6) This section shall not guarantee that a city will receive the requested specific city quota even if the board promulgates an initial amendment pursuant to subsection (4) of this section. The city shall bear the burden of showing the requested increase is necessary due to a change in circumstances from the previous request and that current needs are not being met by the current license holders.

(7) If the board rejects a request made under this section, the board shall notify the city of its decision by registered mail at the address given in the request. Within thirty (30) days after the date of the mailing of the notice, the city may indicate, in writing, its desire for an administrative hearing before the board regarding its request. The hearing shall be conducted in accordance with the provisions of KRS Chapter 13B.

(8) Following an initial request for an increase under subsection (1) of this section, a city may file an additional request to the board once every three (3) years from the date of the denial or establishment of a specific city quota. The procedures established in subsections (1) through (7) of this section shall be followed.

Section 3. Criteria for Consideration. (1) The board shall consider the following information in its determination of a city's request for an increased quota made under Section 2(3) of this administrative regulation:

- (a) Population served by the city;
- (b) Total retail sales of the city for the most recent past fiscal year;
- (c) Retail sales per capita for the most recent past fiscal year;
- (d) Total alcohol sales in the city for the most recent fiscal year;
- (e) Tourist destinations in the area, if applicable; and
- (f) Other economic and commercial data offered to show the city's capacity to support additional licenses.

(2) The board shall grant the request if the factors considered under subsection (1) of this section justify the requested increase.

Section 4. Establishment of Specific City Quotas. (1) Danville, which repealed prohibition on March 2, 2010, shall have six (6) quota retail drink licenses.

(2) Radcliff, which repealed prohibition on October 4, 2011, shall have eight (8) quota retail drink licenses.

(3) Somerset, which repealed prohibition on June 26, 2012, shall have five (5) quota retail drink licenses.

(4) Murray, which repealed prohibition on July 17, 2012, shall have seven (7) quota retail drink licenses.

(5) Bowling Green, which requested a quota increase on May 18, 2015, shall have forty-one (41) quota retail drink licenses.

Section 5. Quota Vacancies. (1) On or before January 1 of each year, the Department of Alcoholic Beverage Control shall request from the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, population estimates as of that date for all wet cities located in dry counties.

(2) If a city's population has increased and the city no longer has one (1) quota retail drink license for every 2,500 persons resident in the city, the Department of Alcoholic Beverage Control shall increase the city's quota to maintain the 1:2,500 ratio.

(3) If a quota retail drink license vacancy is created under Section 1, 2, or 5(2) of this administrative regulation or it occurs for any other reason, the Department of Alcoholic Beverage Control shall within sixty (60) days arrange for the newspaper used for city legal notices to advertise the vacancy and provide information about applying for it.

(4) The Department of Alcoholic Beverage Control shall accept applications for a quota retail drink license vacancy not later than thirty (30) days following the date on which the public notice required by subsection (3) of this section is published.

(5) A licensee that holds a quota retail drink license shall assume the business risk that the number of quota licenses might be increased.

Section 6. Quota Reductions. (1) This administrative regulation shall not prohibit renewal or approved transfer of an existing quota retail drink license issued in a wet city situated in a dry county.

(2) Except for cities with specific quotas under Section 2 of this administrative regulation, if a city has in existence more than one (1) quota retail drink license for every 2,500 persons resident in the city, the number of licenses shall be reduced as they expire or are surrendered or revoked.

Section 7. No Separate City Quota in Wet County. If a dry county in which a wet city is located becomes wet, the quota established for that entire county by 804 KAR 9:010 shall supersede and replace any separate city quota under this administrative regulation.

FREDERICK A. HIGDON, Commissioner  
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: July 1, 2015

FILED WITH LRC: July 2, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2015 at 9:30 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 through the end of the day on August 31, 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 sets specific quotas for retail drink licenses for cities pursuant to KRS 242.125, and sets forth the criteria needed for consideration if a city desires an increase in its quota.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set specific quotas for retail drink licenses in cities and to outline the process by which a city can request an increase.

(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 lists specific quotas for cities which makes it clear what number of licenses are available.

(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 adds a quota increase for the city of Bowling Green.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for Bowling Green to get the additional licenses it requested.

(c) How the amendment conforms to the content of the authorizing statutes: The increased allowance of licenses fits within the mandated prescriptions of KRS 241.065.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the city of Bowling Green in getting the additional licenses it requested.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The city of Bowling Green is affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The city will not have to take any additional steps to comply with this amendment.

(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 will be minimal financial benefits from the licensing fees of the extra available licenses.

(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? The city of Bowling Green requested this amendment and is expected to be impacted by this amendment. The Department of Alcoholic Beverage Control will also be impacted as it will have to review additional license applications.

(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.

(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? Minimal revenue will be generated by this administrative regulation in the form of additional licensing fees.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Minimal revenue is expected to be generated by this administrative regulation in the form of additional licensing fees.

(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 Kentucky Horse Racing Commission (Amendment)**

#### **810 KAR 1:070. Kentucky thoroughbred breeders' incentive fund.**

RELATES TO: KRS 230.330, 230.800

STATUTORY AUTHORITY: KRS 230.800

NECESSITY, FUNCTION AND CONFORMITY: KRS[.] 230.800 establishes the Kentucky Thoroughbred Breeders' Incentive Fund (KBIF). KRS 230.800(2)(b) authorizes the commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, and the

administration of payments from the fund.

Section 1. Definitions. (1) "Allowance race" means an overnight race for which eligibility and weight to be carried is determined according to specified conditions which include age, gender, earnings, and number of wins, excluding starter allowance races.

(2) "Claiming earnings" means the gross cash portion, as this portion is determined by The Jockey Club, of the prize awarded to a qualified Kentucky claiming horse that is paid from the association or the license holder permitted to conduct racing in the jurisdiction.

(3) "Claiming race" means a race in which every horse running in the race may be transferred in conformity with 810 KAR 1:015.

(4) "Grade I stakes race" means a nonrestricted race held in the United States which has been assigned Grade I stakes status for the year contested by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association[for the United States].

(5) "Grade II stakes race" means a nonrestricted race held in the United States which has been assigned Grade II stakes status for the year contested by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association[for the United States].

(6) "Grade III stakes race" means a nonrestricted race held in the United States which has been assigned Grade III stakes status for the year contested by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association[for the United States].

(7) "Group I race" means:

(a) A nonrestricted race held in England, France, or Ireland which has been assigned Group I race status for the year contested by the European Pattern Committee; or

(b) A nonrestricted race held in Canada which has been assigned Canadian Grade I stakes status for the year contested by the Canadian Graded Stakes Committee.

(8) "Group II race" means:

(a) A nonrestricted race held in England, France, or Ireland which has been assigned Group II race status for the year contested by the European Pattern Committee; or

(b) A nonrestricted race held in Canada which has been assigned Canadian Grade II stakes status for the year contested by the Canadian Graded Stakes Committee.

(9) "Group III race" means:

(a) A nonrestricted race held in England, France, or Ireland which has been assigned Group III race status for the year contested by the European Pattern Committee; or

(b) A nonrestricted race held in Canada which has been assigned Canadian Grade III stakes status for the year contested by the Canadian Graded Stakes Committee.

(10) "Intended breeder of record" means the owner or lessee of a thoroughbred mare who desires to use the mare for breeding purposes and to qualify the foal for the Kentucky Thoroughbred Breeders' Incentive Fund and who is listed as the intended breeder of record on the forms necessary to register under the KBIF.

(11) "KBIF" means the Kentucky Thoroughbred Breeders' Incentive Fund.

(12) "KBIF registered horse" means a horse registered with the Kentucky Thoroughbred Breeders' Incentive Fund.

(13) "Kentucky sire" means a sire registered as a Kentucky Thoroughbred Development Fund sire.

(14) "Kentucky Thoroughbred Breeders' Incentive Fund" means the trust and revolving fund set out in KRS 230.800.

(15) "Maiden special weight race" means a race in which:

(a) None of the runners have been previously declared a winner; and

(b) None of the runners are eligible to be claimed.

(16) "Overnight race" means a race for which entries close at a time set by the racing secretary.

(17) "Public auction" means a thoroughbred auction conducted by a recognized member of the Society of International Thoroughbred Auctioneers, or other public auction approved by the KBIF advisory committee.

(18) "Qualified breeder" means the breeder of record as listed

in The Jockey Club records.

(19)[(18)] "Qualified Kentucky claiming horse" means a foal who is born out of a qualified mare and from a Kentucky sire, and who receives earnings from a claiming race in Kentucky.

(20)[(19)] "Qualified mare" means a thoroughbred dam who resides in Kentucky from the time of the first cover in Kentucky by a Kentucky sire until foaling, unless one (1) of the exceptions in Section 5(4) of this administrative regulation is met.

(21)[(20)] "Qualified winner" means a thoroughbred horse born out of a qualified mare and from a Kentucky sire that is declared the official winner~~[and whose nose reaches the finish line first or is placed first through disqualification]~~ by the stewards and is not eligible to be claimed in that race.

(22)[(21)] "Qualified winner's earnings" means the gross cash portion of the prize, as this portion is determined by The Jockey Club, awarded to the qualified winner of a race that is paid for from the association or the license holder permitted to conduct racing in the jurisdiction.

(23)[(22)] "Starter allowance" means a race written to allow claiming horses who have improved from their earlier form to run in a nonclaiming event.

Section 2. Timing of Awards; Eligibility. (1) Disbursements from the ~~KBIF~~~~[Kentucky Thoroughbred Breeders' Incentive Fund]~~ shall be made~~[as soon as is practicable]~~ after December 31~~[the end of each full racing year based on a calendar year]~~, but not later than March 31, for awards earned for the preceding calendar year~~[of the calendar year following the last date the application may be filed under Section 7(3)(b) of this administrative regulation]~~.

(2) For a horse foaled prior to 2007, if the horse is eligible to be registered to receive funds under the Kentucky Thoroughbred Development Fund, the breeder shall be eligible to receive funds from the Kentucky Thoroughbred Breeders' Incentive Fund, subject to registration under Section 4(1) of this administrative regulation.

(3) For a horse foaled during or after 2007, the requirements set forth in this administrative regulation shall be met.

(4) The races eligible for awards from the KBIF as provided in Sections 3 and 6 of this administrative regulation shall be those run on and after January 1, 2006.

Section 3. Awards. (1)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each of the Kentucky Derby and Kentucky Oaks.

(b) The incentive shall be ~~[fifty thousand dollars - (\$50,000)]~~.

(2)(a) An incentive shall be awarded to the top twenty (20) horses with the most claiming wins in Kentucky each year.

(b) Horses earning awards at a Kentucky race track through any component other than the claiming component during the same calendar year shall not be eligible for the Kentucky claiming component.

(c) An incentive of \$200,000 shall be distributed to the top twenty (20) qualified Kentucky claiming horses with the most wins, as follows:

1. \$20,000 to the horse with the most wins;
2. \$17,500 to the horse with the second most wins;
3. \$15,000 to the horse with the third most wins;
4. \$12,500 to the horse with the fourth most wins;
5. \$12,000 to the horse with the fifth most wins;
6. \$11,500 to the horse with the sixth most wins;
7. \$11,000 to the horse with the seventh most wins;
8. \$10,500 to the horse with the eighth most wins;
9. \$10,000 to the horse with the ninth most wins;
10. \$9,500 to the horse with the tenth most wins;
11. \$9,000 to the horse with the eleventh most wins;
12. \$8,500 to the horse with the twelfth most wins;
13. \$8,000 to the horse with the thirteenth most wins;
14. \$7,500 to the horse with the fourteenth most wins;
15. \$7,000 to the horse with the fifteenth most wins;
16. \$6,500 to the horse with the sixteenth most wins;
17. \$6,000 to the horse with the seventeenth most wins;
18. \$6,000 to the horse with the eighteenth most wins;
19. \$6,000 to the horse with the nineteenth most wins; and
20. \$6,000 to the horse with the twentieth most wins.

(d) Claiming earnings earned at a Kentucky race track from the same calendar year shall be used to settle any ties.

(e) If two (2) or more horses have the same number of wins and the same total earnings, all incentive totals to which those horses would have been entitled shall be divided equally between or among them.~~[This shall apply in dividing all incentives whatever the number of horses that finish with the same number of wins and the same total earnings.]~~

(3)(a) For those KBIF registered horses foaled in 2007 or after, an incentive shall be awarded to the qualified breeder of the qualified winner of each maiden special weight and allowance race held in the United States, but outside Kentucky, or at Woodbine Racetrack in Ontario, Canada.

(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner's earnings except it shall not exceed \$3,000~~[three thousand dollars - (\$3,000)]~~.

(4)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each maiden special weight and allowance race held in Kentucky.

(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner's earnings except it shall not exceed \$3,000~~[three thousand dollars - (\$3,000)]~~.

(5)(a) For those KBIF registered horses foaled in 2007 or after, an incentive shall be awarded to the qualified breeder of the qualified winner of each non-graded stakes race held in the United States, but outside Kentucky, or at Woodbine Racetrack in Ontario, Canada.

(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner's earnings except it shall not exceed \$4,000~~[four thousand dollars - (\$4,000)]~~.

(6)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each non-graded stakes race held in Kentucky.

(b) The incentive shall be that amount which is equal to ten (10) percent of the qualified winner's earnings except it shall not exceed \$4,000~~[four thousand dollars - (\$4,000)]~~.

(7)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each:

1. Grade I stakes race held in the United States;
2. Group 1 race held in Canada, England, France, and Ireland;

and

3. Group I race held on Dubai World Cup day, Japan Cup day, and Hong Kong International day.

(b) The incentive shall be \$7,500~~[seven thousand, five hundred dollars - (\$7,500)]~~.

(8)(a) An incentive shall be awarded to the qualified breeder of the qualified winner of each:

1. Grade II and Grade III stakes race held in the United States; and
2. Group 2 and Group 3 race held in Canada, England, France, and Ireland.

(b) The incentive shall be \$5,000~~[five thousand dollars - (\$5,000)]~~.

(9) An incentive shall not be awarded to the winner of any Breeders' Cup World Championship race.

Section 4. Registration of Foals. (1)(a) For a horse foaled on or before December 31, 2006~~[prior to 2007]~~ and eligible to be registered under Section 2(2) of this administrative regulation, the intended breeder of record shall file a Kentucky Thoroughbred Breeders' Incentive Fund Application for Award with the commission~~[a "Grandfather Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for a horse born in 2006 and prior years)"]~~.

(b) The Kentucky Thoroughbred Breeders' Incentive Fund Application for Award~~[application]~~ shall be filed no later than December 31 of the year following the year in which the horse has raced in a race that would qualify the horse~~[him]~~ for an incentive from the KBIF.

(c) A filing fee of thirty (30) dollars~~[may be paid with the application or it]~~ shall be deducted from the award amount.

(d) The filing fee shall be assessed one (1) time per horse.

(2) For a horse foaled on or after January 1, 2007, the intended

breeder of record shall register the unborn foal with the commission on or prior to August 15 of the cover year[breeding season] by filing the Kentucky Thoroughbred Breeders' Incentive Fund Application for Mare Registration["Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for the breeding season beginning in 2007)"] and paying a filing fee of sixty (60) dollars, except as provided in subsection (5) of this section.

(3)(a) The commission shall be recognized and designated as the sole official registrar of the KBIF[Kentucky Thoroughbred Breeders' Incentive Fund] for the purposes of registering Kentucky thoroughbred foals in accordance with this administrative regulation.

(b) The records of The Jockey Club shall be used as the official records of the commission for determining the following information:

1. The identity of the qualified breeder;
2. The claiming wins and earnings for each race pursuant to which an award shall be granted under this administrative regulation;
3. The qualified winners' earnings for each race pursuant to which an award shall be granted under this administrative regulation;
4. The name of the qualified winner for each race pursuant to which an award shall be granted under this administrative regulation;
5. The name of each horse determined to be a qualified Kentucky claiming horse for purposes of calculating the awards under Section 3(2) of this administrative regulation;
6. The registration number or special identification number of the KBIF registered[KBIF-registered] horse;
7. The name of the KBIF registered[KBIF-registered] horse; and
8. Other information for purposes of administering the KBIF.

(4) If the information on a form required under this section is found to be incorrect or becomes incorrect or changes, the person considered to be the intended breeder of record shall promptly file an amended form with the commission to correct the information[within thirty (30) days of realizing the inaccuracy or of the circumstances causing the information to change].

(5)(a) A late[hardship] filing may be made if the intended breeder of record can prove[that there was good cause for the application to not have been filed on a timely basis as required under subsection (2) of this section, and] that the foal otherwise met the eligibility requirements to be a KBIF registered[KBIF-registered] horse. The filing shall be made on the form Kentucky Thoroughbred Breeders' Incentive Fund Application for Late Mare Registration["Late Filing of Application for the Kentucky Breeders' Incentive Fund"].

(b) The amount of the filing fee shall be as follows:

1. For a filing made after August 15 of the cover year[breeding season] and on or prior to December 31 of the cover year, the filing fee shall be \$150;
2. For a filing made between January 1 and[after] December 31[of the cover year and on or prior to December 31] of the weanling year, the filing fee shall be \$750; and
3. For a filing made between January 1 and December 31 of the yearling year, the filing fee shall be \$1,500.[No other late filing shall be permitted.]

(6)(a) A special filing may be made if a pregnant mare is purchased at public auction outside of Kentucky and:

1. The mare resided in Kentucky from the time of the first cover in Kentucky by a Kentucky sire to the time of foaling;
2. The mare returned to Kentucky within fourteen (14) days after the conclusion of the auction; and
3. The foal meets all of the other eligibility requirements to be a KBIF registered horse.

(b) The filing shall be made on the form Kentucky Thoroughbred Breeders' Incentive Fund Application for Special Filing of Mare Registration.

(c) The amount of the filing shall be as follows:

1. For a filing made between January 1 and December 31 of the cover year, the filing fee shall be \$300;
2. For a filing made between January 1 and December 31 of

the weanling year, the filing fee shall be \$1,500; and

3. For a filing made between January 1 and December 31 of the yearling year, the filing fee shall be \$3,000.

(7) If ownership of a mare is transferred, a Kentucky Thoroughbred Breeders' Incentive Fund Mare Transfer Form["Mare Transfer of Ownership Report in connection with the Kentucky Thoroughbred Breeders' Incentive Fund"] shall be filed with the commission.

(8)[(7)] If any registration or nomination deadline imposed by this administrative regulation falls on a weekend or holiday, the deadline shall be moved to the next business day following the original deadline.

Section 5. Qualification of Foal And Qualified Mare. (1) The commission may inspect the location where the mare proposed to be a qualified mare is boarded to determine that the residency requirement is met. The commission may also request, obtain, and inspect records relating to the location of the mare proposed to be a qualified mare to determine that the residency requirement is met.

(2) The person claiming to be the qualified breeder shall bear the burden of proof to show that a mare is a qualified mare.

(3) A failure to comply with a term, condition, or requirement of this administrative regulation shall not result in the loss of the registration of the foal, if the person claiming the foal should be registered proves to the satisfaction of the commission:

(a) The failure to comply was insignificant with respect to the registration requirements as a whole; and

(b) A good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of this administrative regulation.

(4) In order for the thoroughbred dam[mare] to be a qualified mare as defined in Section 1(20)[4(19)] of this administrative regulation, the thoroughbred dam shall have resided in Kentucky from the time of the first cover in Kentucky by a Kentucky sire until foaling, unless one (1) of the following exceptions is met:

(a) Medical procedure.

1. A medical procedure is required to be performed to protect the health of the mare or the unborn foal that involves an extraordinary medical situation and the breeder desires to have an expert located outside of Kentucky conduct the procedure;

2. The owner or the lessee of the mare[, when the mare leaves Kentucky,] files a Kentucky Thoroughbred Breeders' Incentive Fund Application to Move Mare Outside of Kentucky no later than fourteen (14) days after the mare leaves Kentucky[an "Application to Move a Mare outside of Kentucky in connection with the Kentucky Thoroughbred Breeders' Incentive Fund"] and provides information relating to the procedure as requested by the commission[within fourteen (14) days after the mare leaves Kentucky];

3. The executive director of the commission approves the departure of the mare from Kentucky;[and]

4. The mare remains under the care of a veterinarian during the entire period of time she is not residing in Kentucky other than the time during which she is traveling to and from Kentucky;

5. The mare is in Kentucky for foaling; and

6. The owner or lessee of the mare provides documentation to establish to the satisfaction of the commission that the mare was in Kentucky for foaling;[or]

(b) Training.

1. The mare has not yet delivered her first foal and is in active training outside of Kentucky;

2. The owner or the lessee of the mare[, when the mare leaves Kentucky,] files a Kentucky Thoroughbred Breeders' Incentive Fund Application to Move Mare Outside of Kentucky at least fourteen (14) days before the mare leaves Kentucky[an "Application to Move a Mare Outside of Kentucky in connection with the Kentucky Thoroughbred Breeders' Incentive Fund"] and provides information relating to the training outside of Kentucky as requested by the commission[within fourteen (14) days after the mare leaves Kentucky];

3. The executive director of the commission approves the departure of the mare from Kentucky;[and]



4. The mare is in Kentucky for foaling; and  
 5. The owner or lessee of the mare provides documentation to establish to the satisfaction of the commission that the mare was in Kentucky for foaling; or

(c) Public auction.

1. The owner of the mare desires to enter her for sale at a public auction held outside of Kentucky;

2. The owner of the mare files with the commission a Kentucky Thoroughbred Breeders' Incentive Fund Application to Move Mare Outside of Kentucky at least fourteen (14) days before the mare leaves Kentucky and provides information relating to the auction as requested by the commission;

3. The executive director of the commission approves the departure of the mare from Kentucky;

4. The mare returns to Kentucky within fourteen (14) days after the conclusion of the auction;

5. The mare is in Kentucky for foaling; and

6. The owner or lessee of the mare provides documentation to establish to the satisfaction of the commission that the mare was in Kentucky for foaling~~[The mare returns to Kentucky within ten (10) days after the end of her racing career].~~

(5) The executive director shall notify the commission if an exception is made to the residency requirement pursuant to subsection (4) of this section.

(6) A qualified breeder of a qualified mare shall be responsible for:

(a) The registration and records of the KBIF registered~~[KBIF—registered]~~ horse; and

(b) Complying with the requirements of the Kentucky Thoroughbred Breeders' Incentive Fund.

(7) The owner or lessee of the mare may withdraw the mare's foal from the KBIF by filing a Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal~~[Notice of Withdrawal of Foal from the Kentucky Thoroughbred Breeders' Incentive Fund]~~.

Section 6. Bonus Calculation. (1) Funds available in the KBIF state account resulting from the cover year~~[breeding season]~~ relating to each year preceding the granting of the actual awards shall be apportioned according to Sections 3 and 6 of this administrative regulation.

(2) The funds apportioned to each qualified breeder shall be awarded by determining the amount a qualified breeder is eligible to receive based on Sections 3 and 6 of this administrative regulation.

(3) If, at the close of any calendar year, inadequate funding is available in~~[to]~~ the KBIF to fund the awards provided for in Section 3 of this administrative regulation, the funding shall be decreased proportionally among all awards, excluding the Kentucky claiming award, the Kentucky Oaks award, and the Kentucky Derby award, until funding is adequate to fund all awards.

(4)(a) If, at the close of a calendar year, the amount available for awards is in excess of the amount necessary to fund the awards provided in Section 3 of this administrative regulation, after payment of operating expenses, a reserve fund shall be established in the KBIF in an amount which is no more than five (5) percent of the amount of funding available from tax receipts for that calendar year.

(b) Moneys in the reserve account may be used as needed to provide funding of awards in a subsequent calendar year if the amount available at the close of the last calendar year is insufficient to fund the awards provided in Section 3 of this administrative regulation.

(c) Additional money shall not be added to the reserve fund if it contains at least \$5,000,000 when the excess funding is available.

(5) If, at the close of a calendar year, the amount available for awards is in excess of the amount necessary to fund the awards provided in Section 3 of this administrative regulation and an amount has been designated for the reserve fund provided for in subsection (4)(a) of this section, then the awards shall be increased proportionally among all awards except the Kentucky claiming award, the Kentucky Oaks award, and the Kentucky Derby award.

Section 7. Application Requirements. (1) The amount due for awards shall be calculated after the end of each calendar~~[racing]~~ year. The recipient of an award shall be notified of the amount of the award to which the recipient may be entitled according to the last known address on file with the KBIF~~[commission]~~.

(2)(a) After receipt of notification of an award, each potential recipient shall return an application for the award that certifies that the applicant is entitled to the award and certifies the applicant's United States taxpayer ID number or Social Security number.

(b) The application shall be on the form Kentucky Thoroughbred Breeders' Incentive Fund Application for Award~~[Application for an Award from Kentucky Thoroughbred Breeders' Incentive Fund]~~.

(c) A breeder may appoint an authorized agent to complete the Kentucky Thoroughbred Breeders' Incentive Fund Application for Award~~[Application for Award from Kentucky Thoroughbred Breeders' Incentive Fund]~~ by completing and filing with the commission a [Kentucky Thoroughbred Breeders' Incentive Fund Authorized Agent Form].

(3)(a) Awards due recipients who cannot be located by December 31 of the year after the year in which the qualified winner or qualified Kentucky claiming horse became eligible to receive an incentive under Section 3 of this administrative regulation shall lapse to the KBIF for distribution or building the reserve in the following year.

(b) Failure to return the application required by subsection (2) of this section by December 31 of the year after the year in which the qualified winner or qualified Kentucky claiming horse became eligible to receive an incentive under Section 3 of this administrative regulation, shall result in forfeiture of the award and the award money shall lapse to the KBIF for distribution or building the reserve in the following year.

Section 8. Disputes. (1) Any person claiming to be aggrieved by a decision of the commission~~[dispute]~~ arising under this administrative regulation shall file a complaint with the executive director~~[be raised by the aggrieved party filing a petition seeking relief with the executive director]~~ within thirty (30) days of the decision~~[action or inaction leading to the dispute]~~.

(2) An appeal of the decision of the executive director pursuant to subsection (1) of this section shall be filed with the commission within ten (10) days of mailing of the decision and shall be conducted~~[If the executive director and the aggrieved party do not agree on a resolution of the dispute, the executive director shall assign the case to a hearing officer who shall conduct a hearing]~~ pursuant to KRS Chapter 13B.

Section 9. Disciplinary Procedures. (1) The commission may deny or revoke the qualified winner's earnings or registration of a foal or horse, and bar a person from participation in the fund for a period of one (1) to five (5) years based on the seriousness of the violation if the qualified winner, qualified breeder, or an applicant for qualified breeder status:

(a) Provides the commission with incorrect, false, or misleading information concerning a foal or horse and fails within thirty (30) days to provide accurate information upon request by the commission;

(b) Fails to furnish within thirty (30) days information the commission has requested relating to the registration of a foal or horse;~~[or]~~

(c) Is charged or convicted of a crime, offense, or other criminal or civil violation involving cruelty, mistreatment, abuse, or neglect of any horse. A person charged, but not convicted of any crime, offense, or other criminal or civil violation as provided in this subsection may petition the commission for reinstatement. The commission shall reinstate the earnings, registration, or application upon submission of proof satisfactory to the commission that the charges were dismissed and the facts forming the basis of the charges were false;

(d) Engages in conduct that is against the best interest of breeding or horse racing; or

(e) Violates this administrative regulation in any other manner.

(2)~~[If the commission denies or revokes the registration of the~~

foal or horse, the qualified breeder or applicant for qualified breeder status may request, and the commission shall thereupon schedule, a hearing to be conducted pursuant to KRS Chapter 13B.

(3) At the conclusion of the hearing, the commission shall in its final order determine whether the qualified breeder or applicant for qualified breeder status has provided the commission with false or misleading information, or has failed to provide the commission with requested information, or has violated this administrative regulation in any other manner, and may take one (1) or more of the following actions:

- (a) Deny or revoke the registration;
- (b) Uphold the denial or revocation of the registration;
- (c) Rescind the denial or revocation of the registration; or

(d) Bar the applicant who failed to furnish the requested information or who has violated the administrative regulation from registering foals to the fund for a period of one (1) to five (5) breeding seasons, based on the seriousness of the violation, beginning with the season in which the violation occurred.

(4) If a person or his or her designee or representative fails to appear at the hearing, the commission may take one (1) or more of the following actions:

- (a) Deny or revoke the registration; or

(b) Bar the owner or lessee who failed to respond to the summons from registering foals to the fund for a period of one (1) to five (5) breeding seasons, based on the seriousness of the violation, beginning with the breeding season in which the violation occurred.

(5) A second or subsequent violation of this administrative regulation may result in a lifetime bar of the applicant or qualified breeder from being eligible to receive an incentive from the KBIF.

(3)(6) The commission shall notify the applicant or qualified breeder in writing of the action taken by the commission.

(4) A decision imposed pursuant to this section may be appealed pursuant to KRS Chapter 13B. The appeal shall be filed with the commission within ten (10) days of receipt of the decision.

Section 10. The commission may establish an advisory committee to assist the commission in the administration of the KBIF. If established, the advisory committee shall consist of five (5) members appointed by the chairman of the commission by July 1 of each year. Each member of the advisory committee shall serve from July 1 through June 30 of the following year. Each member of the advisory committee shall be a resident of Kentucky. The advisory committee shall select a chairman from its membership annually.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Thoroughbred Breeders' Incentive Fund Application for Mare Registration", KHRC Form 70-1, 6/15["Grandfather Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for a horse born in 2006 and prior years)", KHRA Form 20-1, (4/06)];

(b) "Kentucky Thoroughbred Breeders' Incentive Fund Mare Transfer Form", KHRC Form 70-2, 6/15["Application for the Kentucky Thoroughbred Breeders' Incentive Fund (for the breeding season beginning 2007)", KHRA Form 20-3, (4/06)];

(c) "Kentucky Thoroughbred Breeders' Incentive Fund Authorized Agent Form", KHRC Form 70-3, 6/15["Mare Transfer of Ownership Report in connection with the Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-4, (4/06)];

(d) "Kentucky Thoroughbred Breeders' Incentive Fund Application to Move Mare Outside of Kentucky", KHRC Form 70-4, 6/15["Kentucky Thoroughbred Breeders' Incentive Fund Authorized Agent Form", KHRA Form 20-5, (4/06)];

(e) "Kentucky Thoroughbred Breeders' Incentive Fund Notice of Withdrawal of Foal", KHRC Form 70-5, 6/15["Application to Move a Mare Outside of Kentucky in connection with the Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-6, (4/06)];

(f) "Kentucky Thoroughbred Breeders' Incentive Fund Application for Late Mare Registration", KHRC Form 70-6,

6/15["Notice of Withdrawal of Foal from the Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-7, (4/06)];

(g) "Kentucky Thoroughbred Breeders' Incentive Fund Application for Award", KHRC Form 70-7, 6/15["Late Filing of Application for the Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-8, (4/06)]; and

(h) "Kentucky Thoroughbred Breeders' Incentive Fund Application for Special Filing of Mare Registration", KHRC Form 70-8, 6/15["Application for Award from Kentucky Thoroughbred Breeders' Incentive Fund", KHRA Form 20-9, (4/06)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Kentucky Horse Racing Commission, 4063 Iron Works Parkway[Pike], Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the KHRC Web site at <http://khrc.ky.gov/www.khrc.ky.gov>.

ROBERT M. BECK, Jr., Chairman

AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: July 9, 2015

FILED WITH LRC: July 15, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2015 at 10:00 AM, at the offices of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing 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 August 31, 2015. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Katherine M. Paisley, Deputy General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [katherine.paisley@ky.gov](mailto:katherine.paisley@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Katherine M. Paisley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, and the administration of payments from the Kentucky Thoroughbred Breeders' Incentive Fund ("KBIF").

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the efficient administration of the KBIF and provides notice to participants regarding registration and eligibility standards and the rules that govern distribution of moneys from the KBIF.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.800(2)(b) requires the commission to "promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund." This regulation fulfills that statutory mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: "[T]he Kentucky Horse Racing Commission shall use moneys deposited in the Kentucky thoroughbred breeders' incentive fund to administer the fund and provide rewards for breeders of horses bred and foaled in Kentucky." This administrative regulation sets forth the eligibility criteria for participation in the KBIF, as well as the rules regarding distribution of awards. It puts participants on notice of the deadlines with which they must comply and

establishes procedures for resolving disputes. It also provides disciplinary measures for participants who violate the administrative regulation.

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

(a) How the amendment will change this existing administrative regulation: The administrative regulation contains three substantive amendments. One amendment allows a mare and resulting foal to be eligible to participate in the fund if the mare resided in Kentucky from cover to foaling except during her participation in a public auction outside of Kentucky. This would maintain the spirit of the fund by keeping mares in Kentucky for a significant majority of their pregnancies, while still allowing Kentucky breeders to participate in sales outside of Kentucky and advertise their mares as being eligible for KBIF awards to potential buyers. The second amendment can be found in the disciplinary measures contained in Section 9. Currently, the commission may only deny or revoke a registration. The amendment would allow the commission to also deny or revoke an award. Additionally, the amendment gives the commission the ability to deny or revoke a registration, or deny or revoke an award, if the breeder is charged or convicted of neglect, mistreatment, or abuse of a horse. Under the current administrative regulation, the commission does not have this ability. The third amendment creates an advisory committee. This provides regulatory structure for the current practice. There are also some amendments for clarity.

(b) The necessity of the amendment to this administrative regulation: See 2(a).

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.800(2)(b) requires the commission to "promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund." This administrative regulation fulfills that statutory mandate.

(d) How the amendment will assist in the effective administration of the statutes: KRS 230.800(2)(a) states, "[T]he Kentucky Horse Racing Commission shall use moneys deposited in the Kentucky thoroughbred breeders incentive fund to administer the fund and provide rewards for breeders of horses bred and foaled in Kentucky." The amendments set forth the rules regarding eligibility to receive funds from the KBIF, circumstances that might serve to revoke registration or an award, and the creation of an advisory committee to assist the commission in its administration of the KBIF.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects thoroughbred breeders; boarding farm owners and employees; Kentucky veterinarians and equine health care facilities; horse transportation companies; farriers; farmers and suppliers of hay, feed and grain; equine supply companies providing medical sales; daily maintenance care and tack; Kentucky thoroughbred sale companies; equine tourism generating state/local room taxes for lodging, gasoline tax on travel and transportation of horses; farm equipment, retail stores and maintenance services; and state and local payroll tax.

(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: Breeders will have an additional way to keep or acquire the eligibility of their mare to participate in the fund. The amendment will not require new or additional compliance; it merely provides additional options to breeders. The remainder of the entities identified in question (3) will not have any responsibilities under the amendment but will simply reap the benefits of a bigger and stronger breeding industry in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Should a breeder choose to take advantage of the option to register a mare that resided in Kentucky from cover to

foaling, except for participation in a public auction outside of Kentucky, the breeder will be required to pay the appropriate registration fee – either \$300, \$1,500, or \$3,000 depending on when they choose to register. The other entities will not incur any costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question: The breeders will be able to register a mare that meets all of the qualifications to participate in the KBIF except for her participation in a public auction outside of Kentucky. This will increase the number of mares and resulting foals eligible to participate in the program.

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

(a) Initially: There will be an initial cost of making changes to the database to include the registration for mares nominating on the form "Kentucky Thoroughbred Breeders' Incentive Fund Application for Special Filing of Mare Registration," KHRC Form 70-8 (6/15).

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The nomination fees are used for the implementation and enforcement 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: See 4(b) and 5(a).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment establishes fees for the registration of a mare that resided in Kentucky from cover to foaling except for participation in an auction outside of Kentucky. All breeders wishing to register must pay a registration fee. The amendment is consistent with that concept.

(9) TIERING: Is tiering applied?: Tiering is not applied. All aspects of this regulation will be applied equally to all participants.

#### 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 230.800.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The greatest impact of this administrative regulation to the state and local government will be the increase in payroll taxes by all participants noted in Regulatory Impact Analysis & Tiering Statement, Section (3).

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Continued growth and participation in the program will increase benefits to the state and local government on an annual basis.

(c) How much will it cost to administer this program for the first year? Because the infrastructure for administering the program is already in place, the only costs associated with the new amendment are those required to make changes to the database to include the registration for mares nominating on the form "Kentucky Thoroughbred Breeders' Incentive Fund Application for Special Filing of Mare Registration," KHRC Form 70-8 (6/15).

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The KBIF keeps mares in Kentucky for the entirety of their pregnancy, from cover to foaling, or approximately eleven (11) months. This provides economic support to all businesses and individuals who provide services necessary for the breeding of thoroughbreds (See Regulatory Impact Analysis and Tiering Statement, Section (3)).

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**PUBLIC PROTECTION CABINET**  
**Department of Housing, Buildings and Construction**  
**Electrical Division**  
**(Amendment)**

**815 KAR 35:020. Electrical inspections.**

RELATES TO: KRS 198B.050, 227.460, 227.480, 227.487, 227.491

STATUTORY AUTHORITY: KRS 198B.060, 227.480

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.480 requires the Department of Housing, Buildings and Construction to promulgate administrative regulations to describe the circumstances for which ~~electrical~~ inspections ~~by a Kentucky certified electrical inspector~~ are required for electrical construction, installations, alterations, or repairs ~~of any electrical wiring~~. KRS 198B.060(18) authorizes the department to establish a schedule of fees for the functions it performs pursuant to the chapter. This administrative regulation establishes the requirements for ~~electrical~~ inspections of electrical construction, installations, alterations, and repairs.

Section 1. Compliance With Applicable Codes ~~Inspections~~. The department or a certified electrical inspector having jurisdiction shall inspect electrical construction, installations, alterations, and repairs, for compliance with NFPA 70, the National ~~Electrical~~ Electric Code, ~~as adopted and~~ incorporated by reference in 815 KAR 7:120, Kentucky Building Code, 815 KAR 7:125, Kentucky Residential Code, and 815 KAR 10:060, Kentucky Standards of Safety.

Section 2. Mandatory Electrical Inspections. (1) Inspections shall be required for each electrical construction, installation, alteration, or repair that is not exempt from inspection pursuant to Section 4 of this administrative regulation.

(2) The department or a certified electrical inspector having jurisdiction shall inspect each electrical construction, installation, alteration, or repair; ~~installations, and repairs~~

(a) Upon request by the permit holder or property owner;

(b) Upon discovery or receipt of information indicating that electrical work subject to the jurisdiction of the department or inspector has been performed without a permit, if a permit was required pursuant to KRS 227.480, 815 KAR 7:120, Kentucky Building Code, or 815 KAR 7:125, Kentucky Residential Code; or

(c) If required by 815 KAR 35:015 or this administrative regulation.

(3) ~~(2)~~ The permit holder or property owner shall be responsible for scheduling an appointment for inspection with the electrical inspection authority for the jurisdiction.

(4) ~~(a)~~ ~~(3)~~ Each mandatory electrical inspection shall be scheduled and completed within five (5) working days of the permit holder or property owner's request for inspection, except for an inspection performed pursuant to subsection (2)(b) of this section.

(b) An inspection performed pursuant to subsection (2)(b) of this section shall be conducted and completed within five (5) working days of discovery or receipt of information indicating that the electrical work has been performed.

(5) ~~A~~ ~~(4)~~ rough-in inspection ~~inspections~~ shall be conducted on all permitted electrical work prior to covering or concealment.

(6) ~~(5)~~ If conditions require partial coverage of the permitted

electrical work, permission shall be requested of and received from the department or electrical inspector having jurisdiction prior to coverage or concealment.

(7) ~~(6)~~ Covering an installation without final approval or permission of the department or electrical inspector shall result in the uncovering of the electrical work for inspection, unless the department or inspector having jurisdiction determines that uncovering is ~~determined~~ unnecessary to confirm compliance with the National ~~Electrical~~ Electric Code.

(8) ~~(7)~~ A final inspection shall be conducted by the department or electrical inspector having jurisdiction after completion of the permitted electrical work and prior to use ~~occupancy~~.

Section 3. Permissive Electrical Inspections. (1) A temporary or partial final inspection may be conducted if:

(a) The temporary or partial final inspection will not prevent the remaining portion of the permitted work from being inspected; and

(b) The electrical work ~~installations~~ subject to temporary or partial inspection is ~~are~~ separate and distinguishable from installations remaining to be inspected.

(2) A voluntary inspection for any electrical construction, installation, alteration, repair, or maintenance, not subject to mandatory requirements as established ~~set forth~~ in Section 2 of this administrative regulation, may be requested. The voluntary inspection shall be ~~and~~ scheduled with the department or certified electrical inspector having jurisdiction.

Section 4. Exemptions from Mandatory Electrical Inspections. Electrical inspections shall not be required for:

(1) Electrical work beyond the scope of ~~the~~ NFPA 70 ~~National Electric Code incorporated by reference in 815 KAR 7:120 and 815 KAR 7:125~~;

(2) ~~Electrical installations, repairs or maintenance within structures determined by the department as not meeting the definition of "building" under KRS 198B.010(4);~~

(3) ~~Electrical work that~~ ~~which~~ is exempt from ~~not subject to~~ permitting requirements pursuant to:

(a) Section 105.2 of the Kentucky Building Code, 815 KAR 7:120;

(b) Section 2703.2 of the Kentucky Building Code, 815 KAR 7:120; or

(c) Section R105.2 of the Kentucky Residential Code, 815 KAR 7:125;

(3) ~~(4)~~ Electrical wiring under the exclusive control of electric utilities, in accordance with KRS 227.460;

(4) ~~(5)~~ Electrical wiring of a surface coal mine, an underground coal mine, or at a coal preparation plant; and

(5) ~~(6)~~ Appliances.

Section 5. Inspections by State Employed Electrical Inspectors.

(1) The department shall conduct electrical inspections in accordance with 815 KAR 35:015.

(2) Prior to the commencement of electrical work subject to state inspection pursuant to this section, the electrical contractor, property owner, or other person responsible for the work to be performed shall request and obtain a permit from the department.

(3) The person requesting a permit pursuant to this section shall submit to the department:

(a) The address and location where the work is to be performed;

(b) The type of electrical service to be constructed, installed, altered, or repaired;

(c) The nature and scope of the work to be performed;

(d) The identity and contact information of the electrical contractor or other persons responsible for performing the work;

(e) The total dollar value of the electrical construction, installation, alteration, or repair;

(f) A copy of the electrical contract, if any; and

(g) The name and contact information of the property owner.

(4) It shall be the obligation of the contractor, property owner, or other person responsible for the work to supply the complete value of the work, including labor and material costs regardless of the purchaser.

## VOLUME 42, NUMBER 2 – AUGUST 1, 2015

(5) The department shall request other documented proof of costs from the responsible person or owner if the true value is in question.

(6) Fees for state inspections.

(a) It shall be the responsibility of the electrical contractor, property owner, or other person responsible for the work to pay to the department an inspection fee required by this subsection.

(b) A certificate of inspection or other final approval of an electrical construction, installation, alteration, or repair shall not be issued by the department until the fee required by this subsection has been paid.

(c) The fee to inspect electrical work having a complete value of less than \$8,000 shall be the total of:

1. Thirty-five (35) dollars per hour, excluding travel;

2. Ten (10) dollars per hour for travel to and from the inspection site; and

3. Mileage reimbursed at the rate equivalent to that afforded to state employees pursuant to 200 KAR 2:006, Section 7(4)(a).

(d) The fee to inspect electrical work having a complete value of at least \$8,000 but less than \$25,000 shall be \$500.

(e) The fee to inspect electrical work having a complete value of \$25,000 or more shall be calculated as a percentage of the complete value in accordance with the schedule established in this paragraph.

Amount in dollars	Permit fee
\$25,000 to \$199,999	2.0%
\$200,000 to \$299,999	1.9%
\$300,000 to \$499,999	1.5%
\$500,000 to \$699,999	1.3%
\$700,000 to \$999,999	1.1%
\$1,000,000 & Higher	1.0%

Section 6. Access. All access necessary for inspections shall be provided by the property owner or person obtaining the electrical permit or requesting the electrical inspection.

GARY FECK, Acting Commissioner

AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: May 13, 2015

FILED WITH LRC: June 17, 2015 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 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 August 17, 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 August 31, 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 requirements for inspections of electrical construction, installations, alterations, and repairs, and the fees for inspections conducted by the state.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to implement KRS 198B.060 and 227.480.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.060(4) requires the Department of Housing, Buildings and Construction to have concurrent jurisdiction for the inspection of all buildings, other than single-family dwellings, in accordance with the Uniform State Building Code, and paragraph (18) authorizes the Department to establish a schedule of fees for the functions performed under the provisions of that chapter. KRS 198B.050 requires the Department to include within the promulgation of the Uniform State Building Code the standards for electrical systems and to encompass the National Electrical Code. KRS 227.480 requires all electrical inspections deemed necessary by the Department for the safety of life and property, and directs the Department to promulgate an administrative regulation to describe the circumstances where inspections are required.

(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 electrical inspections.

(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 through the clean-up and revision of non-substantive language and the addition of direct references to existing applicable law establishing the specific exceptions to electrical permitting under the Uniform State Building Code. This amendment also provides uniform rules for the submission of information needed to process a request for a permit for electrical inspection by a state inspector of installations subject to state jurisdiction. Finally, this amendment both simplifies and partially reduces the Department's existing electrical fee schedule.

(b) The necessity of the amendment to this administrative regulation: To improve the administration of the Electrical Division's existing inspection program by providing additional clarifying language, providing better notice of the information needed for the issuance of an electrical permit, and to promulgate an improved inspection fee schedule.

(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 conduct of electrical inspections and the schedule of fees applicable to inspection services provided by the Department.

(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 inspection 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 individuals required to obtain a permit for the installation and inspection of electrical work subject to state jurisdiction pursuant to KRS 198B and the Uniform State Building Code.

(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, because the amendment merely seeks simplify and reduce the inspection fee schedule currently adhered to by affected parties, as well as to simplify notice of the permitting information already required by the Department and already provided 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): Although affected entities will be expected to comply with the electrical fee schedule addressed in this amendment, those individuals have already long adhered to a higher schedule

of fees previously implemented by the Department. As a result, there are no increased costs, and those whose inspections fall subject to the reduced portions of the proposed schedule will experience reduced costs 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 better able to identify the circumstances under existing law where electrical permits are required, and will enjoy the benefit of an electrical fee schedule that is less than the schedule currently applied to state electrical inspections.

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

(a) Initially: There are no anticipated additional costs to administer these regulatory amendments other than the moderate reduction in inspection fees that will result from this amendment compared to the Department's current electrical inspection fee schedule. However, it is anticipated that this decrease will be more than offset by improved administration and management of consistent invoicing and collection of otherwise earned fees that are now fully tracked through the agency's Jurisdiction Online (JO) database, compared to years prior to the establishment of the present Electrical Division in December 2013, as well as other non-fee revenues associated with the operation of the Electrical Division as a whole.

(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 inspection fee revenue established by this amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does promulgate a decreased version of the Department's current electrical inspection fee schedule; therefore, the promulgation of this schedule constitutes a decrease, not an increase, in the base fees to which the affected individuals are already accustomed.

(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? Tiering is not applied as all electrical work subject to state permitting and inspection will be subject to the same requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Electrical Division, as well as cities and counties implementing an electrical inspection program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation is authorized by KRS 198B.060 and 227.480.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is anticipated to result in a decrease in base inspection fee revenue of approximately \$60,000 per year. However, it is anticipated that this decrease will be offset by improved invoicing and collection of otherwise earned fees that are now tracked through the agency's Jurisdiction Online (JO) database, compared to years prior to the establishment of the Division in December 2013, as well as other non-inspection fee revenues associated with the operation of the Division as a whole.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See answer to #3(a) above.

(c) How much will it cost to administer this program for the first year? No change to the administrative costs of the Electrical Division's inspection program is anticipated.

(d) How much will it cost to administer this program for subsequent years? No change to the administrative costs of the Division's inspection program is anticipated.

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

Revenues (+/-): Decrease.

Expenditures (+/-): Neutral.

Other Explanation: Neutral.

#### CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy (Amendment)

#### 900 KAR 6:055. Certificate of need forms.

RELATES TO: KRS 216B.015[216B.010-216B.130, 216B.330-216B.339, 216B.455, 216B.990]

STATUTORY AUTHORITY: KRS[194A.030, 194A.050,] 216B.040(2)(a)1[, 216B.330]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the forms necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Administrative escalation" means an approval from the cabinet to increase the capital expenditure authorized on a previously issued certificate of need.

(2) "Cabinet" is defined by KRS 216B.015(6)[(5)].

Section 2. Forms. (1) OHP - Form 1, Letter of Intent, shall be filed by an applicant[all applicants] for a certificate of need pursuant to the requirements established in 900 KAR 6:065.

(2) OHP - Form 2A, Certificate of Need Application, shall be filed by an applicant[applicants] for a certificate of need unless the application is for[other than] ground ambulance services[providers or] change of location, replacement, or cost escalation.

(3) OHP - Form 2B, Certificate of Need Application For Ground Ambulance Service, shall be filed by an applicant[applicants] for a certificate of need for a ground ambulance service[providers].

(4) OHP - Form 2C, Certificate of Need Application For Change of Location, Replacement, Cost Escalation, or Acquisition, shall be filed by an applicant[applicants] for a certificate of need for change of location, replacement, cost escalation, or acquisition.

(5) OHP - Form 3, Notice of Appearance, shall be filed by a person who wishes[persons that wish] to appear at a hearing.

(6) OHP - Form 4, Witness List, shall be filed by a person who elects[persons that elect] to call a witness[witnesses] at a hearing.

(7) OHP - Form 5, Exhibit List, shall be filed by a person who elects[persons that elect] to introduce evidence at a hearing.

(8) OHP - Form 6, Cost Escalation Form, shall be filed by a facility[facilities] that elects[elect] to request an administrative escalation.

(9) OHP - Form 7, Request for Advisory Opinion, shall be filed by anyone electing to request an advisory opinion.

(10) OHP - Form 8, Certificate of Need Six Month Progress Report, shall be filed by a holder of a certificate of need whose project is not fully implemented.

(11) OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service, shall be submitted by a person proposing to acquire an existing licensed health facility or service.

(12) OHP - Form 10A, Notice of Addition or Establishment of a

Health Service or Equipment, shall be filed by any health facility which adds equipment or makes an addition to a health service for which there are review criteria in the State Health Plan but for which a certificate of need is not required.

(13) OHP – Form 10B, Notice of Termination or Reduction of a Health Service or Reduction of Bed Capacity, shall be filed by a health facility which reduces or terminates a health service[.] or reduces bed capacity.

(14) OHP - Form 11, Application for Certificate of Compliance for a Continuing Care Retirement Community (CCRC), shall be filed by a facility to obtain a certificate of compliance as a continuing care retirement community.

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

- (a) "OHP - Form 1, Letter of Intent", 05/2009;
- (b) "OHP - Form 2A, Certificate of Need Application", 07/2015[05/2009];
- (c) "OHP - Form 2B, Certificate of Need Application For Ground Ambulance Service[Providers]", 05/2009;
- (d) "OHP - Form 2C, Certificate of Need Application For Change of Location, Replacement, Cost Escalation, or Acquisition", 05/2009;
- (e) "OHP - Form 3, Notice of Appearance", 05/2009;
- (f) "OHP - Form 4, Witness List", 05/2009;
- (g) "OHP - Form 5, Exhibit List", 05/2009;
- (h) "OHP - Form 6, Cost Escalation Form", 05/2009;
- (i) "OHP - Form 7, Request for Advisory Opinion", 05/2009;
- (j) "OHP - Form 8, Certificate of Need Six Month Progress Report", 07/2015[05/2009];
- (k) "OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service", 07/2015[05/2009];
- (l) "OHP - Form 10A, Notice of Addition or Establishment of a Health Service or Equipment", 05/2009;
- (m) "OHP - Form 10B, Notice of Termination or Reduction of a Health Service or Reduction of Bed Capacity", 07/2015[05/2009]; and
- (n) "OHP - Form 11, Application for Certificate of Compliance for a Continuing Care Retirement Community (CCRC)", 05/2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 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: July 7, 2015

FILED WITH LRC: July 8, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 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 August 14, 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 August 31, 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: Diona Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference certificate of need forms. OHP- Form 2A is the certificate of need application for formal and nonsubstantive review. OHP - Form 8, the Certificate of Need Six Month Progress Report form is filed by a holder of a certificate of need whose project is not fully implemented to demonstrate compliance with statutory and regulatory certificate of need implementation requirements. OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service is the form utilized to give notice of an acquisition of a health facility or service. OHP-Form 10B Notice of Termination or Reduction of a Health Service or Reduction of Bed Capacity is used by a health facility or service which reduces or terminates a health service or reduces bed capacity.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute, KRS 216B.040(2)(a)1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation incorporates by reference various forms required for the certificate of need program. OHP - Form 8 Certificate of Need Six Month Progress Report is required to be submitted by certificate of need holders to document progress toward implementation of outstanding certificates of need. OHP- Form 2A is the certificate of need application for formal and nonsubstantive review. OHP-Form 10B is used by a health facility or service which reduces or terminates a health service or reduces bed capacity. OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service is the form utilized to give notice of an acquisition of a health facility or service.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 216B.040(2)(a)1 requires the Cabinet to promulgate administrative regulations as necessary for the administration of the certificate of need program. OHP - Form 8 is utilized by certificate of need holders to report progress made toward implementation of outstanding certificates of need. OHP-Form 2A is the application for nonsubstantive and formal review applications. OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service is the form utilized to give notice of an acquisition of a health facility or service. OHP-Form 10B is used by a health facility or service which reduces or terminates a health service or reduces bed capacity.

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

(a) How the amendment will change this existing administrative regulation: The amendment revises OHP - Form 8 Certificate of Need Six Month Progress Report to clarify certificate of need implementation requirements of 900 KAR 6:100. OHP-Form 2A is revised to require nonsubstantive review applicants to address consistency with the State Health Plan, if applicable. OHP-Form 9 is revised to require the license number instead of the certificate of need number. OHP-Form 10B is revised to address reduction of a health service and to require the license number instead of the certificate of need number.

(b) The necessity of the amendment to this administrative regulation: The amendment revises OHP - Form 8 Certificate of Need Six Month Progress Report to clarify certificate of need implementation requirements of 900 KAR 6:100. OHP-Form 2A is revised to require nonsubstantive review applicants to address consistency with the State Health Plan, if applicable. OHP-Form 9 is revised to require the license number instead of the certificate of need number. OHP-Form 10B is revised to address reduction of a health service and to require the license number instead of the certificate of need number.

(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 revised OHP-Form 2A Certificate of Need Application, OHP - Form 8 Certificate of Need Six Month Progress Report, OHP -

Form 9, Notice of Intent to Acquire a Health Facility or Health Service and OHP-Form 10B Notice of Termination or Reduction of a Health Service or Reduction of Bed Capacity.

(d) How the amendment will assist in the effective administration of the statutes: The revised OHP-Form 2A will be consistent with KRS 216B.095 in that nonsubstantive review applications shall be required to address consistency with the State Health Plan, if applicable. The revised OHP - Form 8 Certificate of Need Six Month Progress Report will clarify certificate of need implementation requirements of 900 KAR 6:100.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Annually, approximately 250 progress reports are required to be submitted by CON holders. Annually approximately 115 certificate of need applications are submitted.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: CON applicants will utilize OHP-Form 2A to submit a CON application. Entities which have certificates of need which have not been implemented are required to submit progress reports to the Cabinet utilizing OHP - Form 8. OHP-Form 9 will be used by an entity to notify the Cabinet of an acquisition of a licensed health facility or service. Licensed health services/facilities will utilize OHP-Form 10B to report a termination or reduction of a health service or a reduction of bed capacity.

(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): The amendment revises OHP - Form 8 Certificate of Need Six Month Progress Report to clarify certificate of need implementation requirements of 900 KAR 9:100. Nonsubstantive review applications shall be required to address consistency with the State Health Plan when completing OHP-Form 2A. Reporting requirements of OHP-Form 9 and 10B will be clarified for reporting entities.

(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? Health care facilities owned by the state, county or city which hold unimplemented certificates of need are required to submit certificate of need six month progress reports. Health care facilities owned by the state, county or city will be required to submit certificate of need applications for the establishment or change in a health service.

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

regulation. KRS 216B.040(2)(a)1

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy (Amendment)

#### 900 KAR 6:070. Certificate of need considerations for formal review.

RELATES TO: KRS 216B.015, 216B.062[216B.040], 216B.090[216B.990]

STATUTORY AUTHORITY: KRS[194A.030, 194A.050,] 216B.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.040(2)(a)2 requires the cabinet to promulgate an administrative regulation establishing the criteria for issuance and denial of certificates of need. This administrative regulation establishes the requirements necessary for the consideration for formal review of applications for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6).

(2) "Days" means calendar days, unless otherwise specified.

(3) "Formal review" means the review of an application for certificate of need which is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which is reviewed for compliance with the review criteria set forth at KRS 216B.040 and in this administrative regulation.

(4) ~~"Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.~~

(5) ~~"Public notice" means notice given through:~~

(a) ~~Public information channels; or~~

(b) ~~the cabinet's Certificate of Need Newsletter.~~

Section 2. Considerations for Formal Review. In determining whether to approve or deny a certificate of need, the cabinet's review of an application under formal review shall be limited to the considerations established in this section. (1) Consistency with plans.

(a) To be approved, a proposal shall be consistent with the State Health Plan established in 900 KAR 5:020.



(b) In determining whether an application is consistent with the State Health Plan, the cabinet, in making a final decision on an application, shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the public notice of the application.

(c) In determining whether an application is consistent with the State Health Plan following a reconsideration hearing pursuant to KRS 216B.090 or a reconsideration hearing which is held by virtue of a court ruling, the cabinet shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the reconsideration decision.

(d) An application seeking to re-establish a licensed healthcare facility or service that was provided at the healthcare facility and which was voluntarily discontinued by the applicant shall be considered consistent with the State Health Plan under the following circumstances:

1. The termination or voluntary closure of the former healthcare service or facility:

a. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;

b. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;

c. Did occur while the facility was in substantial compliance with applicable administrative regulations and was otherwise eligible for relicensure;

d. Was not an express condition of any subsequent certificate of need approval; and

e. Did not occur less than twenty-four (24) months prior to the submission of the application to re-establish;

2. The proposed healthcare service shall be provided within the same geographic service area as the former healthcare service;

3. The proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location; and

4. The application shall not seek to re-establish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours.

(2) Need and Accessibility.

(a) The cabinet shall determine if the:

1. [(a) If the] Applicant has identified a need for the proposal in the geographic service area defined in the application;

2. [and (b) If the] Applicant has demonstrated that it is able to meet the need identified in the geographic service area defined in the application; and

3. [(3) Accessibility. The cabinet shall determine if the] Health facility or health service proposed in the application will be accessible to residents of the proposed geographical service area.

(b) If each applicable review criterion in the State Health Plan has been met, there shall be a presumption that the need and accessibility criterion, described in paragraph (a) of this subsection, has been met unless the presumption of need and accessibility has been rebutted by clear and convincing evidence by an affected party [in terms of timeliness, amount, duration, and personnel sufficient to provide the services proposed].

(3) [(4)] Interrelationships and linkages. The cabinet shall determine:

(a) If the proposal shall serve to accomplish appropriate and effective linkages with other services, facilities, and elements of the health care system in the region and state; and

(b) If the proposal is accompanied by assurance of effort to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system.

(4) [(5)] Costs, economic feasibility, and resource availability. The cabinet shall determine:

(a) If it is economically feasible for the applicant to implement and operate the proposal; and

(b) If applicable, if the cost of alternative ways of meeting the need identified in the geographic area defined in the application would be a more effective and economical use of resources.

(5) [(6)] Quality of services.

(a) The cabinet shall determine if the applicant:

1. Is prepared to, and capable of undertaking and carrying out, the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements established by the cabinet; and

2. Has the ability to comply with applicable licensure requirements.

(b) Absence of an applicable licensure category shall not constitute grounds for disapproving an application.

EMILY WHELAN PARENTO, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 7, 2015

FILED WITH LRC: July 8, 2015 at 4 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on August 21, 2015, at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 August 31, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diona Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines for formal review of certificate of need applications.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute, KRS 216B.040(2)(a)1 and 2.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing the requirements necessary for consideration of certificate of need applications undergoing formal review.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements necessary for consideration of certificate of need applications undergoing formal review.

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

(a) How the amendment will change this existing administrative regulation: Section 2(2) Need and Accessibility is revised to state that If each applicable review criterion in the State Health Plan has been met, there shall be a presumption that the need and accessibility criterion has been met unless the presumption of need and accessibility has been rebutted by clear and convincing evidence by an affected party.

(b) The necessity of the amendment to this administrative regulation: It is necessary to make this revision to allow for a presumption that the need and accessibility criterion is met if the applicable review criteria in the State Health Plan has been met.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes requirements necessary for consideration for formal review of certificate of need applications.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes requirements necessary for consideration for formal review of certificate of need applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects an entity wishing to file a formal review certificate of need application. Annually, approximately 115 certificate of need applications are filed.

(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 certificate of need application requesting formal review will be required to meet the requirements of this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities in question (3): Applicants will know the certificate of need application requirements for formal review.

(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? Health care facilities owned by the state, county or city which submit certificate of need applications requesting formal review will be 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 216B.040(2)(a)1 and 2.

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

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

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

(c) How much will it cost to administer this program for the first

year? No additional costs are necessary to administer this program during the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy (Amendment)

#### 900 KAR 6:075. Certificate of need nonsubstantive review.

RELATES TO: KRS 216B.010, 216B.015, 216B.090[216B.095], 216B.455, 216B.990

STATUTORY AUTHORITY: KRS[494A.030,—194A.050;] 216B.040(2)(a)1, 216B.095

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.095 authorizes the review of certificate of need applications that are granted nonsubstantive status. This administrative regulation establishes the requirements necessary for consideration for nonsubstantive review of applications for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Ambulatory surgical center" is defined by KRS 216B.015(4).

(2) "Cabinet" is defined by KRS 216B.015(6).

(3) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <http://chfs.ky.gov/ohp/con>.

(4) "Days" means calendar days, unless otherwise specified.

(5) "Formal review" means the review of an application for certificate of need which is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which is reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(6) "Nonsubstantive review" is defined by KRS 216B.015(18).

(7) ["Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.

(8) "Public notice" means notice given through[:

(a) Public information channels; or

(b) the cabinet's Certificate of Need Newsletter.]{9) "Therapeutic cardiac catheterization outcomes" means in-hospital mortality rates, door-to-balloon time, door-to-balloon time less than or equal to ninety (90) minutes, Percutaneous Coronary Intervention (PCI) related cardiac arrests, and emergency open heart surgeries performed as a result of the PCI.]

Section 2. Nonsubstantive Review. (1) The cabinet shall grant nonsubstantive review status to an application to change the location of a proposed health facility or to relocate a licensed health facility only if:

(a) There is no substantial change in health services or bed capacity; and

(b)1. The change of location or relocation is within the same county; or

2. The change of location or relocation is for a psychiatric residential treatment facility.

(2) The cabinet shall grant nonsubstantive review status to an application that proposes to establish an ambulatory surgical center pursuant to the conditions specified in KRS 216B.095(7).

(3) In addition to the projects specified in KRS 216B.095(3)(a) through (e), pursuant to KRS 216B.095(f), the Office of Health Policy shall grant nonsubstantive review status to an application for which a certificate of need is required if:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there is not a component in the State Health Plan;

(b) ~~The proposal involves an application from a hospital to reestablish the number of acute care beds that it converted to nursing facility beds pursuant to KRS 216B.020(4), if the number of nursing facility beds so converted are delicensed;~~

(c) ~~The proposal involves an application to relocate or transfer licensed acute care beds, not including neonatal Level III or Level IV beds, from one (1) existing licensed hospital to another existing licensed hospital within the same area development district and the requirements established in this paragraph are met.~~

1.a. There shall not be an increase in the total number of licensed acute care beds in that area development district; and

b. The hospital from which the licensed beds are relocated delicensures those beds.

2. If neonatal Level II beds are relocated or transferred pursuant to this paragraph:

a. The receiving hospital shall have an existing licensed Level II, ~~or~~ Level III, ~~or~~ Level IV neonatal unit;

b. A minimum of four (4) beds shall be relocated; and

c. The relocation shall not leave the transferring hospital with less than four (4) neonatal Level II beds unless the relocated beds represent all of its neonatal Level II beds;

(c) ~~(d)~~ The proposal involves an application by an existing licensed acute care hospital to:

1. Convert licensed psychiatric or chemical dependency beds to acute care beds, not including special purpose acute care beds such as neonatal Level II beds, ~~or neonatal~~ Level III beds, ~~or~~ Level IV beds;

2. Convert and implement the beds on-site at the hospital's existing licensed facility; and

3. Delicense the same number of psychiatric or chemical dependency beds that are converted;

(d) ~~(e)~~ The proposal involves an application by an existing licensed hospital providing inpatient psychiatric treatment to:

1. Convert psychiatric beds licensed for use with geriatric patients to acute care beds, not including special purpose acute care beds such as neonatal Level II beds, ~~or neonatal~~ Level III beds, ~~or~~ Level IV beds;

2. Convert and implement the beds on-site at the existing licensed hospital; and

3. Delicense the same number of converted beds;

(e) ~~(f)~~ The proposal involves an application by a psychiatric hospital to convert licensed geriatric, adult, adolescent, or child psychiatric beds to psychiatric beds and the requirements established in this paragraph are met.

1. The psychiatric hospital is located within twenty (20) miles of a United States military base;

2. The psychiatric hospital provides inpatient behavioral health services to active duty military personnel, families of active duty military personnel, and veterans;

3. The psychiatric hospital shall convert and implement the beds on-site at the existing licensed hospital; and

4. The psychiatric hospital shall delicense the same number of converted beds.

(g) The proposal involves an application to transfer or relocate existing certificate of need approved nursing facility beds between certificate of need approved nursing facilities or from a certificate of need approved nursing facility to a proposed nursing facility and the requirements established in this paragraph are met.

1. The selling or transferring facility has a certificate of need nursing facility bed inventory of at least 250 beds;

2. The transfer or relocation takes place within the same Area Development District;

3. The application includes:

a. A properly completed OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service, incorporated by reference in 900 KAR 6:055; and

b. Evidence of the selling or transferring entity's binding commitment to sell or transfer upon approval of the application; and

4. A certificate of need approved nursing facility shall not sell or transfer more than fifty (50) percent of its certificate of need approved nursing facility beds;

(h) The proposal involves an application to establish a therapeutic cardiac catheterization program and the requirements established in this paragraph are met.

1. The applicant is an acute care hospital which was previously granted a certificate of need to participate in a primary angioplasty pilot project and was evaluated after the first two (2) years of operation by an independent consultant who determined the hospital successfully demonstrated good therapeutic cardiac catheterization outcomes.

2. The applicant shall document that the nursing and technical catheterization laboratory staff are experienced and participate in a continuous call schedule.

3. The applicant shall document that the catheterization laboratory shall be equipped with optimal imaging systems, resuscitative equipment, and intra-aortic balloon pump support.

4. The applicant shall document that the cardiac care unit nurses shall be proficient in hemodynamic monitoring and intra-aortic balloon pump management.

5. The applicant shall document formalized written protocols in place for immediate and efficient transfer of patients to an existing licensed cardiac surgical facility.

6. The applicant shall utilize a Digital Imaging and Communications in Medicine (DICOM) standard image transfer system between the hospital and the backup surgical facility.

7. The applicant shall employ an interventional program director who has performed more than 500 primary PCI procedures and who is board certified by the American Board of Internal Medicine in interventional cardiology.

8. The applicant shall document that each cardiologist performing the therapeutic catheterizations shall perform at least seventy-five (75) PCIs per year.

9. The applicant shall document the ability to perform at least 200 interventions per year, with an ideal minimum of 400 interventions per year by the end of the second year of operation.

10. The applicant shall participate in the American College of Cardiology National Cardiovascular Data Registry quality measurement program.

11. The applicant shall report therapeutic cardiac catheterization data annually to the Cabinet for Health and Family Services.

12. The application shall document the applicant's ability to produce therapeutic cardiac catheterization outcomes which are within two (2) standard deviations of the national means for the first two (2) consecutive years;

(i) The proposal involves an application to transfer or relocate existing certificate of need approved nursing facility beds from one (1) long-term care facility to another long-term care facility and the requirements established in this paragraph are met.

1. The selling or transferring facility fails to meet regulations promulgated by the Centers for Medicare and Medicaid Services at 42 C.F.R. 483.70(a)(8) requiring nursing facilities to install sprinkler systems throughout their buildings;

2. The selling or transferring facility may sell or transfer portions of its total bed component to one (1) or more existing nursing facility;

3. The facility acquiring the beds shall be located in a county contiguous to that of the selling or transferring facility;

4. The selling or transferring facility shall be licensed only for nursing facility beds at the time of transfer or application to transfer and shall not sell or transfer more than thirty (30) of its licensed nursing facility beds to an individual facility; and

5. The application shall include a properly completed OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service, incorporated by reference in 900 KAR 6:055;

(j) The proposal involves an application to re-establish a licensed healthcare facility or service that was provided at a hospital [with fifty (50) or fewer licensed beds] and [which] was

voluntarily discontinued by the applicant under the following circumstances:

1. The termination or voluntary closure of the hospital:
  - a. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;
  - b. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;
  - c. Did occur while the facility was in substantial compliance with applicable administrative regulations and was otherwise eligible for re-licensure; and
  - d. Was not an express condition of any subsequent certificate of need approval;
2. The application to re-establish the healthcare facility or service that was voluntarily discontinued is filed no more than one (1) year from the date the hospital last provided the service which the applicant is seeking to re-establish;
3. A proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location; and

4. The application shall not seek to re-establish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours; or

~~(f)(k)~~1. The proposal involves an application to establish an ambulatory surgical center which does not charge its patients and does not seek or accept commercial insurance, Medicare, Medicaid, or other financial support from the federal government; and

2. The proposed ambulatory surgical center shall utilize the surgical facilities of an existing licensed ambulatory surgical center during times the host ambulatory surgical center is not in operation.

~~(4)(3)~~ A certificate of need approved for an application submitted under subsection ~~(3)(f)(2)(k)~~ of this section shall state the limitations specified under subsection ~~(3)(f)(2)(k)~~1. and 2. of this section.

~~(5)(4)~~ If an application is denied nonsubstantive review status by the Office of Health Policy, the application shall automatically be placed in the formal review process.

~~(6)(5)~~ If an application is granted nonsubstantive review status by the Office of Health Policy, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

~~(7)(6)~~(a) If an application is granted nonsubstantive review status by the Office of Health Policy, any affected person who believes that the application~~[applicant]~~ is not entitled to nonsubstantive review status or who believes that the application should not be approved may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review.

(b) The provisions of 900 KAR 6:090 shall govern the conduct of all nonsubstantive review hearings.

~~(c)1. Except as provided in subparagraph 2 of this paragraph, nonsubstantive review applications shall not be comparatively reviewed.~~

~~2. If the capital expenditure proposed involves the establishment or expansion of a health facility or health service for which there is a component in the State Health Plan, the nonsubstantive review applications shall be comparatively reviewed.~~

~~(d) Nonsubstantive review applications~~~~[but]~~ may be consolidated for hearing purposes.

~~(8)(7)~~ If an application for certificate of need is granted nonsubstantive review status by the Office of Health Policy, there shall be a presumption that the facility or service is needed and a presumption that the facility or service is consistent with the State Health Plan~~[and an application granted nonsubstantive review status by the Office of Health Policy shall not be reviewed for consistency with the State Health Plan]~~.

~~(9) If each applicable review criterion in the State Health Plan has been met, there shall be a presumption that the facility or service is needed unless the presumption of need has been rebutted by clear and convincing evidence by an affected party.~~

~~(10)(8)~~ Unless a hearing is requested pursuant to 900 KAR 6:090, the Office of Health Policy shall approve each application for

a certificate of need that has been granted nonsubstantive review status if the exception established in subsection (11)(a) of this section does not apply~~[- (a) The application does not propose a capital expenditure; or~~

~~(b) The application does propose a capital expenditure, and the Office of Health Policy finds the facility or service with respect to which the capital expenditure proposed is needed, unless the cabinet finds that the presumption of need provided for in subsection (7) of this section has been rebutted by clear and convincing evidence by an affected party].~~

~~(11)(9)~~ The cabinet shall disapprove an application for a certificate of need that has been granted nonsubstantive review if the cabinet finds that the:

(a) Application~~[Applicant]~~ is not entitled to nonsubstantive review status; or

(b) Presumption of need or presumption that the facility or service is consistent with the State Health Plan provided for in subsection ~~(8)(7)~~ of this section has been rebutted by clear and convincing evidence by an affected party.

~~(12) In determining whether an application is consistent with the State Health Plan, the cabinet, in making a final decision on an application, shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the public notice of the application.~~

~~(13) In determining whether an application is consistent with the State Health Plan following a reconsideration hearing pursuant to KRS 216B.090 or a reconsideration hearing which is held by virtue of a court ruling, the cabinet shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the reconsideration decision or decision following a court ruling.~~

~~(14)(40)~~ A decision to approve or disapprove an application which has been granted nonsubstantive review status shall be rendered within thirty-five (35) days of the date that nonsubstantive review status has been granted.

~~(15)(44)~~ If a certificate of need is disapproved following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and 900 KAR 6:065;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

EMILY WHELAN PARENTO, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 7, 2015

FILED WITH LRC: July 8, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 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 August 14, 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 August 31, 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: Diona Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines for review of certificate of need applications which are granted nonsubstantive review.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 216B.040(2)(a)1 and KRS 216B.095.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the requirements necessary for consideration of nonsubstantive review of certificate of need applications. KRS 216B.095 allows a certificate of need applicant to waive a formal review process and request nonsubstantive review if specific conditions are met. This regulation establishes the requirements necessary for consideration of nonsubstantive review of certificate of need applications.

(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 regulation is being revised to be consistent with KRS 216B.095(4) to require the Cabinet to consider consistency with the State Health Plan when reviewing a nonsubstantive certificate of need application. Also, the amendment will delete select proposal scenarios from the listing of proposals that may be granted nonsubstantive review status. If an application for certificate of need is granted nonsubstantive review status by the Office of Health Policy, there shall be a presumption that the facility or service is needed and a presumption that the facility or service is consistent with the State Health Plan. Also if each applicable review criterion in the State Health Plan has been met, there shall be a presumption that the facility or service is needed unless the presumption of need has been rebutted by clear and convincing evidence by an affected party.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to be consistent with KRS 216B.095(4) which requires the Cabinet to consider consistency with the State Health Plan when reviewing a nonsubstantive certificate of need application.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes requirements necessary for consideration for nonsubstantive review of certificate of need applications.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes requirements necessary for consideration for nonsubstantive review of certificate of need applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects an entity wishing to file a nonsubstantive review certificate of need application. Annually, approximately 115 certificate of need applications are filed.

(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 certificate of need application requesting nonsubstantive review will be required to meet the requirements of this regulation, including the amendment to require a nonsubstantive review application to address consistency with the State Health Plan if the Plan addresses the proposed service.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question(3): The amendment is necessary to be consistent with KRS 216B.095(4) which requires the Cabinet to consider consistency with the State Health Plan when reviewing a nonsubstantive certificate of need application.

(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? Health care facilities owned by the state, county, or city which submit certificate of need applications requesting nonsubstantive review will be 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 216B.040(2)(a)1 and KRS 216B.095.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Office of Health Policy**  
**(Amendment)**

**900 KAR 6:090. Certificate of need filing, hearing, and show cause hearing.**

RELATES TO: KRS ~~45A.340~~[216B.040], ~~216B.015, 216B.020(2)(a), 216B.040, 216B.062(1)~~[216B.085, 216B.086, 216B.090], 216B.095(1), 216B.990

STATUTORY AUTHORITY: KRS[194A.030, 194A.050,] 216B.040(2)(a)1 and (b), 216B.085, 216B.086, 216B.090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 and (b) require[requires] the Cabinet for Health and Family Services to administer Kentucky's certificate of need program,~~and~~ to promulgate administrative regulations as necessary for the program, and to conduct public hearings in respect to certificate of need applications and revocations of certificates of need. KRS 216B.085, 216B.086, and 216B.090 establish requirements for certificate of need, revocation, and reconsideration hearings. This administrative regulation establishes the requirements for filing, hearing, and show cause hearings necessary for the orderly administration of the certificate of need program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015~~(6)~~[(5)].

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <http://chfs.ky.gov/ohp/con>.

(3) "Days" means calendar days, unless otherwise specified.

(4) "Formal review" means the review of an application[applications] for certificate of need which is[are] reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which is[are] reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(5) "Nonsubstantive review" is defined by KRS 216B.015~~(18)~~[(17)].

(6) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(7) "Office or clinic" means the physical location at which health care services are provided.

(8) "Owner" means a person as defined in KRS 216B.015~~(22)~~[(24)] who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

(9) "Practice" means the individual, entity, or group that proposes to provide health care services and shall include the owners and operators of an office or clinic.

(10) "Proposed findings" means the submission of a proposed final order by the applicant or an affected party for review and consideration by the hearing officer.

(11) "Proposed service area" means the geographic area the applicant proposes to serve.

~~(12) "Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.~~

~~(13) "Public notice" means notice given through:~~

~~(a) Public information channels; or~~

~~(b) the cabinet's Certificate of Need Newsletter.~~

~~(13) [(14)] "Secretary" is defined by KRS 216B.015(26) [(25)].~~

~~(14) [(15)] "Show cause hearing" means a hearing during which it is determined whether a person or entity has violated provisions of KRS Chapter 216B.~~

Section 2. Filing. (1) The filing of~~all~~ documents required by this administrative regulation shall be made with the Office of Health Policy, CHR Building, 4 WE, 275 East Main Street, Frankfort, Kentucky 40621 on or before 4:30 p.m. eastern time on the due date.

(2) Filing of a document[Filing of documents], other than a

certificate of need application[applications] and a proposed hearing report[reports], may be made by facsimile transmission or email if:

(a) The document is[documents are] received by the cabinet by facsimile transmission or email on or before 4:30 p.m. eastern time on the date due; and

(b) ~~The~~[An] original document is filed with the cabinet on or before 4:30 p.m. eastern time on the next business day after the due date.

(3) The Office of Health Policy shall endorse by file stamp the date that each filing is received and the endorsement shall constitute the filing of the document.

(4) In computing any period of time prescribed by this administrative regulation, the date of notice, decision, or order shall not be included.

(5) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or legal state holiday, in which event the period shall run until 4:30 p.m. eastern time of the first business day following the Saturday, Sunday, or legal state holiday.

Section 3. Hearing. (1)(a) A hearing[Hearings] on a certificate of need application or revocation of a certificate of need[matters] shall be held by a hearing officer[officers] from the Cabinet for Health and Family Services, Division of[Health Services] Administrative Hearings[Branch].

(b) A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined in KRS 45A.340.

(c) ~~A~~[Any] party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(2) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner that shall promote the orderly and prompt conduct of the hearing.

(3) Notice of the time, date, place, and subject matter of each hearing shall be:

(a) Mailed to the applicant and each person who requested the hearing[all known affected persons providing the same or similar service in the proposed service area] not less than ten (10) days prior to the date of the hearing; and

(b) Published in the Certificate of Need Newsletter, if applicable; and

~~(c) Provided to members of the general public through public information channels.~~

(4) A public hearing shall be canceled if each person who requested the hearing withdraws the request by giving written notification to the Office of Health Policy that the hearing is no longer required. The consent of each affected person[persons] who has[have] not requested a hearing shall not be required in order for a hearing to be canceled.

(5) ~~A~~[Any] dispositive motion made by a party to the proceedings shall be filed with the hearing officer at least three (3) working days prior to the scheduled date of the hearing.

(6) The hearing officer may convene a preliminary conference.

(a) The purposes of the conference shall be to:

1. Formulate and simplify the issues;

2. Identify additional information and evidence needed for the hearing; and

3. Dispose of pending motions.

(b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.

(c) The hearing officer shall:

1. Tape record the conference; or

2. If requested by a party to the proceedings, allow a stenographer to be present at the expense of the requesting party.

(d) During the preliminary conference, the hearing officer may:

1. Instruct the parties to:

a. Formulate and submit a list of genuine contested issues to be decided at the hearing;

b. Raise and address issues that can be decided before the hearing; or

c. Formulate and submit stipulations to facts, laws, and other matters;

2. Prescribe the manner and extent of the participation of the

parties or persons who will participate;

3. Rule on any pending motions for discovery or subpoenas; or

4. Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

(7) At least five (5) days prior to the scheduled date of any nonsubstantive review hearings and at least seven (7) days prior to the scheduled date of all other certificate of need hearings, all persons wishing to participate as a party to the proceedings shall file with the cabinet an original and one (1) copy of the following for each affected application and serve copies on all other known parties to the proceedings:

(a) OHP - Form 3, Notice of Appearance, incorporated by reference in 900 KAR 6:055;

(b) OHP - Form 4, Witness List, incorporated by reference in 900 KAR 6:055; and

(c) OHP - Form 5, Exhibit List, incorporated by reference in 900 KAR 6:055 and attached exhibits.

(8)(a) If a hearing is requested on an application which has been deferred from a previous cycle and for which a hearing had previously been scheduled, parties shall:

1. File a new OHP - Form 3, Notice of Appearance; and

2. Either:

a. Incorporate previously-filed witness lists (OHP - Form 4) and exhibit lists (OHP - Form 5); or

b. File an amended OHP - Form 4 and OHP - Form 5.

(b) A new party to the hearings shall file an original OHP - Form 3, OHP - Form 4, and OHP - Form 5.

(c) Forms shall be filed in accordance with subsection (7) of this section.

(9) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. Each party[All parties] appearing at the hearing shall enter an appearance by stating the party's name and address[their names and addresses].

(10) Each party shall have the opportunity to:

(a) Present its case;

(b) Make an opening statement[statements];

(c) Call and examine witnesses;

(d) Offer documentary evidence into the record;

(e) Make a closing statement[statements]; and

(f) Cross-examine opposing witnesses on:

1. Matters covered in direct examination; and

2. At the discretion of the hearing officer, other matters relevant to the issues.

(11) A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(12) The hearing officer may:

(a) Allow testimony or other evidence on an issue[issues] not previously identified in the preliminary order which may arise during the course of the hearing, including an[any] additional petition[petitions] for intervention which may be filed;

(b) Act to exclude irrelevant, immaterial, or unduly repetitious evidence; and

(c) Question any party or witness.

(13) The hearing officer shall not be bound by the Kentucky Rules of Evidence. Relevant hearsay evidence may be allowed at the discretion of the hearing officer.

(14) The hearing officer shall have discretion to designate the order of presentation of evidence and the burden of proof as to persuasion.

(15) A witness[Witnesses] shall be examined under oath or affirmation.

(16) A witness[Witnesses] may, at the discretion of the hearing officer:

(a) Appear through deposition or in person; and

(b) Provide written testimony in accordance with the following:

1. The written testimony of a witness shall be in the form of questions and answers or a narrative statement;

2. The witness shall authenticate the document under oath; and

3. The witness shall be subject to cross-examination.

(17) The hearing officer may accept documentary evidence in

the form of copies of excerpts if:

(a) The original is not readily available;

(b) Upon request, parties are given an opportunity to compare the copy with the original; and

(c) The documents to be considered for acceptance are listed on and attached to the party's Exhibit List (OHP - Form 5)[and filed with the hearing officer and other parties at least:

1. ~~Seven (7) days before the hearing for formal review applications; or~~

2. ~~Five (5) days before the hearing for nonsubstantive review applications].~~

(18) A document shall not be incorporated into the record by reference without the permission of the hearing officer. Each[Any] referenced document shall be precisely identified.

(19) The hearing officer may take official notice of facts which are not in dispute or of generally-recognized technical or scientific facts within the agency's special knowledge.

(20) The hearing officer may permit a party to offer, or request a party to produce, additional evidence or briefs of issues as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open. The conclusion of the hearing shall occur when the additional information is timely filed or at the end of the designated time period, whichever occurs first.

(21) In a hearing on an application for a certificate of need, the hearing officer shall, upon the agreement of the applicant, continue a hearing beyond the review deadlines established by KRS 216B.062(1) and 216B.095(1).

(22) If all parties agree to waive the established decision date, the hearing officer shall render a decision within sixty (60) days of the filing of proposed findings.

(23) The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

Section 4. Show Cause Hearing. (1) The cabinet may conduct a show cause hearing on its own initiative or at the request of an affected person, to include hearings requested pursuant to Humana of Kentucky v. NKC Hospitals, Ky., 751 S.W.2d 369 (1988), in order to determine if a person has established or is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or 900 KAR Chapter 6 or is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(2) Unless initiated by the cabinet, in order for a show cause hearing to be held, a request for a show cause hearing submitted by an affected person shall be accompanied and corroborated by credible, relevant, and substantial evidence, including an affidavit or other documentation which demonstrates that there is probable cause to believe that a person:

(a) Has established, or is operating, a health facility or health service in violation of the provisions of KRS Chapter 216B or 900 KAR Chapter 6; or

(b) Is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(3) Based upon the materials accompanying the request for a show cause hearing, the cabinet shall determine if sufficient cause exists to conduct a hearing.

(4) The cabinet shall conduct a show cause hearing if a complaint investigation or licensure inspection by the Office of the Inspector General or the Kentucky Board of Emergency Medical Services reveals a possible violation of KRS Chapter 216B[based on its own investigation pursuant to an annual licensure inspection or otherwise which reveals a possible violation of the terms or conditions which are a part of a Certificate of Need approval and license].

(5) The cabinet shall also conduct a show cause hearing regarding terms and conditions which are a part of a certificate of need approval and license at the request of any person.

(6) The show cause hearing regarding the terms and conditions shall determine whether a person is operating a health facility or health service in violation of any terms or conditions

which are a part of that certificate of need approval and license.

(7) Show cause hearings shall be conducted in accordance with the provisions of Section 3 of this administrative regulation.

(8) If a show cause hearing is held, the individual or entity alleged to be in violation of KRS Chapter 216B shall have the burden of showing that the individual or entity:

(a) Has not established or is not operating a health facility or health service in violation of the provisions of KRS Chapter 216B or 900 KAR Chapter 6; or

(b) Is not subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(9) If it is alleged that an office or clinic offering services or equipment covered by the State Health Plan was established or is operating in violation of KRS 216B.020(2)(a), the hearing officer shall base his or her proposed findings of fact, conclusions of law, and proposed decision on whether the clinic or office meets the physician exemption criteria set forth in 900 KAR 6:130, Certificate of Need criteria for physician exemption.

(10) Prior to convening a show cause hearing, the cabinet shall give the person suspected or alleged to be in violation not less than twenty (20) days' notice of its intent to conduct a hearing.

(11) The notice shall advise the person of:

(a) The allegations against the person;

(b) Any facts determined to exist which support the existence of the allegation; and

(c) The statute or administrative regulation alleged to have been violated.

(12) Notice of the time, date, place, and subject matter of each hearing shall be:

(a) Mailed to all known affected persons or entities not less than ten (10) business days prior to the date of the hearing; and

(b) Published in the Certificate of Need Newsletter, if applicable.

(13) At least seven (7) days prior to a show cause hearing[all hearings] required or requested pursuant to KRS Chapter 216B, ~~[with the exception of hearings involving applications for or revocation of a Certificate of Need,]~~ all persons or entities wishing to participate as a party to the proceedings shall file an original and one (1) copy of the following with the cabinet and serve copies on all other known parties to the proceedings:

(a) OHP - Form 3, Notice of Appearance;

(b) OHP - Form 4, Witness List; and

(c) OHP - Form 5, Exhibit List and attached exhibits.

(14) Within thirty (30) days of the conclusion of the hearing, the hearing officer shall tender findings of fact and a proposed decision to the secretary.

(15) Within thirty (30) days of the receipt of the findings of fact and proposed decision from the hearing officer, the secretary shall issue a final decision on the matter.

(16) A copy of the final decision shall be mailed to the person or his legal representative with the original hearing decision filed in the administrative record maintained by the cabinet.

(17) If a violation is found to have occurred as a result of a show cause hearing conducted pursuant to subsection (1) of this section, the cabinet shall take action as provided by KRS Chapter 216B.

(18) If the person is found to have violated any of the terms or conditions of any certificate of need approval and license as a result of a show cause hearing conducted pursuant to subsection (4) of this section, the cabinet shall take the following action:

(a) If the person had not previously been found to be in violation of the terms and conditions which were made a part of the person's certificate of need approval and license, the person shall be given a period of time, not to exceed sixty (60) days after issuance of the cabinet's decision, in which to demonstrate that the violation has been corrected. At the conclusion of this period, the cabinet shall verify that the facility or service is operating in compliance with the terms or conditions of the certificate of need and license at issue.

(b) If the cabinet is unable to verify that the facility or service has corrected the violation in accordance with paragraph (a) of this subsection, or if a person who had previously been found to be in violation of the terms and conditions which were a part of the

person's certificate of need approval and license is found in a subsequent show cause hearing conducted pursuant to this section to be in violation of the terms and conditions again, the matter shall be referred to the Office of Inspector General for appropriate action.

(19) The deadlines established with respect to hearings shall be modified if agreed to by all parties and the hearing officer.

EMILY WHELAN PARENTO, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 7, 2015

FILED WITH LRC: July 8, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 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 August 14, 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 August 31, 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 establishes the guidelines for CON filings, hearing, and show cause hearing for the certificate of need program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 216B.040(2)(a)1 and (b), KRS 216B.085, KRS 216B.086, and KRS 216B.090.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the requirements necessary for CON filings, hearing and show cause hearing for the certificate of need program.

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

(a) How the amendment will change this existing administrative regulation: The regulation is being revised to allow the filing of specified documents by email. Also, the amended regulation clarifies the deadlines for filing documents with the cabinet and serving copies on all other known parties to the proceedings.

(b) The necessity of the amendment to this administrative regulation: The regulation is being revised to allow the filing of specified documents by email. Also, the amended regulation clarifies the deadlines for filing documents with the cabinet and serving copies on all other known parties to the proceedings.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is necessary to comply with the content of the authorizing statutes KRS 216B.040(2)(a)1 and (b), KRS 216B.085, KRS 216B.086, and KRS 216B.090.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will provide instructions related to CON filings, hearing and show cause hearing for the orderly administration of the certificate of need program.



(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects an entity wishing to file a certificate of need application. Annually, approximately 115 certificate of need applications are filed.

(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: Certificate of need applicants and affected parties requesting hearings shall be required to meet the requirements of this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional 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 are benefited as information related to CON filing, hearing and show cause hearing is clarified.

(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? Health care facilities owned by the state, county, or city which submit may be 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 216B.040(2)(a)1 and (b), KRS 216B.085, KRS 216B.086, and KRS 216B.090.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation

#### CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Amendment)

#### 902 KAR 20:420. Pain management facilities.

RELATES TO: KRS 216B.010-216B.131, 216B.990, 218A.175

STATUTORY AUTHORITY: KRS 216B.042, 216B.105, 218A.175

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. KRS 216B.105 allows the cabinet to deny, revoke, modify, or suspend a license issued by the cabinet if it finds that there has been a substantial failure to comply with the provisions of KRS Chapter 216B or this administrative regulation. KRS 218A.175 imposes a physician-ownership or investment requirement on all pain management facilities except for those health facilities operating as a pain management facility on April 24, 2012, unless there is an administrative sanction or criminal conviction relating to controlled substances imposed on the facility or any person employed by the facility for an act or omission done within the scope of the facility's license or the person's employment. This administrative regulation establishes the minimum licensure requirements for the operation of a pain management facility that is exempt from the physician-ownership requirement of KRS 218A.175.

Section 1. Definitions. (1) "Adverse action" means action taken by the Cabinet for Health and Family Services, Office of Inspector General to deny, suspend, or revoke a pain management facility's license to operate.

(2) "License" means an authorization issued by the cabinet for the purpose of operating a pain management facility.

(3) "Licensee" means the owner, individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the pain management facility, including a satellite facility, is vested.

(4) "National and State Background Check Program" means an initiative implemented by the cabinet pursuant to 906 KAR 1:190, with available appropriations and funding, for the performance of:

(a) Registry checks; and

(b) Fingerprint-supported criminal background checks performed by the Department of Kentucky State Police and the Federal Bureau of Investigation.

(5) "Pain management facility" or "facility" is defined by KRS 218A.175(1), and includes a satellite facility.

(6) "Satellite facility" means a facility permitted by KRS 218A.175(2)(b) to open and operate under the license of a pain management facility that:

(a) Is licensed under this administrative regulation pursuant to the physician-ownership exemption of KRS 218A.175(2)(a); and

(b) Does not have a pending adverse action.

(7) "Unencumbered license" means a license that has not been restricted by the state professional licensing board due to an administrative sanction or criminal conviction relating to a controlled substance.

Section 2. Satellite Facilities. A satellite facility shall comply with the requirements established by this administrative regulation for parent pain management facilities, including background checks, administration, staffing, equipment, and physical

environment.

Section 3. Ownership. (1) A facility licensed pursuant to this administrative regulation shall be immediately disqualified from the physician-ownership exemption of KRS 218A.175, and the cabinet shall revoke the facility's license pursuant to Section 11[40](3) of this administrative regulation if:

(a) An administrative sanction or criminal conviction relating to a controlled substance is imposed on the facility, including a satellite facility, or any person contracted or employed by the facility or satellite facility for an act or omission done within the scope of the facility's licensure or the person's employment; or

(b) A change of ownership occurs, except for a transfer of whole or partial ownership as permitted by KRS 218A.175(2)(b).

(2)(a) A change of ownership shall be deemed to occur if any ownership interest, or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another for an existing facility licensed pursuant to this administrative regulation.

(b) The pain management facility's license shall not be transferred to a new owner, except for a transfer of whole or partial ownership interest in the facility as permitted by KRS 218A.175(2)(b).

Section 4.[3.] Background Checks and Prohibition Against Employment. (1)(a) All owners, operators, and employees, including contract employees of a pain management facility, shall submit to a fingerprint-supported national and state criminal background check.

(b) A facility may use Kentucky's National and State Background Check Program established by 906 KAR 1:190 to satisfy the criminal background check requirement of paragraph (a) of this subsection[an in-state criminal background check from the Justice and Public Safety Cabinet or Administrative Office of the Courts until each individual is phased into the cabinet's National and State Background Check Program].

(2) A facility shall not be licensed if owned in part by, contracts with, or employs a physician or prescribing practitioner:

(a) Whose Drug Enforcement Administration number has ever been revoked;

(b) Whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by any jurisdiction;

(c) Who has had any disciplinary limitation placed on his or her license by:

1. The Kentucky Board of Medical Licensure;
2. The Kentucky Board of Nursing;
3. The Kentucky Board of Dentistry;
4. The Kentucky Board of Optometric Examiners;
5. The State Board of Podiatry;
6. Any other board that licenses or regulates a person who is entitled to prescribe or dispense controlled substances to humans; or

7. A licensing board of another state if the disciplinary action resulted from illegal or improper prescribing or dispensing of controlled substances; or

(d) Who has been convicted of or pleaded guilty or nolo contendere to, regardless of adjudication, an offense that constitutes a felony for receipt of illicit and diverted drugs, including a controlled substance listed as Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V in this state or the United States.

(3) In addition to physicians and prescribing practitioners, a facility shall not employ any individual directly, or by contract, who has been convicted of or pleaded guilty or nolo contendere to, regardless of adjudication, a drug-related offense as described in subsection (2)(d) of this section.

Section 5.[4.] Licensure Application, Fee, and Renewal. (1) A licensee which elects to open and operate no more than two (2) additional satellite facilities[An applicant for an initial license as a pain management facility] shall:

(a)[.] As a condition precedent to adding a satellite facility to the parent pain management facility's license, ensure that the

satellite facility is[licensure, be] in compliance with this administrative regulation and KRS 218A.175, which may be determined through an on-site inspection of the satellite facility; and

(b) Submit a completed Application for License to Operate a Pain Management Facility prior to opening the satellite facility accompanied by a fee of \$2,000 per each satellite facility.

~~(2)[To qualify for licensure under this administrative regulation, a completed Application for License to Operate a Pain Management Facility shall be:~~

~~(a) Submitted to and received by the cabinet no later than close of business, July 20, 2012; and~~

~~(b) Submitted to the cabinet annually thereafter.~~

~~(3) The initial fee for licensure and annual fee for re-licensure as a pain management facility shall be \$2,000, per facility.~~

~~(4) A license shall:~~

~~(a) Expire one (1) year from the date of issuance; and~~

~~(b) Be renewed if the licensee:~~

~~1. Submits a completed Application for License to Operate a Pain Management Facility accompanied by an annual re-licensure fee of [the] \$2,000, plus a fee of \$2,000 per satellite facility[annual re-licensure fee]; and~~

~~2. Has no pending adverse action.~~

~~(3)[(5)] A pain management facility that does not have a pending adverse action but has failed to renew its license on or before the expiration date shall cease operating the facility unless:~~

~~(a) The items required under subsection (2)[(4)](b) of this section have been submitted; and~~

~~(b) The Office of Inspector General has provided the facility with a notice granting temporary authority to operate pending completion of the renewal process.~~

Section 6.[5.] Facility Patients. To determine if the majority of patients of the practitioners at the facility are provided treatment for pain that includes the use of controlled substances, the Office of Inspector General:

(1) Shall have access to the facility pursuant to KRS 216B.042, including the facility's patient records;

(2) Shall calculate the majority of patients based upon the number of unduplicated patients treated in a one (1) month time period; and

(3) May use data from the Kentucky All Schedule Prescription Electronic Reporting (KASPER) Program to determine if the majority of the patients of the facility's practitioners are prescribed controlled substances.

Section 7.[6.] Administration Requirements for Parent and Satellite Pain Management Facilities. (1) A[pain management] facility shall be located in a fixed site.

(2) Each [pain management] facility shall:

(a) Be licensed separately regardless of whether the facility is operated under the same business name or management as another facility; and

(b) post the license conspicuously in a public area of the facility.

(3) Licensee.

(a) The licensee shall be legally responsible for:

1. All activities within the [pain management] facility, including the actions of the physicians and prescribing practitioners; and

2. Compliance with federal, state, and local laws and regulations pertaining to the operation of the facility, including the Drug Abuse Prevention and Control Act (21 U.S.C. 801 et. seq.) and KRS Chapter 218A.

(b) The licensee shall establish lines of authority and designate an administrator who:

1. May serve in a dual role as the facility's medical director; and

2. Shall be principally responsible for the daily operation of the facility.

(4) Policies. The facility shall establish and follow written administrative policies covering all aspects of operation, including:

(a) A description of organizational structure, staffing, and allocation of responsibility and accountability;

(b) A description of linkages with inpatient facilities and other providers;

(c) Policies and procedures for the guidance and control of personnel performances;

(d) A written program narrative describing in detail each service offered, methods and protocols for service delivery, qualifications of personnel involved in the delivery of the services, and goals of each service;

(e) A description of the administrative and patient care records and reports;

(f) Procedures to be followed if the facility performs any functions related to the storage, handling, and administration of drugs and biologicals; and

(g) Procedures for compliance with KRS 218A.175(4).

(5) Referral. If an individual seeks or is in need of care and treatment beyond the scope of services offered by the [pain management] facility, the facility:

(a) Shall immediately advise the individual that he or she should seek services elsewhere; and

(b) May make a referral on behalf of the individual.

(6) Personnel.

(a) Prescribers. Each prescriber employed or contracted by a [pain management] facility shall be board certified and have a full, active, and unencumbered license to practice in the commonwealth issued under KRS Chapter 311 or 314.

(b) Medical director.

1. The facility's medical director shall:

a. Be responsible for complying with all requirements related to the licensure and operation of the facility;

b. Be physically present practicing medicine in the facility for at least fifty (50) percent of the time that patients are present in the facility; and

c. Be board certified and have a full, active, and unencumbered license to practice medicine in the commonwealth issued under KRS Chapter 311; and

d. Not be permitted to serve in a dual role as the medical director of both the parent facility and a satellite facility.

(c) Medical director's qualifications. The facility's medical director shall [1.] meet one (1) of the requirements established in KRS 218A.175(3)(a) through (e); or

2. Be an owner of or practice in the specific facility applying for licensure as a pain management facility and who:

a. ~~Has completed an accredited residency which included a component in the practice of pain management;~~

b. ~~Is eligible for and has provided the Kentucky Board of Medical Licensure and the Office of Inspector General with written verification that the facility's medical director has registered to complete the certification examination offered by the American Board of Pain Medicine or the American Board of Interventional Pain Physicians in April 2013; and~~

c. ~~Becomes certified by the American Board of Pain Medicine or by the American Board of Interventional Pain Physicians by September 1, 2013. If the physician fails the certification examination or fails to become certified by the American Board of Pain Medicine or the American Board of Interventional Pain Physicians by September 1, 2013, the physician shall meet one (1) of the requirements established in KRS 218A.175(3) to continue to be qualified as the facility's medical director.~~

(d) Within ten (10) calendar [10] days after termination of the medical director, the facility shall notify the cabinet of the identity of the individual designated as medical director, including the identity of any interim medical director until a permanent director is secured for the facility.

(e) The facility's medical director shall sign and submit the Pain Management Facility Data Reporting Form to the cabinet within thirty (30) calendar days of the quarter ending March 31, June 30, September 30, and December 31 of each year. The medical director shall document the following on the Pain Management Facility Data Reporting Form:

1. The number of new and repeat patients seen and treated at the facility who are prescribed controlled substance medications for the treatment of chronic, nonmalignant pain;

2. The number of patients discharged due to drug abuse;

3. The number of patients discharged due to drug diversion; and

4. The number of patients treated at the facility whose domicile is located somewhere other than in Kentucky. A patient's domicile shall be the patient's fixed or permanent home to which he or she intends to return even though he or she may temporarily reside elsewhere.

(f) The medical director shall, within ten (10) days after the facility hires a prescriber of controlled substances or ten (10) days after termination of a prescriber of controlled substances, notify the cabinet in writing and report the name of the prescriber.

(7) Staffing. At least one (1) physician and one (1) practical nurse, licensed practical nurse, or registered nurse shall be on duty in the facility during all hours the facility is operational.

(8) Job descriptions. There shall be a written job description for each position which shall be reviewed and revised as necessary.

(9) Personnel records. Current personnel records shall be maintained for each employee and include the following:

(a) Name, address, and social security number;

(b) Evidence of current certification or licensure of personnel;

(c) Records of training and experience;

(d) Records of each performance evaluation; and

(e) Annual verification of certification or licensure.

(10) In-service training.

(a) All personnel shall participate in orientation and annual in-service training programs relating to their respective job activities.

(b) All licensed prescribers in a [pain management] facility shall comply with the professional standards established by their respective licensing boards for the completion of continuing professional education. Each licensed physician who prescribes or dispenses a controlled substance to a patient in the facility as part of his or her employment agreement with the facility shall successfully complete a minimum of ten (10) hours of Category I continuing medical education in pain management during each registration period throughout his or her employment agreement with the facility.

(11) Quality assurance program.

(a) Each [pain management] facility shall have an ongoing quality assurance program that:

1. Monitors and evaluates the quality and appropriateness of patient care;

2. Evaluates methods to improve patient care;

3. Identifies and corrects deficiencies within the facility;

4. Alerts the designated physician or prescribing practitioner to identify and resolve recurring problems; and

5. Provides for opportunities to improve the facility's performance and to enhance and improve the quality of care provided to the public.

(b) The medical director shall establish a quality assurance program that includes the following components:

1. The identification, investigation, and analysis of the frequency and causes of adverse incidents to patients;

2. The identification of trends or patterns of incidents;

3. The development and implementation of measures to correct, reduce, minimize, or eliminate the risk of adverse incidents to patients; and

4. The documentation of these functions and periodic review no less than quarterly of this information by the designated physician or prescribing practitioner.

(12) Medical records. Each [pain management] facility shall maintain accurate, readily accessible, and complete medical records that conform to the professional standards established by the respective licensing board for prescribers of controlled substances in the facility.

(13) Professional standards for prescribing and dispensing controlled substances.

(a) Each licensed prescriber in a [pain management] facility shall comply with the professional standards relating to the prescribing and dispensing of controlled substances established by the respective professional licensing board.

(b) A representative from the Office of Inspector General shall review facility records, including the facility's patient records, to verify facility compliance with administrative regulations

promulgated by professional licensing boards pursuant to KRS 218A.205 which establish standards for licensees authorized to prescribe or dispense controlled substances.

(14) Kentucky Health Information Exchange (KHIE). Each facility shall participate in KHIE pursuant to the requirements of 900 KAR 9:010.

Section 8.[7.] Equipment. Equipment used for direct patient care by a ~~pain management~~ facility shall comply with the requirements established in this section.

(1) The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative and properly calibrated.

(2) All personnel engaged in the operation of diagnostic equipment shall have adequate training and be currently licensed, registered, or certified in accordance with applicable state statutes and administrative regulations.

(3) A written plan shall be developed and maintained to provide for training of personnel in the safe and proper usage of the equipment.

Section 9.[8-] Physical Environment. (1) Accessibility. The facility shall meet requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

(2) Fire safety. A new~~An initial~~ license to operate a ~~satellite~~~~pain management~~ facility or a new license to operate a facility upon approval of a change of location shall not be issued before the facility obtains approval from the State Fire Marshal's office for the satellite facility or new location.

(3) Physical location and overall environment.

(a) The facility shall:

1. Comply with building codes, ordinances, and administrative regulations which are enforced by city, county, or state jurisdictions;

2. Display a sign that can be viewed by the public that contains the facility name, hours of operation, and a street address;

3. Have a publicly listed telephone number and a dedicated phone number to send and receive faxes with a fax machine that shall be operational twenty-four (24) hours per day;

4. Have a reception and waiting area;

5. Provide a restroom;

6. Have an administrative area, including room for storage of medical records, supplies, and equipment;

7. Have private patient examination rooms;

8. Have treatment rooms, if treatment is being provided to the patients; and

9. Display a printed sign located in a conspicuous place in the waiting room viewable by the public with the name and contact information of the facility's medical director and the names of all physicians and prescribers practicing in the facility.

(b) The condition of the physical location and the overall environment shall be maintained in such a manner that the safety and well-being of patients, personnel, and visitors are assured.

(4) Housekeeping and maintenance services.

(a) The facility shall maintain a clean and safe facility free of unpleasant odors.

(b) Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans, and other sources.

(c)1. The facility shall provide a hand washing facility in each exam room with:

a. Hot and cold water and blade type operating handles;

b. Knee or foot controls; or

c. Motion activated technology.

2. A soap dispenser, disposable towels or electronic hand dryers, and a waste receptacle shall be provided at each hand washing sink.

(d) The premises shall be well kept and in good repair. Requirements shall include:

1. The facility shall ensure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches,

ramps, and fences are in good repair;

2. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing, and electrical fixtures shall be in good repair. Windows and doors which can be opened for ventilation shall be screened;

3. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly; and

4. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(5) The facility shall develop written infection control policies that are consistent with Centers for Disease Control guidelines and include:

(a) Prevention of disease transmission to and from patients, visitors, and employees, including:

1. Universal blood and body fluid precautions;

2. Precautions against airborne transmittal of infections;

3. Work restrictions for employees with infectious diseases; and

4. Cleaning, disinfection, and sterilization methods used for equipment and the environment.

(b) The facility shall provide in-service education programs annually on the cause, effect, transmission, prevention, and elimination of infections.

(6) Hazardous cleaning solutions, compounds, and substances shall be:

(a) Labeled;

(b) Stored in closed metal containers;

(c) Kept separate from other cleaning materials; and

(d) Kept in a locked storage area apart from the exam room.

(7) The facility shall be kept free from insects and rodents, and their nesting places.

(8) Garbage and trash:

(a) Shall be removed from the premises regularly; and

(b) Containers shall be cleaned daily.

(9) A facility shall establish and maintain a written policy for the handling and disposal of wastes, including any infectious, pathological, or contaminated wastes, which shall include the requirements established in this subsection.

(a) Sharp wastes shall be segregated from other wastes and placed in puncture-resistant containers immediately after use.

(b) A needle or other contaminated sharp shall not be recapped, purposely bent, broken, or otherwise manipulated by hand as a means of disposal, except as permitted by the Centers for Disease Control and the Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).

(c) A sharp waste container shall be incinerated on or off-site or rendered nonhazardous.

(d) Any nondisposable sharps shall be placed in a hard walled container for transport to a processing area for decontamination.

(10)(a) Disposable waste shall be:

1. Placed in a suitable bag or closed container so as to prevent leakage or spillage; and

2. Handled, stored, and disposed of in such a way as to minimize direct exposure of personnel or patients to waste materials.

(b) The facility shall establish specific written policies regarding handling and disposal of waste material.

Section 10.[9-] Inspections. (1) The cabinet shall conduct unannounced inspections of the pain management facility no less than annually, including a review of the patient records, to ensure that the facility complies with the provisions of this administrative regulation and KRS 218A.175.

(2) A representative from the Office of Inspector General shall have access to the facility and the facility's records pursuant to KRS 216B.042.

(3) Violations.

(a) The Office of Inspector General shall notify the pain management facility in writing of a regulatory violation identified

during an inspection.

(b) The facility shall submit to the Office of Inspector General, within ten (10) days of the notice, a written plan for the correction of the regulatory violation.

1. The plan shall be signed by the facility's administrator, the licensee, or the medical director and shall specify:

- a. The date by which the violation shall be corrected;
- b. The specific measures utilized to correct the violation; and
- c. The specific measures utilized to ensure the violation will not recur.

2. The Office of Inspector General shall review the plan and notify the facility of the decision to:

- a. Accept the plan;
- b. Not accept the plan; or
- c. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2).

3. The notice specified in subparagraph 2.b. of this paragraph shall:

- a. State the specific reasons the plan is unacceptable; and
- b. Require an amended plan of correction within ten (10) days of receipt of the notice.

4. The Office of Inspector General shall review the amended plan of correction and notify the facility in writing of the decision to:

- a. Accept the plan;
- b. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2); or
- c. Require the facility to submit an acceptable plan of correction.

5. A facility that fails to submit an acceptable amended plan of correction shall be notified that the license shall be denied, suspended, or revoked in accordance with KRS 216B.105(2).

(4) Complaints. An unannounced inspection shall be conducted:

- (a) In response to a credible, relevant complaint or allegation; and
- (b) According to procedures established in this section.

Section 11.140. Denial and Revocation. (1) The cabinet shall deny an Application for License to Operate a Pain Management Facility at the time of annual renewal or the addition of a satellite facility if:

~~(a) The initial application is received by the cabinet after close of business on July 20, 2012;~~

~~(b) The facility fails to comply with Section 4[3](2) through (3), or 7[6](6) of this administrative regulation;~~

~~(b)[(e)] Any person with ownership interest in the facility has had previous ownership interest in a health care facility which had its license revoked or voluntarily relinquished its license as the result of an investigation or pending disciplinary action;~~

~~(c)[(d)] An administrative sanction or criminal conviction relating to controlled substances has been imposed on the facility or any person employed by the facility for an act or omission done within the scope of the facility's license or the person's employment; or~~

~~(d)[(e)] The facility fails[after the initial inspection] to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by Section 10[9](3) of this administrative regulation.~~

(2) If during ~~the initial~~ inspection of the pain management facility the cabinet has probable cause to believe that a physician or other prescriber practicing at the facility may be engaged in the improper, inappropriate, or illegal prescribing or dispensing of a controlled substance, the cabinet shall:

(a) Refer the physician or other prescriber practicing at the pain management facility to the appropriate professional licensing board and appropriate law enforcement agency; and

(b) ~~Suspend a facility's~~ Withhold issuing a license ~~to the facility~~ pending resolution of any investigation into the matter by a licensing board or law enforcement agency, and resolution of the appeals process if applicable.

(3) The cabinet shall revoke a license if it finds that:

(a) In accordance with KRS 216B.105(2), there has been a substantial failure by the facility, or its satellite facility, to comply

with the provisions of this administrative regulation;

(b) An administrative sanction or criminal conviction relating to controlled substances is imposed on the facility or any person employed by the facility for an act or omission done within the scope of the facility's license or the person's employment;

(c) A change of ownership has occurred, except for a transfer of whole or partial ownership as permitted by KRS 218A.175(2)(b);

(d) The facility fails to accept private health insurance as one (1) of the facility's allowable forms of payment for goods or services provided, or the facility fails to accept payment for services rendered or goods provided only from the patient or the patient's insurer, guarantor, spouse, parent, guardian, or legal custodian;

(e) The facility fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by Section 10(3)[9(3)] of this administrative regulation; or

(f) The facility fails to comply with Section 4[3](2) through (3), 7[6](6)(a), (b), or (c), or 7[6](7) of this administrative regulation.

(4) The denial or revocation of a facility's license shall be mailed to the applicant or licensee, by certified mail, return receipt requested, or by personal service. Notice of the denial or revocation shall set forth the particular reasons for the action.

(5) The denial or revocation shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee, within the thirty (30) day period, files a request in writing for a hearing with the cabinet.

(6) Emergency action to suspend a license.

(a) The cabinet shall take emergency action to suspend a pain management facility's license if the cabinet has probable cause to believe that:

1. The continued operation of the facility would constitute a danger to the health, welfare, or safety of the facility's patients or of the general public; or

2. A physician or other prescriber practicing at the facility may be engaged in the improper, inappropriate, or illegal prescribing or dispensing of a controlled substance.

(b)1. The pain management facility shall cease operating immediately on the date the facility is served with the notice of emergency suspension.

2. Notice of the emergency suspension shall set forth the particular reasons for the action.

(c) If the cabinet issues an emergency suspension of the facility's license pursuant to paragraph (a)2 of this subsection, the cabinet shall refer the physician or other prescriber practicing at the pain management facility to the appropriate professional licensing board and appropriate law enforcement agency.

(7) Notice of an emergency suspension shall be served on the facility by certified mail, return receipt requested, or by personal service.

(8)(a) Any facility required to comply with an emergency suspension issued under subsection (6) of this section may submit a written request for an emergency hearing within five (5) calendar days of receipt of the notice to determine the propriety of the suspension.

(b) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing.

(c) Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the emergency suspension.

(d) The emergency suspension shall be affirmed if there is substantial evidence of an immediate danger to the public health, safety, or welfare.

(9) The decision rendered under subsection (8) of this section shall be a final order of the agency on the matter, and any party aggrieved by the decision may appeal to circuit court.

(10) If the cabinet issues an emergency suspension, the cabinet shall take action to revoke the facility's license pursuant to subsection (3) of this section if:

(a) The facility fails to submit a written request for an emergency hearing within five (5) calendar days of receipt of notice of the emergency suspension;

(b) The decision rendered under subsection (8) of this section

affirms that there is substantial evidence of an immediate danger to the public health, safety, or welfare; or

(c) Referral to a professional licensing board and law enforcement agency in accordance with subsection (6)(c) of this section results in an administrative sanction or criminal conviction relating to controlled substances against a physician or prescribing practitioner employed by, or under contract with, the facility.

(11) Pursuant to KRS 216B.050, the cabinet may compel obedience to its lawful orders.

Section 12.[14-] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) OIG 20:240, "Application for License to Operate a Pain Management Facility", July 2015[June 2012] edition; and

(b) OIG 20:240-1, "Pain Management Facility Data Reporting Form", June 2012 edition.

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

MARYELLEN B. MYNEAR, Inspector General

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: June 25, 2015 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2015, at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 August 31, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for the licensure of pain management facilities that are exempt from the physician ownership or investment requirements of KRS 218A.175.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the licensure requirements for the operation of pain management facilities that are exempt from the physician ownership or investment requirements of KRS 218A.175.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities. This administrative regulation also conforms to KRS 218A.175, which provides for an exemption from the physician ownership or investment requirement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by setting forth the cabinet's licensure requirements for pain management facilities.

(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: In accordance with the passage of HB 329 from the 2015 Session of the General Assembly, this amendment will permit no more than two (2) satellite facilities to open and operate under the license of a pain management facility that is licensed in good standing under this administrative regulation, as well as allow for a transfer of ownership between existing practitioner owners or to a new owner if the new owner is a physician having a full and active license to practice in Kentucky. This amendment also requires all satellite facilities to comply with the requirements established by this administrative regulation for parent pain management facilities, including background checks, administration, staffing, equipment, and physical environment. This amendment further requires all pain management facility employees to submit to a fingerprint-supported national and state criminal background check; establishes a fee of \$2,000 for each satellite facility; removes obsolete language which had previously allowed a facility's medical director to become certified by the American Board of Pain Medicine or American Board of Interventional Pain Physicians by September 1, 2013; and requires all pain management facilities, including satellites, to participate in the Kentucky Health Information Exchange pursuant to the requirements of 900 KAR 9:010.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure consistency with the passage of HB 329 from the 2015 Session of the General Assembly.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 218A.175(2)(b).

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by updating this administrative regulation for consistency with the passage of HB 329, thereby allowing for the operation of no more than two (2) satellite facilities by a pain management facility that is licensed in good standing under this administrative regulation, as well as permitting a transfer of ownership to occur between existing practitioner owners or to a new owner if the new owner is a physician having a full and active license to practice in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation affects the five (5) pain management facilities licensed under 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: Pain management facilities exempt from the physician-ownership requirement of KRS 218A.175 are required to comply with the licensure standards established in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The initial and annual fee for licensure as a pain management facility is \$2000. In addition, the fee for operating a satellite facility is \$2000 per satellite.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An entity that is exempt from the physician-ownership requirement of KRS 218A.175(2)(a) and which demonstrates compliance with this administrative regulation may continue operating as a pain management facility.

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

(a) Initially: The cost of implementing this administrative regulation is absorbable because the licensure fee covers the cost of regulating pain management facilities, including initial and annual surveys conducted by at least one (1) nurse consultant

inspector and one (1) pharmacist consultant, investigation of complaints, processing applications, supervisory review, travel costs, and other indirect costs.

(b) On a continuing basis: The cost of implementing this administrative regulation is absorbable as the licensure fee covers the cost of regulating pain management facilities on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation is from licensure fees collected from licensed pain management facilities and state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees. However, a fee of \$2000 is established per each satellite facility added to the pain management facility's license, not to exceed two satellites.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: See response to question 7.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities 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 relates to the licensure of pain management facilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042 and KRS 218A.175

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The cabinet collects an annual licensure fee of \$2000 from the five (5) pain management facilities licensed under 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? The cabinet collects an annual licensure fee of \$2000 from the five (5) pain management facilities licensed under this administrative regulation.

(c) How much will it cost to administer this program for the first year? The cost of implementing this administrative regulation is absorbable.

(d) How much will it cost to administer this program for subsequent years? The cost of implementing this administrative regulation is absorbable.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Behavioral Health, Developmental and Intellectual Disabilities Division of Administration and Financial Management (Amendment)

#### 908 KAR 3:050. Per diem rates.

RELATES TO: KRS 210.710, 210.720, 210.730

STATUTORY AUTHORITY: KRS 194A.050 (1), 210.720(2), 210.750

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.720(2) requires the secretary of the Cabinet for Health and Family Services to establish the patient cost per day for board, maintenance, and treatment for state owned facilities at frequent intervals which shall be the uniform charge for persons receiving those services. KRS 210.750 authorizes the secretary to promulgate administrative regulations to implement KRS 210.710 to 210.760, the Patient Liability Act of 1978. This administrative regulation establishes the patient cost per day for board, maintenance, and treatment at state owned facilities.

Section 1. Facility Rates. (1) Facilities owned by the state shall charge a per diem rate for room and board and a separate charge for each treatment service listed in subsection (3) of this section that is provided.

(2) The per diem rate for room and board for each facility shall be as follows:

Facility	Rate
Central State Hospital	\$1,080[1,025]
Bingham Gardens	\$1,535[1,500]
Western State Hospital	\$740
Western State Nursing Facility	\$335[385]
Outwood ICF/MR	\$890[775]
Oakwood-[Community Center]	Unit 1 \$1,180[1,225]
	Unit 2 \$1,180[1,115]
	Unit 3 \$1,180[1,110]
	Unit 4 \$1,180[1,115]
Hazelwood Center	\$1,045[1,015]
Glasgow State Nursing Facility	\$440[355]
Del Maria	\$895[625]
Meadows	\$880[750]
Windsong	\$965[680]
Eastern State Hospital	\$845[625]
Eastern State Nursing Facility	\$660

(3) A separate charge shall be imposed if the following treatment services are provided at a Department for Behavioral Health, Developmental and Intellectual Disabilities facility listed in subsection (2) of this section:

- (a) Physician's services;
- (b) EEG;
- (c) EKG;
- (d) Occupational therapy;
- (e) Physical therapy;
- (f) X-ray;
- (g) Laboratory;
- (h) Speech therapy;
- (i) Hearing therapy;
- (j) Psychology;
- (k) Pharmacy;
- (l) Respiratory therapy;
- (m) Anesthesia;
- (n) Electroshock therapy;
- (o) Physician assistant;[and]
- (p) Advanced practice registered nurse; and
- (q) Outpatient clinic services.

Section 2. Board, Maintenance, and Treatment Charges. The cost per day for board, maintenance, and treatment charges shall be established using the last available cost report adjusted for

inflation. Current rates shall be posted at each facility.

MARY REINLE BEGLEY, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 7, 2015

FILED WITH LRC: July 9, 2015 at 4 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on August 21, 2015, at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 through August 31, 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, Ky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tanya Dickinson or Stephanie Craycraft

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the patient cost per day for board, maintenance, and treatment for a facility owned by the state which shall be the uniform charge for persons receiving those services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to comply with the provisions of KRS 210.720(2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 210.720(2) requires the cabinet to establish, at frequent intervals, the patient cost per day for board, maintenance and treatment for a facility owned by the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the patient cost per day for board, maintenance and treatment for a facility owned by the state as required by KRS 210.720(2). The per diem rates are determined by applying a formula that has been in use since the 1980s. This formula calculates per diem rates by dividing actual costs for a state owned facility (using cost reports from a previous fiscal year) by the total number of patient days.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is being amended to establish the revised patient cost per day for facilities owned by the state as required by KRS 210.270(2).

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to assure that the cabinet complies with KRS 210.720(2) by establishing the patient cost per day for board, maintenance, and treatment for each facility owned by the state.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 210.720(2) requires the cabinet to establish the patient cost per day for board, maintenance and treatment for a facility owned by the state at a frequent interval.

(d) How the amendment will assist in the effective administration of the statutes: KRS 210.720(1) requires that every patient admitted to a facility owned by the state, except for prisoners transferred in accordance with KRS 202A.201, shall be charged for board, maintenance, and treatment. This

administrative regulation establishes a rate for room, board, and treatment which is based on a formula in use for over twenty (20) years that calculates per diem rates by dividing actual cost for a state owned facility (using cost reports from the previous fiscal year) by the total number of patient days.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are thirteen (13) state owned facilities affected by this administrative regulation. In addition, this amendment will affect only a small number of patients (approximately ten (10) on any given day out of an average daily statewide census in excess of 1,000) admitted to these facilities who have the financial resources to be 100 percent self-pay and are uninsured. Medicare pays at the reimbursement rates it establishes under CMS requirements, not the per diem rates found in this regulation. Private insurers and MCOs will pay a negotiated rate to state owned facilities – just as they do with other health care providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each facility will be required to change the charge rates in their billing systems.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any cost for a state owned facility to comply with this administrative regulation. For those few patients who are uninsured and have the resources to be 100 percent self-pay, the per diem rate will increase in some state owned facilities. Thus, they would pay more for services. In other state owned facilities, the per diem rate will decrease resulting in a lower cost for patients who are 100 percent self-pay and uninsured.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This change will ensure that the facilities are reimbursed for services and treatments rendered to self-pay patients.

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

(a) Initially: There will be no additional cost to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Residential services are funded primarily with restricted agency funds generated from patient charges.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This administrative regulation adjusts the charge rates as required by statute. Because only a small number of patients (those who have the resources to be 100 percent self-pay and who are uninsured) will be required to pay the revised rates, it is anticipated that the revenue increase would be approximately insignificant. Medicare, Medicaid and private insurance payors do not base their reimbursement on this billed amount, but on Medicare and Medicaid reimbursement requirements. And private insurers and MCOs are based on negotiated rates.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation establishes, as required by law, charges for room, board, and treatment at state owned facilities. At some state owned facilities, the per diem rate will increase; at other facilities, the per diem rate will decrease. Per diem rates are set utilizing the facilities' most recently completed cost reports.

(9) Tiering: Is tiering applied? Tiering is not appropriate in this administrative regulation because all facility rates are set based on actual cost.



FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the thirteen (13) state owned facilities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 210.720 (2)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate a minimal amount of additional revenue for the Department for Behavioral Health, Developmental and Intellectual Disabilities – approximately \$14,000 in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate a minimal amount of additional revenue for the Department for Behavioral Health, Developmental and Intellectual Disabilities – approximately \$14,000 in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost associated administering this regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost associated with administering this administrative regulation in subsequent years.

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

Revenues (+/-): This administrative regulation does not generate any revenue.

Expenditures (+/-): This administrative regulation sets per diem rate for facilities owned by the state.

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Department for Behavioral Health, Developmental and Intellectual Disabilities**

**Division of Administration and Financial Management  
(Amendment)**

**908 KAR 3:060. "Means test" for determining patient liability.**

RELATES TO: KRS Chapter 13B, 210.710, 210.720, and 210.730

STATUTORY AUTHORITY: KRS 194A.050, 210.710(4), 210.720(3), 210.750

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 210.750 authorizes the secretary to promulgate administrative regulations to carry out the provisions of KRS 210.710 to 210.760. KRS 210.710(4) and 210.720(3) require the secretary to adopt a "Means test" for determining the ability to pay of the patient or person responsible for the patient for board, maintenance, and treatment at a facility owned by the state. This administrative regulation establishes the "Means test" for making that determination.

Section 1. Definitions. (1) "Allowed deduction" means an amount disregarded or deducted from income and assets for the purpose of determining the ability to pay for services rendered by a facility.

(2) "Available assets" means resources of the patient or person responsible for the patient in accordance with KRS 210.720(3), less the allowed deductions~~[applicable protections specified in Section 2(7) of this administrative regulation]~~.

(3) "Deductible" means an amount that a patient or person responsible for the patient is expected to pay toward the patient's care by a third-party payor such as Medicare or a private insurance company.

(4) "Facility" is defined in KRS 210.710(2).

(5) "Income" means funds received by the patient or person responsible for the patient and includes the following:

- (a) Salaries;
- (b) Wages;
- (c) Self-employed gross revenues, less operating expenses;
- (d) Benefit payments, except for Supplemental Security

Income payments;

(e) Social Security payments;

(f) Rents;

(g) Royalties;

(h) Pensions;

(i) Retirement payments;

(j) Veteran's Administration payments;

(k) Black lung benefits;

(l) Railroad retirement benefits;

(m) Gifts;

(n) Settlements;

(o) Trust receipts;

(p) Alimony, but does not include child support payments;

(q) Interest income; and

(r) Income from investments.

(6) "Patient" means a person admitted to a facility.

(7) "Person responsible for the patient" is defined in KRS 210.710(5).

(8) "Personal Needs Allowance" means an amount of resources deducted from income for the patient's personal needs, including clothing and other miscellaneous items required by the patient.

(9) "Poverty Guidelines" means the~~[latest]~~ federal poverty ~~[measurement]~~ guidelines updated periodically in the Federal Register~~[issued]~~ by the United States Department of Health and Human Services~~[and published annually in the Federal Register]~~, under the authority of 42 U.S.C. 9902(2).

Section 2. Determination of the Ability to Pay for Services Rendered at Facilities. (1) The facility shall apply the means test to each patient who is admitted to the facility for treatment.

(2)(a) The means test shall include a determination of the responsible party or parties to pay for the patient's care, which shall be documented using the Patient or Responsible Party Financial Record form.

(b) This form shall be explained to the patient or person responsible for the patient and signed by all parties.

(c) If the patient or person responsible for the patient refuses to sign, this refusal shall be noted on the form along with the date the form was discussed.

(d) Refusal to sign the form shall not absolve the liability of the patient or person responsible for the patient to pay for services rendered.

(3) The amount a patient or person responsible for the patient is required to pay for services shall be the lesser of:

(a) The cost per patient day in accordance with 908 KAR 3:050, less any amount paid by Medicare, Medicaid, and other third-party payment sources; or

(b) The amount the patient is able to pay calculated in accordance with this administrative regulation.

(4) The facility shall determine the financial resources available to the patient or person responsible for the patient including:

(a) Insurance and third-party payors;

(b) Income received or expected to be received during the period of hospitalization; and

(c) Available assets.

(5) Allowed deductions shall be calculated as the patient and the number of the patient's dependents.

(a) A patient's legally-recognized spouse and each individual less than eighteen (18) years of age who is in the patient's care shall be classified as dependents for purposes of calculating the poverty guidelines.

(b) Allowed deductions for the patient plus the patient's dependents shall be as follows:

1. One (1) shall be \$2,000;

2. Two (2) shall be \$4,000; or

3. Three (3) or more shall be \$4,000 plus fifty (50) dollars added for each additional member over the initial two (2).

(6) The following shall be allowed deductions from income:

(a) Federal income taxes;

(b) State income taxes;

(c) Social security taxes;

(d) Normal retirement contributions;

(e) Unpaid medical and dental bills;

(f) Health insurance premiums;

(g) Medicare Part B insurance premiums;

(h) Long-term care insurance premiums;

(i) A personal needs allowance of forty (40) dollars per month;

(j) Student loan payments;

(k) Bed-hold reservation costs at another facility for up to fourteen (14) days as long as the patient's stay is expected to be shorter than the reservation period;

(l) Child support payments;

(m) Life insurance premiums if the patient's estate or a funeral home is the named beneficiary on the policy; and

(n) A basic maintenance allowance, derived from the current Poverty Guidelines, [as contained in the Basic Maintenance Allowance Table of Section 3(7) of this administrative regulation] for the size of the patient's family, if the following conditions are met:

1. The patient was maintaining a residence immediately prior to admission;

2. The residence will continue to be maintained during the period of hospitalization and resources of the patient are needed for this effort; and

3. Facility staff expects the patient's hospital stay to be three (3) months or less in duration.

(7)[(6)] An estimated income tax related deduction of twenty-five (25) percent of total income shall be allowed instead of the actual wage taxes contained in subsection (6)[(5)] of this section. A patient or person responsible for the patient may request that actual tax amounts be used instead of the estimated deduction, if the person can substantiate the actual tax amounts.

(8)[(7)] The following shall be excluded from the calculation of available assets:

(a) Prepaid burial plans of up to \$1,500 per family member;

(b) Automobiles;

(c) Housing structures;

(d) Land;

(e) Retirement accounts;

(f) Pension funds;

(g) Trust funds that cannot be accessed;

(h) The applicable allowed deduction [amount contained in the Ability To Pay Assets Table of Section 3(7) of this administrative regulation]; and

(i) Other assets that are exempted under state law, if any.

Section 3. Calculation of the Amount the Patient or Person Responsible for the Patient is Able to Pay. (1) The facility shall calculate the ability to pay amount utilizing either the Ability to Pay Worksheet or the Deductible Ability to Pay Worksheet as appropriate and by using the following formula:

(a) Determine the total amount of income of the patient or person responsible for the patient;

(b) Determine the amount of allowed deductions from income in accordance with Section 2(5) and (6) of this administrative regulation;

(c) Subtract the allowed deductions from income; and

(d) The remaining available income shall be divided by 365 to obtain the average daily income of the patient or person responsible for the patient.

(2) If the patient or person responsible for the patient has available assets, the facility shall:

(a) Determine the amount of available assets [in accordance with Section 2(7) of this administrative regulation]; and

(b) Include available assets that remain after the deduction in the patient or person responsible for the patient's ability to pay amount.

(3) Payments to be made on behalf of the patient by a third-party, such as Medicare, Medicaid, or private insurance companies, shall be subtracted from the facility's per diem rate as contained in 908 KAR 3:050. Any remaining liability shall be satisfied as follows, with the exception of ability to pay amounts arising from deductibles:

(a) The available income of the patient or person responsible for the patient shall first be applied to the patient's liability for services;

(b) Any liability that remains after application of the average available income shall be satisfied by available assets; and

(c) The applicable average income per day and available asset amount per day shall be combined to determine the ability to pay amount. The ability to pay amount shall be charged for each day the patient is in the facility.

(4) Ability to pay liabilities arising from deductibles shall first be applied to available assets of the patient or person responsible for the patient with any remaining liability being satisfied with available income.

(5) If the Department for Medicaid Services performs an income assessment for a Medicaid patient residing in a nursing facility, intermediate care facility for an individual with an intellectual disability, or psychiatric hospital in accordance with 907 KAR 20:035, that Medicaid income assessment shall be relied upon instead of the ability to pay provisions established in this administrative regulation.

(6)(a) After the ability to pay is determined for the patient or person responsible for the patient, a Patient or Responsible Party Financial Agreement and Assignment form shall be completed.

(b) This form shall be explained to the patient or person responsible for the patient and signed by all parties.

(c) If the patient or person responsible for the patient refuses to sign, this refusal shall be noted on the form including the date the form was discussed.

(d) Refusal to sign the form shall not absolve the liability of the patient or person responsible for the patient to pay for services rendered.

(7) The patient liability shall be calculated based on the United States Department of Health and Human Services poverty guidelines [established in this subsection]:

(a) The poverty guidelines effective July 31, 2013 shall be as follows:

TABLE I. BASIC MAINTENANCE ALLOWANCE TABLE	
Size of Family	Allowed deduction from income*
1	\$11,490
2	\$15,510
3	\$19,530
4	\$23,550
5	\$27,570
6	\$31,590
7	\$35,610
8	\$39,630

\*For each additional dependent, the facility shall add \$4,020.

TABLE II. ABILITY TO PAY ASSETS TABLE	
Size of Family	Allowed Deduction from Assets*
1	\$2,000
2	\$4,000
3	\$4,050
4	\$4,100

\*For each additional dependent, the facility shall add fifty (50) dollars.

(b) The poverty guidelines effective on the effective date of this administrative regulation shall be as follows:

TABLE I. BASIC MAINTENANCE ALLOWANCE TABLE	
--	--

## VOLUME 42, NUMBER 2 – AUGUST 1, 2015

Size of Family	Allowed deduction from income*
1	\$11,670
2	\$15,730
3	\$19,790
4	\$23,850
5	\$27,910
6	\$31,970
7	\$36,030
8	\$40,090

\*For each additional dependent, the facility shall add \$4,060.

TABLE II. ABILITY TO PAY ASSETS TABLE	
Size of Family	Allowed Deduction from Assets*
1	\$2,000
2	\$4,000
3	\$4,050
4	\$4,100

\*For each additional dependent, the facility shall add fifty (50) dollars.

~~(8) A legally-recognized spouse and each individual less than eighteen (18) years of age who is in the patient's care shall be classified as dependents for purposes of calculating the basic maintenance allowance].~~

Section 4. Revisions to Ability to Pay Amounts. (1) Facility staff shall update a patient's ability to pay amount to incorporate changes that take place subsequent to the initial determination. These changes may include:

- (a) Income revisions;
- (b) Asset revisions, including exhaustion of available assets;
- (c) Change in allowed deductions;
- (d) Change in a dependent of the patient or person responsible for the patient; or
- (e) Change regarding the status of the person responsible for the patient.

(2) Upon a change to the ability to pay information, a revised Ability to Pay Worksheet or Deductible Ability to Pay Worksheet shall be prepared along with a revised Patient or Responsible Party Financial Record form and a revised Patient or Responsible Party Financial Agreement and Assignment form. The revised forms shall be presented to the patient or person responsible for the patient in the same manner as the original forms.

Section 5. Failure to Provide Financial Information or to Assign Benefits. (1) If the patient or person responsible for the patient fails to or will not provide the information necessary to calculate the ability to pay amount, the maximum charge provided in Section 2(3)(a) of this administrative regulation shall be assessed.

(2) If the patient or person responsible for the patient fails to sign the assignment provision contained in the Patient or Responsible Party Financial Agreement and Assignment form, the maximum charge provided in Section 2(3)(a) of this administrative regulation shall be assessed.

Section 6. Payment Hardship, Appeal and Waiver Procedures. (1) Payment hardships.

(a) If the patient or person responsible for the patient believes that payment of the ability to pay amount results in a financial hardship, the patient or person responsible for the patient may request to make installment payments.

(b) This request shall be made in writing to the facility's patient billing supervisor and shall include documentation to support the claimed hardship.

(c) The patient billing supervisor shall review the financial hardship request and render a payment plan decision within fifteen (15) days from the receipt of the hardship request. If there is financial hardship, the patient billing supervisor shall allow minimum monthly payments based on what the patient can reasonably afford.

(2) Appeals.

(a) If the patient or person responsible for the patient is aggrieved by the facility charges or a payment plan determined in

accordance with this administrative regulation, that person may appeal the determination to the facility director or the facility director's designee for informal resolution within thirty (30) days of the ability to pay amount or payment plan being calculated.

(b) The facility director or the facility director's designee shall review the appeal and issue a determination within thirty (30) days of receipt.

(c) If the patient or person responsible for the patient is dissatisfied with the informal resolution, that person may file an appeal within thirty (30) days of the facility's response to the Director of the Division of Administration and Financial Management, Department for Behavioral Health, Developmental and Intellectual Disabilities, 275 E Main Street~~[100 Fair Oaks Lane, 4th Floor]~~, Frankfort, Kentucky 40621~~[-0004]~~. The director shall arrange for an administrative hearing in accordance with KRS Chapter 13B.

(d) The appeal request shall fully explain the patient's, or person responsible for the patient's, position and shall include all relevant documentation supporting the claim of financial hardship.

(3) Waivers.

(a) The director of each facility may waive payment of the facility's charges under this administrative regulation if waiver is in the best interest of all parties, based on the factors provided in paragraph (c) of this subsection.

(b) The Director of the Division of Administration and Financial Management shall have the authority to waive payment at any facility within the department if waiver is in the best interest of all parties, based on the factors provided in paragraph (c) of this subsection.

(c) When making a waiver determination, the following factors shall be considered:

- 1. Income;
- 2. Overall family debt;
- 3. Assets; and
- 4. Other information relating to the current financial situation of the patient or the person responsible for the patient.

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

(a) "DBHDID 3:060-1 Ability to Pay Worksheet", February 2015~~[June 2008]~~;

(b) "DBHDID 3:060-2 Deductible Ability to Pay Worksheet", February 2015~~[June 2008]~~;

(c) "DBHDID 3:060-3 Patient or Responsible Party Financial Agreement and Assignment", February 2015~~[August 2004]~~; and

(d) "DBHDID 3:060-4 Patient or Responsible Party Financial Record", February 2015~~[March 2006]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Behavioral Health, Developmental and Intellectual Disabilities, 275~~[475]~~ East Main Street, 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: July 7, 2015

FILED WITH LRC: July 9, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall, if requested, be held on August 21, 2015, at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 August 31, 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, Ky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tanya Dickinson or Stephanie Craycraft

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires the Secretary of the Cabinet for Health and Family Services to adopt a "means test" for determining the ability to pay of the patient or person responsible for the patient for board, maintenance and treatment at a facility owned or utilized by the state.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary in order to establish an on-going, homogeneous methodology to determine the ability of a patient or person responsible for the patient to pay for services received at a facility owned or utilized by the state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 210.710 to KRS 210.760 requires the cabinet to adopt a "means test" to determine the ability to pay of a patient who receives services at a facility for individuals with behavioral health, developmental and intellectual disabilities operated or utilized by the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the cabinet in determining the entire financial resources available to a patient or person responsible for the patient.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is being amended to update the Basic Maintenance Allowances by directly referencing 42 U.S.C. 9902(2), the Federal poverty guidelines published periodically in the Federal Register by U.S. Department of Health and Human Services.

(b) The necessity of the amendment to this administrative regulations: The amendment to this administrative regulation is necessary to maintain current benefit and support limits, 42 U.S.C. 9902(2), the Federal poverty guidelines published periodically in the Federal Register by U.S. Department of Health and Human Services. Current benefit and support limits are necessary to accurately determine the ability to pay of the patient or person responsible for the patient for board, maintenance, and treatment at a facility owned or utilized by the state.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 210.710 to KRS 210.760 requires the cabinet to adopt a "means test" to determine the ability to pay of a patient who receives services at a facility for individuals with behavioral health, developmental and intellectual disabilities operated or utilized by the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: KRS 210.720 requires the cabinet to adopt a "means test" to determine the ability to pay of a patient. This amendment to 908 KAR 3:060 allows the Cabinet to more accurately assess the entire financial resources available to a patient or person responsible for the patient.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are thirteen (13) state owned facilities affected by this administrative regulation. This amendment will primarily affect patients admitted to facilities owned by 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: Facility staff will be required to assess the financial resources of the clients or clients' financially responsible party.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation allows facilities to assess and recoup costs associated with treatment and services. No resident presented for admission shall be denied treatment due to an inability to pay. This administrative regulation will assure that state owned facilities equitably charge patients served. Increases in poverty guidelines factor into patients' liability to their benefit in allowable deductions.

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

(a) Initially: There is no cost to implement this administrative regulation.

(b) On a continuing basis: There is no 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: There is not an additional cost to implement and enforce this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not increase fees to a patient or to the cabinet.

(9) Tiering: Is tiering applied? Tiering is not appropriate in this administrative regulation because the "Means Test" to determine ability to pay apply equally to all patients.

## 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 thirteen (13) state owned facilities are 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 210.710, 210.728

(3). Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation allows facilities to asses and recoup costs associated with treatment and services.

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

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

(c) How much will it cost to administer this program for the first year? There is no cost to administer this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There is no cost to administer this administrative regulation.

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

Revenues (+/-): No

Expenditures (+/-): No

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Aging and Independent Living**  
**Division of Quality Living**  
**(Amendment)**

**910 KAR 1:240. Certification of assisted-living communities.**

RELATES TO: KRS Chapter 13B, 17.165(1), (2), 194A.060(1), 194A.700-729, 209.030, 216.300(1), 216.595, 216.789, 216.793  
 STATUTORY AUTHORITY: KRS 194A.050(1), 194A.707(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. KRS 194A.707(1) requires the cabinet to promulgate an administrative regulation establishing an initial and annual certification review process for assisted-living communities that shall include an on-site visit and procedures related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B. This administrative regulation establishes the certification process for assisted-living communities.

Section 1. Definitions. (1) "Activities of daily living" is defined by KRS 194A.700(1).

(2) "Ambulatory" means the ability to walk without assistance.

(3) "Applicant" means the owner or manager who represents a business seeking initial or annual certification as an assisted-living community.

(4) [(3)] "Assisted-living community" is defined by KRS 194A.700(4).

(5) [(4)] "Certification review" means the process of reviewing applications and issuing certification for an assisted-living community.

(6) [(5)] "Client", "resident", or "tenant" is defined by KRS 194A.700(5).

(7) [(6)] "Client's designated representative" means a person identified in a document signed and dated by the client, client's guardian, or attorney-in-fact identifying a representative authorized to prepare or direct medication pursuant to KRS 194A.700(3).

(8) [(7)] "Danger" is defined by KRS 194A.700(6).

(9) "Decision-making capacity" means the client's ability to communicate and understand the information the resident is given and make informed decisions based on that information.

(10) [(8)] "Functional needs assessment" means the client data required by KRS 194A.705(5)(a) and (b).

(11) [(9)] "Instrumental activities of daily living" is defined by 194A.700(9).

(12) [(10)] "Licensed healthcare professional" is defined by KRS 216.300(1).

(13) [(11)] "Living unit" is defined by KRS 194A.700(10).

(14) "Mobile non-ambulatory" is defined by KRS 194A.700(11).

(15) [(12)] "Plan of correction" is defined by KRS 194A.700(12).

(16) [(13)] "Statement of danger" is defined by KRS 194A.700(13).

(17) [(14)] "Statement of noncompliance" is defined by KRS 194A.700(14).

(18) [(15)] "Temporary condition" means a condition that affects a client as follows:

(a) The client loses mobility either before or after entering a lease agreement with the assisted-living community but is expected to regain mobility within six (6) months of loss of ambulation or mobile nonambulation; is documented by a licensed healthcare professional who is not the owner, manager, or employee of the assisted-living community; and the assisted-living community has a written plan in place to ensure that the client is not a danger; or

(b) 1. The client loses mobility after entering a lease agreement;

2. The client is not expected to regain mobility;

3. Hospice or similar end-of-life services are provided in

accordance with KRS 194A.705(2) documented by hospice or a licensed health care professional; and

4. The assisted-living community has a written plan in place to ensure that the client is not a danger.

Section 2. Application for Initial Certification Review. (1) For initial certification an applicant shall, at least sixty (60) days prior to a planned opening, file with the department:

(a) A completed DAIL-ALC-1, Assisted-Living Community Certification Application;

(b) A copy of a blank lease agreement and any documentation incorporated by reference into the lease agreement;

(c) A copy of written material used to market the proposed assisted-living community, including material that markets offered special programming, staffing, or training in accordance with KRS 194A.713(11);

(d) The floor plan of the proposed assisted-living community identifying the:

1. Living units, including features that meet the requirements of KRS 194A.703(1);

2. Central dining area;

3. Laundry facility; and

4. Central living room; and

(e) A nonrefundable certification fee:

1. Assessed by the department in accordance with KRS 194A.707(8);

2. Made payable to the Kentucky State Treasurer; and

3. Mailed to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) The applicant shall notify the department upon occupancy of five (5) residents in the assisted-living community ~~If an initial certification becomes effective on a date other than July 1, the certification fee shall be prorated by:~~

(a) ~~Calculating the fee for a year by computing twenty (20) dollars per living unit~~

~~or the \$300 minimum set forth in KRS 194A.707(8), whichever is greater, but no more~~

~~than the \$1,600 maximum set forth in KRS 194A.707(8);~~

(b) ~~Dividing the yearly fee by twelve (12) to obtain a monthly fee; and~~

(c) ~~Multiplying the monthly fee by the number of months remaining until the annual renewal on July 1.~~

Section 3. Application for Annual Certification Review. [(4)] The department shall renew a certification if an assisted-living community:

(1) [(a)] Has obtained its initial certification in accordance with Section 5 of this administrative regulation; and

(2) [(b)] Submits to the department annually by July 1:

(a) [(1)] A completed DAIL-ALC-1, Assisted-Living Community Certification Application;

(b) [(2)] The documentation required by Section 2(1)(a) through (d) of this administrative regulation, if changes have occurred since the previous certification; and

(c) [(3)] The nonrefundable certification fee required by Section 2(1)(e) of this administrative regulation. ~~[(2) If an annual certification is due after the effective date of this administrative regulation and before or after the required annual certification date, the certification fee shall be prorated as specified in Section 2(2)(a), (b), and (c) of this administrative regulation.]~~

Section 4. Change in an Assisted-Living Community. (1) If there is an increase in the number of living units, an assisted-living community shall reapply for certification with the department:

(a) In accordance with Section 2(1) of this administrative regulation; and

(b) Not less than sixty (60) days prior to the increase.

(2) If the increase in units occurs before or after the required annual certification date, the certification fee shall be twenty (20) dollars per each additional unit ~~prorated in accordance with Section 2(2) of this administrative regulation.~~

(3) If there is a decrease in the number of living units, an assisted-living community shall notify the department within sixty

(60) days of the decrease.

(4) If there is a change of more than fifty (50) percent interest in ownership of an assisted-living community, the new owner shall apply for certification:

(a) By following the procedures in Section 3 of this administrative regulation; and

(b) Within thirty (30) days of the change of owners.

(5) An assisted-living community shall:

(a) Notify the department in writing:

1. Within thirty (30) days of a name or mailing address change for the assisted-living community or the applicant; or

2. At least sixty (60) days prior to termination of operation; and

(b) Notify a client of termination of operation sixty (60) days prior to closure unless there is sudden termination due to:

1. Fire;

2. Natural disaster; or

3. Closure by a local, state, or federal agency.

#### Section 5. Initial Certification of an Assisted-Living Community.

If department staff determines that an applicant for initial certification meets the application requirements specified in Section 2(1) of this administrative regulation, the department shall:

(1) Consider the application process complete;

(2) Notify the applicant of operation status within ten (10) business days of receipt of the completed DAIL-ALC-1, Assisted-Living Community Certification Application; and

(3) Conduct an announced on-site review.

Section 6. Annual Certification of an Assisted-Living Community. If department staff determines that an applicant for annual certification meets the application requirements specified in Section 3(1) of this administrative regulation, the department shall:

(1) Consider the application process complete; and

(2) Conduct an unannounced on-site review pursuant to KRS 194A.707(2)(b) or (c).

#### Section 7. On-Site Review of an Assisted-Living Community.

(1)(a) A representative of the department conducting a certification review shall not disclose information made confidential by KRS 194A.060(1).

(b) A confidential interview with a client or access to a client's living unit shall be subject to the client's oral or written consent.

(2) The on-site review shall consist of:

(a) Review of staffing pursuant to KRS 194A.717(1);

(b) Review of employment records including:

1. An employment application that shall contain a criminal record check notice pursuant to KRS 216.793(1);

2. A criminal records check that shall be:

a. Requested in accordance with KRS 216.789(3);[and]

b. Applied for no sooner than forty-five (45) days prior to but no later than[within] seven (7) days following an employee's first day of work[from the date of an employee's hire];

c. Checked annually through the Kentucky Justice Cabinet or Administrative Office of the Courts;

d. A national criminal record check upon hire if the employee lived outside of Kentucky in the last three (3) years; and

e. A national criminal record check annually if the employee maintains residency outside of Kentucky;

3. Employees, upon their initial date of hire and at least annually thereafter, shall be checked and not be found on the:

a. Central Registry;

b. Adult Protective Services Caregiver Misconduct Registry; and

c. Nurse Aide abuse registry.

4. An assisted living community may use Kentucky's national background check program established by 906 KAR 1:190 to satisfy the background check requirements of this subsection.

5.[3.] Verification that an employee reads and agrees to the policy and procedures of the assisted-living community regarding communicable disease pursuant to KRS 194A.717(4); and

6.[4.] Documentation of:

a. Completion of employee orientation:

(i) Pursuant to KRS 194A.719(1); and

(ii) Within ninety (90) days of the date of hire; and

b. Annual in-service education pursuant to KRS 194.719(2);

(c) Verification of compliance with the applicable building and life safety codes in accordance with KRS 194A.703(3);

(d) Review of client records including:

1. A completed client functional needs assessment that shall:

a. Be completed:

(i) Upon move in;

(ii) Once every twelve (12) months thereafter; and

(iii) As needed due to a change in function or condition;

b. Be administered by a person with at least:

(i) A bachelor's degree in health or human service or a related field;

(ii) An associate's degree in health or human services or a related field and at least one (1) year of experience working with the elderly or conducting assessments; or

(iii) A high school diploma or its equivalency and two (2) years of experience working with the elderly or conducting assessments;

c. Assess the decision making capacity of the client to ensure he meets[that the client met] the eligibility requirements for assisted-living pursuant to KRS 194A.711;[194A.705(5) and]

d. Reflect the client's ability to perform activities of daily living and instrumental activities of daily living pursuant to KRS 194A.705(5); and

e. Be[b. In which a copy was] provided to the client [upon move in] pursuant to KRS 194A.705(5)(a);

2.[An initial and at least annual functional needs assessment:

a. That reflects a client's ability pursuant to KRS 194A.705(5) to perform activities of daily living and instrumental activities of daily living; and

b. In which a copy was provided to the client after move in pursuant to KRS 194A.705(5)(b);

3. Current] Personal preferences and social factors updated at least every two (2) years;

3.[4.] A signed lease with all attachments;

4.[5.] Documentation of a client's designated representative, if applicable; and

5.[6.] Documentation that the client received a copy of the assisted-living community's cardiopulmonary resuscitation policies pursuant to KRS 194A.719(1)(d);

(e) Review of an assisted-living community's policies and procedures for compliance with KRS 194A.700 through 194A.729 using a DAIL-ALC-2, Assisted-Living Community Certification Checklist;

(f) Review of an assisted-living community's written service provision and practices related to:

1. Provisions of KRS 194A.705(1)(d) which, in the case of medications not preset in a medication organizer or single dose unit container as described in KRS 194A.700(3)(a), may include but shall not exceed the following staff actions if the client requests assistance:

a. Providing the client with a medication reminder;

b. Reading the medication's label to the client, and confirming that the medication is being taken by the client for whom it is prescribed; and

c. Opening the medication container or dosage package, but not handling or removing the medication;

2. Health services, delivered by assisted-living staff, which shall be reported in compliance with KRS 194A.709(1);

3. Documentation in a client's file:

a. From a licensed health care professional defined by KRS 216.300(1) or entity providing the health service to the client:

(i) Requested of the client by the assisted-living community; and

(ii) That states the client has a temporary condition pursuant to KRS 194A.711(1); and

b. From the assisted-living community to ensure that the client is not a danger, including if hospice or similar end-of-life services are provided; and

4. Compliance with KRS 194A.713(11), 194A.719(1)(j), and 216.595 regarding special programming, staffing, or training that may be provided to a client of an assisted-living community provided the assisted-living community:

- a. Ensures a client's functional needs assessment that:
  - (i) Reflects the client's abilities as specified in paragraph (d)2 of this subsection; and
  - (ii) Shall be updated at least annually; and
- b. Complies with the requirements of KRS 216.595; and
- 5. Compliance with a department approved waiver request in accordance with Section 8 of this administrative regulation; and
- (g) Review of any documentation or records to ensure compliance pursuant to KRS 194A.707(10).
- (3) The department may, pursuant to KRS 194A.707(10), request additional information to ensure an assisted-living community complies with KRS 194A.700-729 and 216.789(1).
- (4) Prior to completion of the on-site visit at the assisted-living community, a department representative shall hold a meeting with the assisted-living community manager or designee to discuss the preliminary results of the on-site visit.

Section 8. Waiver of Building Requirements. (1) Pursuant to KRS 216.595(3), an assisted-living community may request a waiver from the department regarding building requirements to address the specialized needs of individuals with Alzheimer's disease or other brain disorders.

- (2) The department shall:
  - (a) Review the waiver request for approval; and
  - (b) Not waive the building and life safety codes established in KRS 194A.703(3).
- (3) An assisted-living community shall not alter the building requirements established in KRS 194A.703(1) and (2) without department approval.

Section 9. Assisted-living On-Site Review Findings. (1) The department shall:

- (a) Document any noncompliance with KRS 194A.700 through 194A.729 or this administrative regulation found during an on-site review on the DAIL-ALC-2, Assisted-Living Community Certification Checklist; and
- (b) Submit the finding of noncompliance to the applicant:
  - 1. On a statement of noncompliance located on the DAIL-ALC-3, Statement of Noncompliance and Plan of Correction; and
  - 2. Unless the finding is due to a client being a danger pursuant to subsection (9) of this section, within fifteen (15) business days upon completion of the on-site review.
- (2)(a) The assisted-living community shall complete a plan of correction on the DAIL-ALC-3, Statement of Noncompliance and Plan of Correction and submit the form to the department within fifteen (15) business days of receipt of the notice of noncompliance.
- (b) The assisted-living community shall specify in the plan the dates by which the noncompliance shall be corrected.
- (3) The department shall notify the applicant in writing within fifteen (15) business days of receipt of the plan of correction:
  - (a) Whether the plan of correction is approved or not approved; and
  - (b) The reasons for the department's decision.
- (4)(a) If the plan of correction is approved and the department determines a follow-up on-site review is unnecessary, the department shall issue a certification certificate.
- (b) The assisted-living community shall post the certificate in a public area.
- (5) If the plan of correction is not approved, the applicant shall submit to the department an amended plan of correction within fifteen (15) business days of receipt of notice the plan was not approved.
- (6) If the department determines after reviewing the amended plan of correction that certification may be denied or revoked, the department shall notify the assisted-living community within ten (10) business days of the determination and with the:
  - (a) Opportunity for an informal dispute resolution meeting:
    - 1. Between the department and the assisted-living community;
    - 2. To be held within fifteen (15) days of the assisted-living community's receipt of the notice; and
    - 3. To address a dispute, including the provision of additional documentation or support materials; and

- (b) Appeal rights as specified in Section 12 of this administrative regulation if:
    - 1. An informal dispute is not requested; or
    - 2. A dispute is not resolved with the informal dispute resolution.
  - (7) If an applicant meets all the requirements on the DAIL-ALC-2, Assisted-Living Community Certification Checklist, the department shall issue a certification certificate verifying its status.
  - (8) The assisted-living community shall post the certification certificate in a public area.
  - (9) If the department finds during a complaint or certification review that a client is a danger, the department shall:
    - (a) Immediately notify the assisted-living community as established in Section 7(4) of this administrative regulation; and
    - (b) Provide the DAIL-ALC-4, Statement of Danger to the assisted-living community.
  - (10) Within forty-eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall begin to implement a plan to correct the danger in accordance with Section 10(2)(e)1 or 2 of this administrative regulation.
  - (11) The department shall make a report of suspected abuse, neglect, or exploitation to Adult Protective Services in accordance with KRS 209.030(3).
  - (12) The department may conduct additional on-site visits pursuant to KRS 194A.707(10).
- Section 10. Denial and Revocation of Certification. (1) Certification shall be denied or revoked if:
- (a)1. The department determines upon a complaint or certification review that an assisted-living community knowingly employs any individual convicted of an offense prohibited by KRS 216.789(1) or 216.789(2) as disclosed by the individual's employment application or a criminal records check and if the assisted-living community fails to immediately terminate the employment upon the department's finding; or
  - 2. The same repeat violation of subparagraph 1 of this paragraph is found by the department within a three (3) year period; or
  - (b) An assisted-living community or applicant fails to submit a plan of correction to the department as specified in Section 9(2) through (7) of this administrative regulation.
  - (2) Certification may be denied or revoked if an assisted-living community:
    - (a) Fails to apply for certification as specified in Sections 2(1), 3(1), or 4(1) of this administrative regulation;
    - (b) Submits a completed DAIL-ALC-1, Assisted-Living Community Certification Application more than fifteen (15) days late for two (2) consecutive years;
    - (c) Fails to submit a completed DAIL-ALC-1, Assisted-Living Community Certification Application within thirty (30) days of July 1 annually;
    - (d) Fails to implement its most recent approved plan of correction:
      - 1. Under current ownership; and
      - 2. Within the plan of correction's specified timeframe on the DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction;
    - (e) Fails to comply with one (1) of the following requirements if the department finds that a client is a danger and the department initially verifies those findings in writing pursuant to Section 9(9)(9)(9) of this administrative regulation:
      - 1. Within forty-eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall submit a written response to the department that confirms how the danger has been eliminated or why the danger is disputed, with submission occurring via:
        - a. Email;
        - b. Facsimile transmission;
        - c. Delivery to the department by hand;
        - d. United States mail; or
        - e. Courier service; or

2. Within forty-eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall:

a. Initiate a move-out notice and begin the process of assisting the client to find appropriate living arrangements pursuant to KRS 194A.705(4); and

b. Submit a written response to the department that confirms the assisted-living community took the required action, with submission occurring via:

- (i) Email;
- (ii) Facsimile transmission;
- (iii) Delivery to the department by hand;
- (iv) United States mail; or
- (v) Courier service; or

(f) Except as provided in subsection (3) of this section, fails to initiate the requirements of paragraph (e)2 of this subsection, if the department:

1. Notifies the assisted-living community in writing that the client remains a danger; and

2. Does not accept the assisted-living community's written response pursuant to paragraph (e)1 of this subsection.

(3) If, after reviewing the assisted-living community's written response pursuant to subsection (2)(e)1 of this section, the department determines the client remains a danger, the department shall notify the assisted-living community in writing that:

(a) Certification may be denied or revoked;

(b) The assisted-living community has the right to an informal dispute resolution meeting:

1. Between the department and the assisted-living community;

2. For the purpose of attempting to resolve a dispute, including the provision of additional documentation or support materials; and

3. To be requested by the assisted-living community in writing within three (3) business days of receiving the department's written notice; and

(c) It has appeal rights pursuant to Section 12 of this administrative regulation if:

1. An informal dispute resolution meeting is not requested; or

2. A dispute is not resolved with the informal dispute resolution meeting.

(4) The department shall issue a written notice to the assisted-living community if the department determines:

(a)1. A danger is unsubstantiated; or

2. The danger has been eliminated; or

(b) To deny or revoke certification following an informal dispute resolution meeting pursuant to subsection (3)(b) of this section.

(5)(a) If an assisted-living community continues to operate after its certification is revoked and fails to request an informal dispute resolution meeting or an administrative hearing pursuant to Section 12 of this administrative regulation to resolve a danger dispute, the assisted-living community may be fined in accordance with KRS 194A.723.

(b) The fine shall be paid as specified in Section 11(1) of this administrative regulation.

Section 11. Collection of Fees and Fines. (1) An entity or business found to be in violation of KRS 194A.723 and pursuant to KRS 194A.724 assessed a penalty shall make a check payable to the Kentucky State Treasurer and mail it to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) A party aggrieved by a determination of the department may appeal the determination or the fine in accordance with KRS Chapter 13B.

(3) The fee established for the notification of conditional compliance to a lender after review of the architectural drawings and lease agreement, pursuant to KRS 194A.729, shall be \$250.

Section 12. Right to Appeal Decision and Hearings. (1) If the department determines that a certification shall be denied or revoked, the applicant shall be notified of the right to appeal the determination:

(a) By certified mail; and

(b) Within ten (10) days of determination.

(2) To request an administrative hearing, an applicant shall send a written request to the department within thirty (30) days of receipt of a written notice of:

(a) Nonapproval of the amended plan of correction; or

(b) Denial or revocation of certification.

(3) After receipt of the request for a hearing, the cabinet shall conduct a hearing pursuant to KRS Chapter 13B.

(4) The denial or revocation of certification shall be effective upon the final decision of the secretary pursuant to KRS Chapter 13B.

(5) If the denial or revocation is upheld by the secretary, the assisted-living community shall cease to operate and the assisted-living community shall:

(a) Assist clients in locating alternate living arrangements pursuant to KRS 194A.705(4); and

(b) Ensure that all clients are relocated within thirty (30) days of final notice of revocation or denial.

(6) The commissioner of the department shall have the authority to extend the time limit specified in subsection (5)(b) of this section, not to exceed an additional fifteen (15) days.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DAIL-ALC-1, Assisted-Living Community Certification Application", 06/2015[~~edition 7/40~~];

(b) "DAIL-ALC-2, Assisted-Living Community Certification Check List", 06/2015[~~edition 7/42~~];

(c) "DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction", [~~edition~~] 2/09; and

(d) "DAIL-ALC-4, Statement of Danger", 06/2015[~~edition 2/09~~].

(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.

DEBORAH S. ANDERSON, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 15, 2015

FILED WITH LRC: July 15, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2015, at 9:00 a.m. in the Cabinet for Health and Family Services, Health Services Building, Suite B, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 14, 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 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 through August 31, 2015. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Phyllis Sosa

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the certification requirements for Assisted Living Communities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the requirements for certification of Assisted Living Communities including resident eligibility, application, and application review, components of the



lease agreement, living unit and physical plant requirements, live safety code requirements, employee requirements, and services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the composition and functions of the Assisted Living Community Certification requirements as specified in KRS 194A.700-729.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the standards of certification for the Certification of Assisted Living Communities.

(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 application process, removing the prorating of certification fees, adds definitions to improve clarity, updates the requirements for background checks to be consistent with other long-term care requirements and updates the requirements for Functional needs assessments.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide more clarity through definitions, updating the application process and how fees are paid, requiring background checks that are more comprehensive due to the vulnerability of the population served in assisted living communities and requiring updates to the functional needs assessment of residents in the assisted livings to ensure they are being offered and provided services based on their current need, or being recommended for a higher level of care to meet their needs.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute KRS 194A.700 - 729 by establishing the certification process for assisted living communities.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist with the effective administration of the statutes as it provides clarification on certification requirements, updates definitions for clarity, expands the requirements for background checks to ensure no employee is listed on the Central Registry, Nurse Aid Abuse Registry, or Adult Protective Services Caregiver Misconduct Registry. An update to the Functional Needs Assessment conducted at least annually to ensure the residents remain appropriate to reside in an assisted living community.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently one hundred and ten (110) certified assisted living communities in Kentucky and approximately 4,804 certified living units. Each living unit could have double occupancy with mutual agreement; however, double occupancy is the exception.

(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: 1. The current certified assisted living communities will have to conduct at least an annual functional needs assessment on each resident in the community. They will also have to conduct background checks on employees to include the Central Registry, Nurse Aid Abuse Registry, Adult Protective Services Caregiver Misconduct Register and if an employee has lived outside of Kentucky within the past three (3) years national criminal records check rather than just an in-state check. Residents will have to be assessed at least annually to determine their service needs and to ensure they remain eligible to remain in the assisted living.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be a cost to conduct background checks by the assisted living community. The assisted living communities are agreeable to conducting the background checks and the costs to better address the safety of the residents.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The vulnerable aging and disabled population that reside in assisted living communities will have more protection due to the enhanced background checks that are required for every employee. The population of the assisted living will be assessed at least annually to ensure they are in the appropriate level of care and those requiring care beyond that allowed in an assisted living can be referred to the appropriate level of care. This will ensure the proper care is provided to all individuals.

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

(a) Initially: Approximately \$185,000; there is no increase in funding for Assisted Living Certification.

(b) On a continuing basis: Approximately \$185,000; it is anticipated that funding will remain consistent.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted agency funds generated from the certification fees from the assisted living communities.

(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 due to this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees established or fees increased as a result of this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied since policy is administered the same statewide.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation amendment will increase the requests for background checks on the Department for Community Based Services for background checks for the Central Registry and the Adult Protective Services Caregiver Misconduct Registry and the Board of Nursing for background check of the Nurse Aid Abuse Registry.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.707.

(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 amendment will not generate additional revenue or an increase in costs in expenditures.

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

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

(c) How much will it cost to administer this program for the first year? FY 15 - approximately \$185,000.

(d) How much will it cost to administer this program for subsequent years? FY 16 - approximately \$185,000.

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 Income Support**  
**Child Support Enforcement**  
**(Amendment)**

**921 KAR 1:400. Establishment, review, and modification of child support and medical support orders.**

RELATES TO: KRS 205.710-205.800, 205.990, 213.046(4), (9), 403.160(1), (2)(a), (b), 403.210-403.240, 405.430, 405.440, 405.991, 406.021, 406.025, 454.220, 45 C.F.R. 302.50, 302.56, 302.80, 303.4, 303.8, 303.30-303.32, 42 U.S.C. 651-669B

STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the cabinet 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. KRS 205.795 and 405.520 authorize the secretary of the cabinet to promulgate and adopt administrative regulations to operate the Child Support Enforcement Program in accordance with federal law and regulations. This administrative regulation establishes the requirements for the establishment, review, and modification of child support and medical support orders.

Section 1. Support Obligation Shall be Established. (1) A child support and medical support obligation shall be established by: (a) A court of competent jurisdiction; or

(b) An administrative order.

(2) The obligation shall be the amount as established administratively or judicially, as computed by the:

(a) CS-71, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation; or

(b) CS-71.1, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation Exception.

(3) The amount determined shall be the amount to be collected. Any support payment collected shall reduce the amount of the obligation dollar for dollar.

(4) For a public assistance case and a nonpublic assistance case for which child support services are being provided, the cabinet shall use state statutes and legal process in establishing the amount of a child support and medical support obligation, including KRS 403.211, 403.212, 405.430 and 454.220.

(5) In addition to the deductions specified in KRS 403.212(2), the deduction for a prior-born child residing with a parent for an administratively or judicially imputed child support obligation, as specified in KRS 403.212(2)(g)3, shall be calculated by using:

(a) That parent's portion of the total support obligation as indicated on the worksheet, if:

1. There is a support order; and

2. A copy of the child support obligation worksheet is obtained; or

(b) 100 percent of the income of the parent with whom the prior born child resides, if:

1. There is no support order;

2. There is a support order, but no support obligation worksheet; or

3. A worksheet cannot be obtained.

(6) In accordance with 45 C.F.R. 303.4(d), within ninety (90) calendar days of locating a noncustodial parent, or obligor, the cabinet shall:

(a) Complete service of process; or

(b) Document an unsuccessful attempt to serve process.

(7) If service of process has been completed, the cabinet shall, if necessary:

(a) Establish paternity;

(b) Establish a child support or medical support obligation; or

(c) Send a copy of any legal proceeding to the obligor and obligee within fourteen (14) calendar days of issuance.

(8) If a court or administrative authority dismisses a petition for support without prejudice, the cabinet shall, at that time, determine

when to appropriately seek an order in the future.

Section 2. Administrative Establishment. (1) The cabinet may administratively establish a child support obligation or medical support obligation, or both if:

(a) Paternity is not in question;

(b) There is no existing order of support for the child;

(c) The noncustodial parent, or obligor, resides or is employed in Kentucky; and

(d) The noncustodial parent's, or obligor's, address is known.

(2) To gather necessary information for administrative establishment, as appropriate the cabinet shall:

(a) Send to the custodial parent or nonparent custodian forms:

1. CS-133, Custodial Parent Information Request;

2. CS-132, Child Care Expense Verification; and

3. CS-136, Health Insurance Information Request;

(b) Send to the custodial parent the CS-65, Statement of Income and Resources;

(c) Send to the noncustodial parent forms:

1. CS-64, Noncustodial Parent Appointment Letter;

2. CS-65, Statement of Income and Resources;

3. CS-132, Child Care Expense Verification; and

4. CS-136, Health Insurance Information Request;

(d) Send a CS-130, Income Information Request, to the employer of the:

1. Custodial parent; or

2. Noncustodial parent, or obligor; and

(e) Issue a CS-84 Administrative subpoena in accordance with KRS 205.712(2)(k) and (n), if appropriate; and

~~(f) Prior to initiating a request for information from a certified consumer credit reporting agency, send an obligor a CS-93, Advance Notice of Intent to Request Full Credit Report in accordance with KRS 205.7685].~~

(3) The cabinet shall determine the monthly support obligation in accordance with the child support guidelines as contained in KRS 403.212 or subsection (4) of this section.

(4) In a default case, the cabinet shall set the obligation based upon the needs of the child or the previous standard of living of the child, whichever is greater in accordance with KRS 403.211(5).

(5) After the monthly support obligation is determined, the cabinet shall serve a CS-66, Administrative Order/Notice of Monthly Support Obligation, in accordance with the requirements of KRS 405.440 and 42 U.S.C. 654(12).

(6) The cabinet shall not administratively modify an obligation that is established by a court of competent jurisdiction, except as provided in subsection (7) of this section.

(7) If support rights are assigned to the cabinet, the cabinet shall direct the obligor to pay to the appropriate entity by modifying the order:

(a) Administratively upon notice to the obligor or obligee; or

(b) Judicially through a court of competent jurisdiction.

Section 3. Review and Adjustment of Child Support and Medical Support Orders. (1) In accordance with KRS 405.430(6), the cabinet may modify the monthly support established. Every thirty-six (36) months the cabinet shall notify each party subject to a child support order of the right to request a review of the order.

(2) Pursuant to 45 C.F.R. 303.8, the cabinet shall conduct a review upon the request of:

(a) Either parent;

(b) The state agency with assignment; or

(c) Another party with standing to request a modification.

(3) In accordance with 45 C.F.R. 303.8(e), within 180 days of receiving a request for review or of locating the nonrequesting parent, whichever occurs later, the cabinet shall:

(a) Conduct the review;

(b) Modify the order; or

(c) Determine the circumstances do not meet criteria for modification.

(4) The cabinet shall provide notification within fourteen (14) calendar days of modification or determination to each parent or custodian, if appropriate, and legal representatives by issuing a CS-79, Notification of Review Determination, in accordance with KRS 205.712(2)(m)[403.213].

(5) In accordance with subsections (2) and (3) of this section, the cabinet or the cabinet's designee shall seek modification of an administrative or judicial support order to include medical support on behalf of the child as defined in KRS 403.211(7)(a) through (d).

(6) Retroactive modification of a child support order shall occur in accordance with KRS 403.211(5) and 403.213(1).

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

(a) "CS-64, Noncustodial Parent Appointment Letter", [edition] 3/10;

(b) "CS-65, Statement of Income and Resources", 12/15[~~edition 3/10~~];

(c) "CS-66, Administrative Order/Notice of Monthly Support Obligation", [edition] 3/10;

(d) "CS-71, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation", [edition] 3/10;

(e) "CS-71.1, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation Exception", [edition] 3/10;

(f) "CS-79, Notification of Review Determination", [edition] 3/10;

(g) "CS-84, Administrative Subpoena", 12/15[~~edition 10/12~~];

(h) [~~"CS-93, Advance Notice of Intent to Request Full Credit Report", edition 3/10;~~

(i) "CS-130, Income Information Request", [edition] 3/10;

(j) [(i)] "CS-132, Child Care Expense Verification", [edition] 3/10;

(k) [(j)] "CS-133, Custodial Parent Information Request", [edition] 3/10; and

(l) [(k)] "CS-136, Health Insurance Information Request", 12/15[~~edition 3/10~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN P. VENNO, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 7, 2015

FILED WITH LRC: July 8, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2015 at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 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 August 31, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email [tricia.orme@ky.gov](mailto:tricia.orme@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mary W. Sparrow

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the establishment, review and modification of child and medical support orders.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement requirements for the establishment, review and modification of child and medical support orders in accordance with 42 U.S.C. 651-654, 656, 666,

667 669B and 45 C.F.R. 302 and 303.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 194A.050(1), 205.795, 405.520, and by virtue of applying for federal funds under 42 U.S.C. 651-669B to establish, review, and modify child support and medical support obligations. This administrative regulation sets forth such procedures and processes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with further establishing procedures to ensure effective administration of and conforming to KRS 403.211 through 403.213.

(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 provide identification of authorizing state and federal laws in both the Administrative Regulation and the Incorporated Forms. This amendment outlines the procedures necessary to conform to KRS 403.211.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove the request of information from a certified consumer credit reporting agency that has been added to 921 KAR 1:410 and to update some of the forms incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying the criteria used by the Cabinet in establishing, reviewing, and modifying child support and medical support orders. This amendment identifies each party that has a right to request a review or modification of the child or medical support order, conforming to 45 C.F.R. 303.8. This amendment also identifies KRS 403.212 and 403.211(5) as the laws governing how child support obligations are determined.

(d) How the amendment will assist in the effective administration of the statutes: The forms incorporated by reference have been updated to be more user friendly for the participants in the child support program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The updates to the state forms incorporated by reference in this regulation will affect Child Support Enforcement Workers and Contracting Officials' offices, Custodial Parents, Noncustodial Parents and their children.

(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 participants in the child support enforcement program will not be impacted by the changes made in this review of the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with the changes being made to this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Participants in the child support program will benefit from the forms being revised to be more user friendly.

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

(a) Initially: There are no fees and no increase in funding for this administrative regulation.

(b) On a continuing basis: There are no fees and no increase in funding for this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include state general funds and federal funds under 42 U.S.C. 401-419, Title IV-D of the Social Security Act.

(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 are no fees and no increase in funding for this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities which elect to be regulated by it.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 302 and 303, 42 U.S.C. 651-654, 656, 666, 667, 669B

2. State compliance standards. KRS 194A.050(1), 205.710, 205.712, 205.725, 205.735, 205.765, 205.792, 205.793, 205.795, 403.211, 403.212, 403.213, 405.430, 405.440, 405.450, 405.520, 405.550, and 405.991

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the 42 U.S.C. 654(4)(A), and 666(a)(10) and (c)(1).

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 651 - 654, 656, 666(a)(10) and (c)(1), 667, and 669B  
45 C.F.R. 302 and 303

KRS 194A.050(1), 205.710, 205.712, 205.725, 205.735, 205.765, 205.792, 205.793, 205.795, 403.211, 403.212, 403.213, 405.430, 405.440, 405.450, 405.520, 405.550, and 405.991

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in any 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 2:006. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP).

RELATES TO: KRS 205.010, 205.2005, 205.703, 205.720(1), 45 C.F.R. Parts 260-265, 7 U.S.C. 2011-2036, 8 U.S.C. 1101-1524,, 21 U.S.C. 802(6), 22 U.S.C. 7102(8), 7105, 38 U.S.C. 101, 107, 1101, 1301, 1304, 5303A(d), 42 U.S.C. 416, 601-619, 1381-1384, 1396, Pub. L. 111-118

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), (3), 205.2003(1), 42 U.S.C. 601-619[~~Pub. L. 109-171, 111-118~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate the programs and fulfill the responsibilities vested in the cabinet 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. KRS 205.2003(1) requires the secretary to promulgate administrative regulations to develop a work program for recipients of public assistance under Title IV-A of the Federal Social Security Act, 42 U.S.C. 601 to 619. KRS 205.200(2) requires the secretary to promulgate administrative regulations prescribing the conditions of eligibility for public assistance in conformity with 42 U.S.C. 602 and federal regulations. KRS 205.200(3) authorizes the secretary to promulgate administrative regulations prescribing as a condition of eligibility that a needy child regularly attend school, and the degree of relationship of the person or persons in whose home the needy child must reside.~~[Pub. L. 109-171, effective October 1, 2006, reauthorized the Temporary Assistance for Needy Families Program known as the Kentucky Transitional Assistance Program (K-TAP) in Kentucky.]~~ This administrative regulation establishes the technical requirements of school attendance, residence, citizenship, deprivation, living with a relative, age, one (1) category of assistance, cooperation in child support activities, strikers, minor teenage parent provisions, time limits and potential entitlement for other programs for eligibility for benefits from the Kentucky Transitional Assistance Program (K-TAP).

Section 1. Definitions. (1) "Assistance" is defined by 45 C.F.R. 260.31.

(2) "Barriers" means a limitation in an individual's ability to become employed and self sufficient or to comply with K-TAP requirements.

(3) "Battered or subjected to extreme cruelty" means an individual who has been subjected to:

(a) A physical act that resulted in, or threatened to result in, physical injury to the individual;

(b) Sexual abuse;

(c) Sexual activity involving a dependent child;

(d) Being forced as the caretaker relative of a dependent child to engage in a nonconsensual sexual act or activity;

(e) Threat of, or an attempt at, physical or sexual abuse;

(f) Mental abuse; or

(g) Neglect or deprivation of medical care.

(4) "Benefit group" means a group composed of one (1) or more children and may include as a specified relative a person pursuant to Section 11 of this administrative regulation.

(5) "Child" means an individual:

(a) Age fifteen (15) or under;

(b) Age sixteen (16), seventeen (17), or eighteen (18) in regular full-time attendance in elementary, junior high, or high

school or equivalent level of vocational or technical school; or

(c) Under age eighteen (18) and a high school graduate.

(6) "Domestic violence" means the same as the definition for "battered or subjected to extreme cruelty" pursuant to subsection (3) of this section.

(7) "Employed" means a person who performs a physical or mental activity in exchange for direct monetary compensation.

(8) "Family member" means an individual:

(a) Related by blood, marriage, or adoption to a child or a work-eligible individual, as defined by 45 C.F.R. 261.2(n), in the benefit group; or

(b) Who is a member of an unmarried couple and has a child in the benefit group in common with the work-eligible individual, as defined by 45 C.F.R. 261.2(n).

(9) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families (TANF) money payment program for a child who is deprived of parental support or care due to:

(a) Death of one (1) parent;

(b) Continued voluntary or involuntary absence of one (1) parent; or

(c) If both parents are in the home:

1. Physical or mental incapacity of one (1) parent; or

2. Unemployment of at least one (1) parent.

(10) "Kentucky Works Program" or "KWP" means a program that assists in obtaining education, training, experience and employment necessary to leave public assistance.

(11) "Minor teenage parent" means an individual who:

(a) Has not attained eighteen (18) years of age;

(b) Is not married, or is married and not living with the spouse; and

(c) Has a minor child in the applicant's or recipient's care.

(12) "Penalized individual" means a person who is required to be included in the benefit group, but fails to fulfill an eligibility requirement that causes a reduction in benefits of the benefit group. If otherwise eligible, a penalized individual remains a member of the benefit group.

(13) "Prior labor market attachment" or "PLMA" means the parent has earned not less than \$1,000 during the twenty-four (24) months prior to the application for K-TAP benefits based on the deprivation of unemployment pursuant to Section 10 of this administrative regulation.

(14) "Qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive K-TAP, is:

(a) Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 to 1524;

(b) Granted asylum pursuant to 8 U.S.C. 1158;

(c) A refugee who is admitted to the United States pursuant to 8 U.S.C. 1157;

(d) Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;

(e) An alien whose deportation is being withheld pursuant to:

1. 8 U.S.C. 1253, as in effect prior to April 1, 1997; or

2. 8 U.S.C. 1231(b)(3);

(f) Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7) as in effect prior to April 1, 1980;

(g) An alien who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

(h) Battered or subjected to extreme cruelty in the United States:

1. By a:

a. Spouse or parent; or

b. Member of the spouse or parent's family residing in the same household as the alien, and the spouse or parent consented to, or acquiesced in, the battery or cruelty; and

2. If:

a. The alien no longer resides in the household with the individual responsible for the battery or cruelty;

b. There is a substantial connection between the battery or cruelty and the need for the benefit; and

c. The alien has been approved or has a petition pending for:

(i) Status as a spouse or child of a United States citizen pursuant to 8 U.S.C. 1154(a)(1)(A)(ii), (iii), or (iv);

(ii) Classification pursuant to 8 U.S.C. 1154(a)(1)(B)(ii) or (iii); or

(iii) Suspension of deportation and adjustment of status pursuant to 8 U.S.C. 1254(a)(3);

(i) A child of an alien or a child who is an alien who has been battered or subjected to extreme cruelty in the United States:

1. By a:

a. Spouse or parent of the alien without the active participation of the alien in the battery or cruelty; or

b. Member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to the battery or cruelty; and

2. If:

a. The alien no longer resides in the household with the individual responsible for the battery or cruelty;

b. There is a substantial connection between the battery or cruelty and the need for the benefit; and

c. The alien has been approved or has a petition pending for:

(i) Status as a spouse or child of a United States citizen pursuant to 8 U.S.C. 1154(a)(1)(A)(ii), (iii), or (iv);

(ii) Classification pursuant to 8 U.S.C. 1154(a)(1)(B)(ii) or (iii); or

(iii) Suspension of deportation and adjustment of status pursuant to 8 U.S.C. 1254(a)(3);

(j) An alien who is lawfully residing in Kentucky and is:

1. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

2. On active duty other than active duty for training in the Armed Forces of the United States and who fulfils the minimum active duty service requirements pursuant to 38 U.S.C. 5303A(d);

3. The spouse or surviving spouse who is not remarried if the marriage fulfils the requirements in 38 U.S.C. 1304, or unmarried dependent child of an individual pursuant to subparagraph 1 or 2 of this paragraph;

4. A victim, a child of a victim, or spouse of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105; or

5. A parent or a sibling of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105 and is under eighteen (18) years of age;

(k) An alien who is admitted to the United States as an Amerasian immigrant pursuant to 8 U.S.C. 1101; or

(l) An alien admitted to the United States as an Afghan or Iraqi special immigrant on or after December 19, 2009, in accordance with Pub. L. 111-118, Section 8120.

(15) "Qualifying parent" means the parent who meets PLMA.

(16) "Recipient" means an individual receiving K-TAP including a specified relative or a specified relative receiving on behalf of a child.

(17) "Sanctioned individual" means a person who is required to be included in the benefit group, but who is excluded from the benefit group due to failure to fulfill an eligibility requirement.

(18) "Second chance home" means an entity that:

(a) Provides a minor teenage parent a supportive and supervised living arrangement; and

(b) Requires a minor teenage parent to learn:

1. Parenting skills, including child development;

2. Family budgeting;

3. Health and nutrition; and

4. Other skills to promote long-term economic independence and the well-being of the child of the minor teenage parent.

(19) "Severe form of trafficking in persons" is defined by 22 U.S.C. 7102(8).

(20) "Striker" means an employed individual who is participating in:

(a) A work stoppage;

(b) A concerted slowdown of work; or

(c) An interruption of operations at his or her place of employment.

(21) "Supplemental Security Income" or "SSI" means a monthly cash payment made pursuant to:

(a) 42 U.S.C. 1381 to 1384 to the aged, blind and persons with

a disability;

(b) 42 U.S.C. 1382e; or

(c) 42 U.S.C. 1382.

(22) "Unemployed parent case" or "UP case" means K-TAP benefits paid to a family if both parents are in the home and at least one (1) parent is unemployed.

(23) "Work" means participation in a ~~KWP~~[Kentucky Works] activity pursuant to 921 KAR 2:370, Section 2(1)(c).

Section 2. Eligible Parent. (1) An eligible parent shall include the natural, adopted, or adjudicated parent of the child.

(2) An adjudicated parent shall include an administrative establishment of the relationship.

(3) A stepparent shall not be an eligible parent.

Section 3. Age and School Attendance. (1) The definition of a "child", pursuant to Section 1(5) of this administrative regulation, shall be met for at least one (1) person in the home.

(2) Verification of school attendance shall be required for a:

(a) Child who is sixteen (16), seventeen (17), or eighteen (18) years of age, in order to determine his continuing eligibility; or

(b) Minor teenage parent pursuant to Section 20(1) of this administrative regulation.

(3) Unless the parent states the child shall not reenter school, a child shall be considered in regular attendance in a month he or she is not attending because of:

(a) Official school or training program vacation;

(b) Illness;

(c) Convalescence; or

(d) Family emergency.

(4) Verification of a high school diploma for a child under age eighteen (18) who is a high school graduate shall be required.

Section 4. Enumeration. (1) A person included in the K-TAP case shall furnish his or her Social Security number or apply for a number if one (1) has not been issued.

(2) Refusal to furnish the Social Security number or apply for a number shall result in the ineligibility of the person whose Social Security number is not furnished.

(3) The cabinet shall assist an individual in making application for a Social Security number, if needed.

Section 5. Residence and Citizenship. (1) Residence. A resident shall be an individual who:

(a) Is living in the state voluntarily and not for a temporary purpose; or

(b)1. Entered the state with a job commitment or seeking employment; and

2. Is not receiving assistance funded by a block grant program pursuant to 42 U.S.C. 601 to 619 from another state.

(2) Citizenship.

(a) Except as provided in paragraphs (b) and (c) of this subsection, K-TAP shall be provided only to a United States citizen.

(b) A qualified alien, pursuant to Section 1(14) of this administrative regulation, who entered the United States before August 22, 1996, who is otherwise eligible for K-TAP, shall be eligible for assistance.

(c) A qualified alien, pursuant to Section 1(14) of this administrative regulation, who entered the United States on or after August 22, 1996, shall not be eligible for K-TAP for a period of five (5) years beginning on the date of the alien's entry into the United States. The following exceptions shall apply to this provision:

1. An alien who is admitted to the United States as a refugee pursuant to 8 U.S.C. 1157;

2. An alien who is granted asylum pursuant to 8 U.S.C. 1158;

3. An alien whose deportation is being withheld pursuant to:

a. 8 U.S.C. 1253, as in effect prior to April 1, 1997; or

b. 8 U.S.C. 1231(b);

4. An alien who is lawfully residing in Kentucky and is:

a. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

b. On active duty other than active duty for training in the

Armed Forces of the United States and who fulfills the minimum active duty service requirements pursuant to 38 U.S.C. 5303A(d);

c. The spouse or unremarried surviving spouse if the marriage fulfills the requirements in 38 U.S.C. 1304, or unmarried dependent child of an individual described in clause a or b of this subparagraph;

d. A victim, a child of a victim, or spouse of a victim of a severe form of trafficking in persons who is admitted to the United States pursuant to 22 U.S.C. 7105; or

e. A parent or a sibling of a victim of a severe form of trafficking in persons who is admitted to the United States pursuant to 22 U.S.C. 7105 and is under eighteen (18) years of age;

5. An alien who is a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

6. An alien who is admitted to the United States as an Amerasian immigrant pursuant to 8 U.S.C. 1101; or

7. An alien admitted to the United States as an Afghan or Iraqi special immigrant on or after December 19, 2009, in accordance with Pub. L. 111-118, Section 8120.

(d) Failure of the parent or other adult applying for or receiving benefits to verify citizenship or alien status shall cause the needs of the parent or other adult to be removed from the case.

Section 6. Deprivation. (1) To be eligible for K-TAP, a child shall be in need and shall be deprived of parental support or care pursuant to Section 1(9) of this administrative regulation.

(2) A specific deprivation factor under Section 7, 8, 9, or 10 of this administrative regulation shall be verified for a child for whom assistance is approved.

Section 7. Deprivation Due to Death. The death of either parent shall qualify a child as deprived due to death.

Section 8. Deprivation Due to Absence. (1) To be considered deprived due to absence, a needy child shall be physically separated from the parent.

(2) Absence may be voluntary or involuntary.

(a) Voluntary absence shall include:

1. Divorce;

2. Legal separation;

3. Marriage annulment;

4. Desertion of:

a. Thirty (30) days or more if the parent:

(i) Voluntarily leaves; or

(ii) Refuses to accept the child into his or her home; or

b. Less than thirty (30) days if:

(i) The child leaves the parent because the parent was requiring the child to live under a circumstance hazardous to the health or morals of the child;

(ii) One (1) of the parents in the home is required by the court to leave the home because that parent was requiring the child to live under a circumstance hazardous to the health or morals of the child;

(iii) The child is voluntarily placed with a relative following a finding by the cabinet that the home is unsuitable;

(iv) The child is placed by the court with a specified relative other than the parent;

(v) The child is eligible and receiving benefits based on the unemployment or the incapacity of a parent and one (1) of the parents subsequently leaves the home; or

(vi) Both parents are absent from the home;

5. Forced separation; or

6. Birth out-of-wedlock.

(b) Involuntary absence shall include:

1. Commitment to a penal institution for thirty (30) days or more;

2. Long-term hospitalization;

3. Deportation; or

4. Single parent adoption.

(3) A parent who is a convicted offender, but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday shall be considered absent from the home.

Section 9. Deprivation Due to Incapacity. (1) A determination of a deprivation of incapacity shall be based on a full consideration and assessment of the following factors affecting the claimant:

- (a) Medical;
- (b) Social; and
- (c) Economic.

(2) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in the parent's inability to support or care for the child.

(3) Incapacity shall exist in a case if the following criteria are met:

(a) A medical determination is made~~[It is medically determined]~~ that one (1) parent has a physical or mental disability, illness, or impairment that:

- 1. Was present at the time of application; and
- 2. Has continued or is expected to last for a period of at least thirty (30) calendar days. The thirty (30) day period may include a period the claimant is undergoing:

- a. Planned diagnostic study; or
- b. Evaluation of rehabilitation potential; and

(b) ~~[It is determined by]~~ nonmedical evaluation determines that the disability, illness, or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.

(4) A determination regarding incapacity shall be made by:

(a) Field staff if the following criteria are met:

- 1. The parent declares physical inability to work;
- 2. The worker observes some physical or mental limitation; and
- 3. The parent:

- a. Is receiving SSI;
- b. Is age sixty-five (65) or over;

c. Has been determined to meet the definition of blindness pursuant to 42 U.S.C. 1382c or 42 U.S.C. 416 by the Social Security Administration;

d. Has been determined to meet the definition of permanent and total disability pursuant to 42 U.S.C. 1382c or 42 U.S.C. 416 by either the:

- (i) Social Security Administration; or
- (ii) Medical review team of the cabinet;

e. Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction with no reexamination requested, and there is no visible improvement in condition;

f. Is receiving Retirement, Survivors and Disability Insurance, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter;

g. Is receiving Veterans Administration benefits based on 100 percent disability, as verified by an award letter;

h. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, a statement from the physician shall be requested to indicate if incapacity existed as of the application date;

i. Is recovering from surgery, illness, or injury that requires a period of time for recovery, up to six (6) weeks, as specified by a physician statement. A period longer than six (6) weeks shall be determined through the medical review team;

j. Is on approved sick leave recovering from surgery, illness, or injury for the duration of the approved sick leave if the employer is holding the job for the individual's return, as verified by the employer; or

k. Is a woman in a high risk pregnancy, during the duration of the pregnancy, as verified by physician statement; or

(b) The medical review team, consisting of a licensed physician and a social worker employed by the cabinet, if a determination by field staff is precluded.

(5) The factors to be considered by the medical review team in making the medical determination shall include:

(a) The claimant's medical history and subjective complaint regarding an alleged physical or mental disability, illness, or

impairment; and

(b) Competent medical testimony relevant to whether:

1. A physical or mental disability, illness, or impairment exists; and

2. The disability, illness, or impairment is:

a. Sufficient to reduce the parent's ability to support or care for a child; and

b. Likely to last thirty (30) days.

(6) The factors to be considered in making the nonmedical evaluation shall include:

(a) The claimant's:

- 1. Age;
- 2. Employment history;
- 3. Vocational training;
- 4. Educational background; and
- 5. Subjective complaint regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

(b) The extent and accessibility of employment opportunity available in the claimant's area of residence.

(7) A written report shall be made of the determination under this section.

(8) A claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing pursuant to 921 KAR 2:055.

Section 10. Deprivation Due to Unemployment. (1) The determination that a child is deprived of parental support due to the unemployment of a parent if both parents are in the home shall be based on the determination that the qualifying parent meets the criteria of unemployment pursuant to subsection (3) of this section and has a PLMA, pursuant to Section 1(13) of this administrative regulation.

(2) The qualifying parent designation shall remain with the same parent as long as assistance is received on the basis of the same application.

(3) A parent shall be considered to be unemployed if employed:

(a) Less than 100 hours in a calendar month; or

(b) In excess of 100 hours in a particular month if the employment is intermittent and the excess is of a temporary nature, if the parent:

1. Was under the 100 hour standard in the prior two (2) months, from the month of application for K-TAP; and

2. Is expected to be under the 100 hour standard in the following month of application for K-TAP.

(4) The 100 hour requirement for unemployment in subsection (3) of this section shall apply to a K-TAP applicant.

(5) PLMA shall be established if the parent:

(a) Attests to the amount of earnings pursuant to Section 1(13) of this administrative regulation with the following requirements:

1. Gross income from self-employment and farming shall qualify as earned income in determining PLMA; and

2. The self-employed individual shall not have to realize a profit to meet this requirement;

(b) Within twelve (12) months prior to application, received unemployment compensation; or

(c) Is currently receiving unemployment compensation or if potentially eligible, has made application for and complies with the requirements to receive unemployment insurance benefits.

(6) In determining whether or not criteria in subsection (5) of this section are met, two (2) semesters of full-time school attendance, as defined by the school or institution, may be substituted for \$500 of the \$1,000 earnings.

(7) Unemployment shall not exist if the qualifying parent:

(a) Is on strike;

(b) Is temporarily unemployed:

1. Due to weather condition or lack of work;

2. If there is a job to return to; and

3. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

(c) Is unavailable for full-time employment;

(d) Is under contract for employment, unless a written statement from the employer verifies that the individual is subject

to release from the contract if full-time employment is secured;

(e) Has not met the criteria of unemployment for at least thirty (30) days;

(f) Is not:

1. Registered for work pursuant to 921 KAR 2:370, Section 4(3); or

2. Subject to KWP[~~Kentucky Works~~], pursuant to 921 KAR 2:370;

(g) Has refused a bona fide offer of employment or training for employment without good cause, pursuant to 921 KAR 2:370, Section 6(1), in the thirty (30) days prior to UP eligibility or during the course of receipt of UP benefits; or

(h) Has been discontinued in accordance with 921 KAR 2:370, Section 7(2)(a)2, for less than thirty (30) days.

Section 11. Living with a Specified Relative. (1) To be eligible for K-TAP, a needy child shall be living in the home of a relative as follows:

(a) A blood relative, including a relative of the half-blood;

(b) A person listed in paragraph (a) of this subsection if the alleged father has had relationship established through the administrative determination process pursuant to Section 12 of this administrative regulation;

(c) An adoptive parent, the natural and other legally adopted child and other relative of the adoptive parent; or

(d) A relative by marriage, even if the marriage may have terminated, if termination occurred after the birth of the child, as follows:

1. A couple that has been considered married by a state with a common-law marriage provision shall be considered married in Kentucky for K-TAP eligibility purposes; and

2. The statement of the applicant or recipient that the couple's marriage is recognized from another state as a common-law marriage shall be accepted as verification by the cabinet.

(2) Cash assistance shall not be provided for a child who is absent, or expected to be absent, from the home for a period of thirty (30) consecutive days or more unless good cause exists. Good cause for absence, or expected absence, of the child from the home for a period of thirty (30) consecutive days or more shall exist if the parent continues to exercise care and control of the child and the child is absent due to:

(a) Medical care;

(b) Attendance at school including boarding school;

(c) College or vocational school;

(d) Foster care, as verified by the cabinet; or

(e) A short visit with a friend or relative if it is intended that the child will return to the home and the parent or specified relative maintains parental control of the child.

(3)(a) A child shall be removed from the benefit group the first administratively feasible month following thirty (30) consecutive days from the date the child is placed in foster care.

(b) If the only eligible child in the benefit group is absent due to foster care, the otherwise eligible parent or parents in the benefit group shall:

1. Remain eligible for sixty (60) days from the date the child is placed in foster care; and

2. Be discontinued the first administratively feasible month following sixty (60) days from the date the child is placed in foster care if no other eligible child is in the benefit group.

(4)(a) If a specified relative fails to notify the cabinet of a thirty (30) consecutive day or more absence of the child for a reason other than one (1) of the good cause reasons listed in subsection (2) of this section, the specified relative shall not be eligible for his or her share of K-TAP benefits during the period of the child's unreported absence of thirty (30) consecutive days or more.

(b) Ineligible benefits received by the specified relative and child during the period of the child's unreported absence of thirty (30) consecutive days or more shall be recouped pursuant to 921 KAR 2:016, Section 11.

Section 12. Administrative Establishment of Relationship. (1) An administrative determination of relationship as established in this administrative regulation shall be used only to establish

relationship for K-TAP eligibility if the following type of evidence is present:

(a) A birth certificate listing the alleged parent;

(b) Legal document which shall include:

1. Hospital record;

2. Juvenile court record;

3. Will; or

4. Other court record that clearly indicates the relationship of the alleged parent or relative;

(c) Receipt of statutory benefits as a result of the alleged parent's circumstance;

(d) Documents declaring voluntary paternity as specified in 901 KAR 5:070, Section 1; or

(e) A sworn statement or affidavit of either parent acknowledging relationship plus one (1) of the following:

1. School record;

2. Bible record;

3. Immigration record;

4. Naturalization record;

5. Church document, such as baptismal certificate;

6. Passport;

7. Military record;

8. U.S. Census record; or

9. Notarized statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.

(2) Rebuttal of administrative relationship shall occur if the parent or, in the absence of the parent, the caretaker relative:

(a) Alleges the evidence pursuant to subsection (1)(a) or (b) of this section is erroneous;

(b) Provides substantiation of the erroneous information; and

(c) Provides a notarized statement or affidavit:

1. Acknowledging the erroneous information; and

2. Containing the correct information on the actual alleged parent.

(3) Presence of the notarized statement or affidavit pursuant to subsection (2)(c) of this section shall serve as rebuttal to the evidence present in subsection (1)(a) or (b) of this section and a determination of relationship shall not be acknowledged.

Section 13. One (1) Category of Assistance. (1) A child or adult relative shall not be eligible for K-TAP if receiving SSI.

(2) If a child who receives SSI meets the K-TAP requirements of age, deprivation, and living in the home of a specified relative, the specified relative shall be approved for K-TAP if all other eligibility factors are met.

(3) If a child who receives foster care benefits meets the K-TAP requirements of age, deprivation, and living in the home of a specified relative, the specified relative shall be approved for K-TAP if all other eligibility factors are met.

Section 14. Strikers. (1) A family shall be ineligible for benefits for a month the parent, with whom the child is living on the last day of the month, is participating in a strike.

(2) A specified relative other than the parent shall be ineligible for benefits for a month if, on the last day of the month, the relative is participating in a strike.

Section 15. Work Registration. An adult applicant or recipient of the K-TAP benefit group shall register for work pursuant to 921 KAR 2:370, Section 4(3).

Section 16. Assessment. A work-eligible individual, as defined by 45 C.F.R. 261.2(n), shall complete an assessment pursuant to 921 KAR 2:370.

Section 17. Kentucky Works Program. The technical requirements for participation in KWP[~~the Kentucky Works Program~~] shall be pursuant to 921 KAR 2:370.

Section 18. Cooperation in Child Support Activities. (1) In cooperation with the Department for Income Support, the Department for Community Based Services shall attempt to secure



parental support, and if necessary establish paternity, for a child receiving assistance pursuant to Section 1(1) of this administrative regulation, who has a parent absent from the home due to:

- (a) Divorce;
- (b) Desertion;
- (c) Birth out-of-wedlock;
- (d) Legal separation;
- (e) Forced separation; or
- (f) Marriage annulment.

(2) With the exception of a good cause reason, pursuant to subsections (4) and (5) of this section, avoidance of the twenty-five (25) percent reduction of the amount of the payment maximum in K-TAP benefits pursuant to subsection (7) of this section shall be dependent upon the applicant's or recipient's cooperation in child support activities that shall include:

- (a) Identifying the noncustodial parent or obligor;
- (b) Providing information to assist in the:
  - 1. Location of the noncustodial parent or obligor;
  - 2. Enforcement of a child support order; or
  - 3. Review or modification of a child support order;
- (c) Establishing paternity, if required;
- (d) Establishing, modifying or enforcing a child support order;

and

(e) Forwarding a child support payment received to the state's centralized collection agency.

(3) The cabinet shall inform the applicant or recipient of the individual's right to file a good cause claim for refusing to cooperate in a child support activity.

(4) The applicant or recipient shall be excused from penalty for failure to cooperate with a child support activity, pursuant to subsection (2) of this section, if one (1) of the following criteria is met:

(a) Cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the:

- 1. Child; or
- 2. Caretaker relative to an extent that it would reduce the capacity to care for the child adequately;

(b) The child was conceived as a result of incest or forcible rape and the cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation;

(c) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction and the cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(d) The applicant or recipient is being assisted by a public or licensed private social service agency to resolve whether to keep the child or release the child for adoption if:

- 1. Discussion has not gone on for more than three (3) months; and

2. The cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.

(5) Unless an extension is granted, the applicant or recipient shall have ~~thirty (30)~~~~twenty (20)~~ days from the date the good cause claim is made~~[Part I of Form PA-121, Good Cause Claim/Determination, is filed]~~ to provide evidence to substantiate the claim.

(a) Evidence used to determine good cause shall include:

1. Birth certificate, medical information, or law enforcement record indicating that the child was conceived as a result of incest or forcible rape;

2. Court document or other record indicating legal proceedings for adoption of the child by a specific family is pending before a court of competent jurisdiction;

3. Record or other evidence indicating the noncustodial parent, or obligor, or the alleged parent might inflict physical or emotional harm on the child or caretaker relative;

4. A written statement from a public or licensed private social service agency that assistance is being given to the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child for adoption, and the issue has not been pending more than three (3) months; or

5. Notarized statement from an individual, other than the applicant or recipient, with knowledge of the circumstance that

provides the basis for the good cause claim.

(b) In each good cause determination based upon anticipation of serious emotional harm to the child or caretaker relative, the following shall be considered:

1. The present emotional state of the individual subject to emotional harm;

2. The emotional health history of the individual;

3. The extent and probable duration of the individual's emotional impairment; and

4. The extent of involvement required by the individual in establishing paternity or enforcing a support obligation.

(c) If the good cause claim is based on the anticipation of physical harm to the child or caretaker relative, and corroborative evidence is not submitted, the cabinet shall conduct an investigation if it is believed that:

1. Corroborative evidence is not available; and

2. The claim is credible without corroborative evidence.

(d) If the cabinet conducts an investigation of a good cause claim, it shall not contact the noncustodial parent or obligor, or the alleged parent regarding support, unless the contact is necessary to establish the good cause claim.

(e) If it is necessary for the cabinet to contact the noncustodial parent, or obligor, or the alleged parent during the investigation of a good cause claim, the worker shall notify the applicant or recipient of the proposed contact to either:

1. Obtain permission for the contact; or

2. Enable the applicant or recipient to:

a. Present additional evidence or information so that the contact shall be unnecessary;

b. Withdraw the application for assistance or request discontinuance of K-TAP; or

c. Have the good cause claim denied.

(6) After receipt of evidence to substantiate the good cause claim or conducting an investigation, the cabinet shall:

(a) Document the case;

(b) Determine that good cause:

1. Exists and a support activity cannot be initiated without endangering the:

a. Best interests of the child; or

b. Physical or emotional health of the child or the relative; or

2. Does not exist;

(c) Advise the applicant or recipient~~[in writing, Part II of Form PA-121, Good Cause Claim/Determination,]~~ of the result of the good cause claim determination; and

(d) Identify each case that good cause is established, but may be subject to change, for subsequent review.

(7) If the specified relative refuses to cooperate without good cause criteria being claimed, or claimed but not considered to be met by the cabinet~~[,]~~ K-TAP benefits shall be reduced by twenty-five (25) percent of the amount of the maximum payment for the appropriate family size pursuant to Section 9 of 921 KAR 2:016.

(8) If, after the reduction of the K-TAP payment for failure to cooperate, the specified relative states he or she will cooperate, the cabinet shall:

(a) Remove the twenty-five (25) percent reduction in benefits effective the first administratively feasible month if the individual states he or she will cooperate and verification of cooperation is provided timely; and

(b) Not authorize a back payment for the period the individual did not cooperate.

(9) As a condition of eligibility for assistance, each applicant for, or recipient of, K-TAP shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person in accordance with KRS 205.720(1). The assignment shall:

(a) Include all members of the case for whom support rights apply; and

(b) Be completed at the time of application for K-TAP benefits.

Section 19. Potential Entitlement for Other Programs. (1) An applicant or recipient shall apply for and comply with the requirements to receive another benefit if potential entitlement exists.

(2) Failure to apply for another benefit or comply with its requirements shall result in ineligibility for K-TAP.

(3) If an applicant or recipient voluntarily reduces the amount of benefits received from another source, other than for the purpose of reimbursing the source for a previous overpayment, this action shall result in ineligibility.

Section 20. Minor Teenage Parents. (1) A minor teenage parent shall participate in an educational activity directed toward the attainment of a high school diploma, or its equivalent, or a cabinet approved alternate education or training program if the individual has:

(a) A minor child at least twelve (12) weeks of age in his or her care; and

(b) Not completed a high school education (or its equivalent).

(2) Except pursuant to subsection (4) of this section, a minor teenage parent and his or her minor child shall reside in:

(a) A place of residence maintained by:

1. A parent;

2. A legal guardian; or

3. An adult relative pursuant to Section 11 of this administrative regulation; or

(b) An appropriate adult supervised supportive living arrangement, that includes a second chance home or maternity home, taking into consideration the needs and barriers of the minor teenage parent.

(3) The cabinet shall provide or assist the minor teenage parent in locating a second chance home, maternity home, or other appropriate adult supervised supportive living arrangement if the:

(a) Minor teenage parent does not have a:

1. Parent, legal guardian, or appropriate adult relative pursuant to Section 11 of this administrative regulation who is living or whose whereabouts is known; or

2. Living parent, legal guardian, or other appropriate adult relative pursuant to Section 11 of this administrative regulation who:

a. Otherwise meets applicable state criteria to act as the legal guardian of the minor teenage parent; and

b. Would allow the minor teenage parent to live in the home of the parent, guardian, or relative pursuant to Section 11 of this administrative regulation; or

(b) Cabinet determines:

1. The minor teenage parent or the minor child of the teenage parent is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the minor teenage parent's own parent or legal guardian; or

2. Substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the minor teenage parent and the minor child lived in the same residence with the minor teenage parent's own parent or legal guardian.

(4) The requirement in subsection (2) of this section shall be waived if the cabinet determines:

(a) Living in the place of residence maintained by the parent, legal guardian, or adult relative pursuant to Section 11 of this administrative regulation is not in the best interest of the minor child taking into consideration the needs of the minor child; or

(b) The minor teenage parent's current living arrangement is appropriate.

(5) If a circumstance changes and the current arrangement ceases to be appropriate based on the needs and barriers of the minor teenage parent, the cabinet shall assist the minor teenage parent in finding an alternate appropriate arrangement.

(6) If the minor teenage parent is determined to be ineligible for K-TAP as a result of not complying with a provision found in this section, payment shall continue for the eligible child of the minor teenage parent.

(7) Even if exemption criteria are met and the cabinet determines the minor teenage parent's current living arrangement is appropriate, a minor teenage parent and the child, who do not reside in a place of residence maintained by a parent, legal guardian, other adult relative pursuant to Section 11 of this administrative regulation, second chance home, or maternity home, shall be considered an adult regarding benefit time

limitations pursuant to Section 21 of this administrative regulation.

Section 21. Benefit Time Limits. (1) K-TAP, or any other assistance from a federally-funded program pursuant to 42 U.S.C. 601 to 619, shall not be provided for more than sixty (60) cumulative months to a benefit group that includes:

(a) An adult;

(b) A minor teenage parent who is head of household; or

(c) A fugitive or drug felon not eligible pursuant to Section 23 or 24 of this administrative regulation.

(2) After assistance has been received for sixty (60) months, an otherwise eligible benefit group containing one (1) of the following individuals shall be allowed an extension of the sixty (60) ~~month~~<sup>months</sup> time limit, during the period the individual:

(a) Is battered or subjected to extreme cruelty. During the extension period the individual shall have an individual service plan pursuant to Section 25(1)(b) of this administrative regulation;

(b) Is a work-eligible individual in the benefit group, who the cabinet determines has a physical or mental disability, as established in Section 9(3) of this administrative regulation. During the extension period, the individual shall comply with:

1. Treatment or other activity recommended by the referral source and approved by the cabinet, as required by the Kentucky Works Program pursuant to 921 KAR 2:370, Sections 2(1)(c)12 and 4(2); and

2. Child support cooperation requirements pursuant to Section 18 of this administrative regulation;

(c) In accordance with 45 C.F.R. 261.2(n)(2)(i), is a parent providing care for a disabled family member living in the home as verified pursuant to 921 KAR 2:370, Section 3(5). During the extension period, the individual shall comply with child support cooperation requirements pursuant to Section 18 of this administrative regulation;

(d) Is a grandparent or other relative, except for a parent, caring for an eligible child who would otherwise be placed in foster care. The caretaker relative shall continue to comply with:

1. Child support cooperation requirements pursuant to Section 18 of this administrative regulation; and

2. Except for a caretaker relative age sixty (60) or over, ~~KWP~~<sup>Kentucky Works</sup> requirements pursuant to 921 KAR 2:370 if the caretaker relative is included in the benefit group;

(e) Is an adult with insufficient employment opportunities, who:

1. Has complied with:

a. ~~KWP~~<sup>Kentucky Works</sup> requirements pursuant to 921 KAR 2:370; and

b. Child support cooperation requirements pursuant to Section 18 of this administrative regulation;

2. During the extension period, shall:

a. Comply with:

(i) ~~KWP~~<sup>Kentucky Works</sup> requirements pursuant to 921 KAR 2:370;

(ii) Child support cooperation requirements pursuant to Section 18 of this administrative regulation;

(iii) Employment opportunities and activities listed on the KW-202, Transitional Assistance Agreement, incorporated by reference in and pursuant to 921 KAR 2:370, Section 4(2); and

(iv) Work registration requirements pursuant to 921 KAR 2:370, Section 4(3); and

b. Not quit or refuse a job without good cause pursuant to 921 KAR 2:370, Section 6; and

3. Shall be limited to an extension period of six (6) consecutive months; or

(f)1. Received a domestic violence exemption pursuant to Section 25(2) of this administrative regulation, up to the number of months the individual received K-TAP during the domestic violence exemption.

2. During the extension period, the individual shall comply with:

a. Child support cooperation requirements pursuant to Section 18 of this administrative regulation; and

b. ~~KWP~~<sup>Kentucky Works</sup> requirements pursuant to 921 KAR 2:370.

(3) If otherwise eligible, a benefit group containing a member who has lost a job, through no fault of the recipient, within thirty

(30) days of reaching the sixty (60) month time limit shall receive a three (3) consecutive month extension of the time limitation.

(4) A benefit group that receives an extension to the sixty (60) months time limit shall be reviewed:

(a) Every six (6) months for an extension pursuant to subsection (2)(a), (c), or (f) of this section;

(b) Every three (3) months for an extension pursuant to subsection (2)(e) of this section;

(c) Every three (3) months or the medical review team review period for an extension pursuant to subsection (2)(b) of this section; or

(d) Annually for an extension pursuant to subsection (2)(d) of this section.

(5) The cabinet shall send a notice containing a list of the hardship extensions, pursuant to subsection (2) of this section, to a benefit group nearing the sixty (60) month time limit.

(6) A benefit group discontinued from K-TAP due to reaching the sixty (60) month time limitation shall receive a notice pursuant to 921 KAR 2:046, Section 4.

(7) The cabinet shall conduct a review at least two (2) months prior to the expiration of the sixty (60) month time limit to:

(a) Determine if the benefit group meets criteria established for a hardship extension pursuant to subsection (2) of this section; and

(b) Inform the benefit group of Safety Net Services, pursuant to 922 KAR 1:400, Section 5.

(8)(a) K-TAP shall not be provided to a benefit group, pursuant to Section 2(1) of 921 KAR 2:016, that includes an adult, or minor teenage parent pursuant to Section 20(7) of this administrative regulation, who has:

1. Received six (6) cumulative months of assistance from a federally funded program pursuant to 42 U.S.C. 601 to 619; and

2. Been penalized for failure to cooperate in KWP[Kentucky Works], pursuant to 921 KAR 2:370, for a period of three (3) cumulative months.

(b) An adult or minor teenage parent in paragraph (a) of this subsection shall receive assistance if the individual:

1. Demonstrates cooperation in KWP[Kentucky Works] pursuant to 921 KAR 2:370;

2. Meets the technical requirements established in this administrative regulation; and

3. Meets the standard of need in accordance with 921 KAR 2:016.

(9) Time limitations shall apply to a:

(a) Sanctioned individual; or

(b) Penalized individual.

#### Section 22. Receiving Assistance in Two (2) or More States.

(1) K-TAP assistance shall be denied for ten (10) years to a person who has been convicted in federal or state court of having made a fraudulent statement or representation committed after August 22, 1996, with respect to the place of residence of the individual in order to receive assistance simultaneously from two (2) or more states for:

(a) A program pursuant to:

1. 42 U.S.C. 601 to 619;

2. 42 U.S.C. 1396; or

3. 7 U.S.C. 2011 to 2036; or

(b) Benefits received under SSI.

(2) The requirement in subsection (1) of this section shall not apply to a conviction for a month beginning after the granting of a pardon by the President of the United States with respect to the conduct that was the subject of the conviction.

(3) An individual in subsection (1) of this section living with a child receiving assistance shall be required to cooperate in KWP[Kentucky Works] in accordance with 921 KAR 2:370.

Section 23. Fugitive Felons. (1) K-TAP assistance shall not be provided to an individual:

(a) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or an attempt to commit a crime, committed or attempted to be committed after August 22, 1996, that is a felony; or

(b) Violating a condition of probation or parole imposed under

federal or state law.

(2) Subsection (1) of this section shall not apply with respect to conduct of an individual for a month beginning after the President of the United States grants a pardon with respect to the conduct.

(3) An individual in subsection (1) of this section living with a child receiving assistance shall be required to cooperate in KWP[Kentucky Works] in accordance with 921 KAR 2:370.

Section 24. Denial of Assistance for a Drug Felon. (1) An individual convicted under federal or state law of an offense committed after August 22, 1996, classified as a felony by the law of the jurisdiction involved and that has as an element the possession, use or distribution of a controlled substance pursuant to 21 U.S.C. 802(6), shall not be eligible for K-TAP benefits, except pursuant to KRS 205.2005.

(2) An individual applying for K-TAP benefits shall be required to state in writing whether the individual or a member of the household has been convicted of a crime pursuant to subsection (1) of this section.

(3) An individual in subsection (1) of this section living with a child receiving assistance shall be required to cooperate in KWP[Kentucky Works] in accordance with 921 KAR 2:370.

Section 25. Domestic Violence. (1)(a) A K-TAP applicant or recipient shall be screened for a history of domestic violence.

(b) If the applicant or recipient is identified as a victim of domestic violence or with a history of domestic violence, an appropriate services plan shall be required for the individual. The plan shall:

1. Be developed by a person trained in domestic violence;

2. Reflect the individualized assessment and a revision made by a redetermination;

3. Include appropriate referral to counseling and supportive services based on the needs and barriers identified in the individualized assessment, as determined by the cabinet;

4. Be designed to lead safely to employment; and

5. Be completed no less often than every six (6) months.

(2) If compliance with the following K-TAP requirements would make it more difficult for an individual receiving K-TAP to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence, the individual shall not be required to meet:

(a) Residency requirements pursuant to Section 5 of this administrative regulation;

(b) Child support cooperation requirements pursuant to Section 18 of this administrative regulation;

(c) Time limitations, for so long as necessary and otherwise eligible, pursuant to Section 21 of this administrative regulation; or

(d) Participation in KWP[Kentucky Works] requirements pursuant to 921 KAR 2:370. ~~[Section 26. Incorporation by Reference. (1) The "PA-121, Good Cause Claim/Determination", edition 2/09, 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: July 7, 2015

FILED WITH LRC: July 9, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 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 August 14, 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 August 31, 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 technical eligibility requirements for the Kentucky Transitional Assistance Program (K-TAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish technical eligibility for K-TAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the requirements for technical eligibility for K-TAP, the assistance program funded by the Temporary Assistance for Needy Families (TANF) Block Grant.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the K-TAP technical eligibility requirements, including school attendance, residency, citizenship, deprivation, living with a relative, age, cooperation with child support, minor teenage parent provisions, and the time limitations for K-TAP benefit receipt.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation removes material incorporated by reference, the PA-121, Good Cause Claim/Determination, to allow other methods for an applicant or recipient of K-TAP to establish good cause for noncooperation with child support activities. The amendment will also extend the timeframe for an individual to provide verification of good cause from twenty (20) days to thirty (30) days. Lastly, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: While retaining all criteria to establish good cause, the amendment to this administrative regulation grants more flexibility to a K-TAP household in terms of evidencing good cause for noncooperation with child support activities, such as risk of physical or emotional harm to the child or adult household member. The amendment to this administrative regulation is also necessary to align with the requirements of a new web-based enrollment and eligibility system. This system promises further programmatic modernization, greater efficiency in the eligibility determination process and ongoing case maintenance, and enhanced reporting and archiving functionalities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by affording various methods to establish good cause for noncooperation with child support and aligning with the forthcoming web-based eligibility and enrollment system.

(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 clarifying technical eligibility criteria for K-TAP and assuring process and policy alignment, resource maximization, and programmatic accountability.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In March 2015, 20,590 families received K-TAP assistance.

(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 require no new or additional action by K-TAP 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): The amendment to this administrative regulation will create no new or additional cost to K-TAP applicants or recipients.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, regulated entities will have enhanced flexibility to evidence meeting good cause criteria for noncooperation with child support activities, though the criteria for good cause are unchanged. Regulated entities will also benefit from the updates and clarity provided within the regulatory amendment and the enhanced programmatic efficiencies promised by the new web-based eligibility and enrollment system.

(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 is anticipated to impose no new or additional cost to the administrative body to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and is anticipated to impose no new or additional ongoing costs to the administrative body to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Temporary Assistance for Needy Families (TANF) Block Grant funds under Title IV-A of the Social Security Act and General Funds used to meet Maintenance of Effort requirements are the funding sources for this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 U.S.C. 601-619

2. State compliance standards. KRS 194A.50(1), 205.200(2), (3), 205.2003(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 601 to 619

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.200(2), (3), 205.2003(1), 42 U.S.C. 601-619

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in any 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 2:016. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP).**

RELATES TO: KRS 205.200, 205.210, 205.2001, 205.211, 45 C.F.R. 233.20(a)(13), Parts 260-265, 400.66(d), 8 U.S.C. 1183a, 20 U.S.C. 1088(b)(1), 2302(3), (13), 25 U.S.C. 459, 1261, 1401, 26 U.S.C. 6409, 29 U.S.C. 723(a)(5), 2801, 2931(a)(2), 38 U.S.C. 1833, 42 U.S.C. 7(xviii), (D)(4), 1381-1384, 1771, 1775, 3001, 4950-5084, 8621, 10602(c)[, Pub.L. 111-312]

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), 205.210(1), 42 U.S.C. 601-619

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate the programs and fulfill the responsibilities vested in the cabinet 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. KRS 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601 to 619 and federal regulations. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Kentucky Transitional Assistance Program (K-TAP), the block grant program funded by 42 U.S.C. 601 to 619. This administrative regulation sets forth the standards of need for and the amount of a Kentucky Transitional Assistance Program payment.

Section 1. Definitions. (1) "Assistance" is defined by 45 C.F.R.

260.31.

(2) "Benefit group" means a group composed of one (1) or more children and may include as specified relative a person pursuant to 921 KAR 2:006, Section 11.

(3) "Change in a circumstance" means a change in income or dependent care expense affecting the ongoing K-TAP payment that includes:

(a) Beginning or ending employment;

(b) Change in an employer or obtaining additional employment;

(c) Increase or decrease in the number of work hours;

(d) Increase or decrease in the rate of pay;

(e) Increase or decrease in the dependent care expense due to a change in:

1. Provider;

2. Number of hours of care;

3. Number of individuals for whom care is given; or

4. Amount charged; or

(f) Change in farm cropping arrangement or type of self-employment activity.

(4) "Claimant" means the individual responsible for the repayment of an overpayment.

(5) "Countable income" means income that remains after excluded income and appropriate deductions are removed from gross income.

(6) "Deduction" means an amount subtracted from gross income to determine countable income.

(7) "Electronic benefit transfer" or "EBT" means a computer-based electronic benefit transfer system in which an eligible household's benefit authorization is received from a central computer through a point of sale terminal or automated transfer machine.

(8) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(9) "Excluded income" means income that is received but not counted in the gross income test.

(10) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(11) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in:

1. An adult basic education program;

2. A general educational development program; or

3. A literacy program;

(b) The number of hours required by the individual program for participation in a college or university; or

(c) The number of hours required by the individual high school or vocational school to fulfill the high school or vocational school's definition of full time.

(12) "Gross income limitation standard" means 185 percent of the assistance standard, as set forth in Section 9 of this administrative regulation.

(13) "Kentucky Transitional Assistance Program" or "K-TAP" means a money payment program for a child who is deprived of parental support or care pursuant to 921 KAR 2:006, Section 1.

(14) "Kentucky Works" means a program that assists a:

(a) Recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance; or

(b) Former K-TAP recipient with job retention service.

(15) "Lump sum income" means income that does not:

(a) Occur on a regular basis; or

(b) Represent accumulated monthly income received in a single sum.

(16) "Minor" means a person who is under the age of eighteen (18).

(17) "Minor parent" means an individual who:

(a) Has not attained eighteen (18) years of age;

(b) Is not married or is married and not living with the spouse; and

(c) Has a minor child in the applicant's or recipient's care.

(18) "Part-time employment" means employment of:

(a) Less than thirty (30) hours per week; or

(b) Less than 130 hours per month.

(19) "Part-time school attendance" means a workload that is less than full-time school attendance as determined by the educational institution.

(20) "Penalized individual" means a person who is required to be included in the benefit group but fails to fulfill an eligibility requirement, causing a reduction in benefits of the benefit group. If otherwise eligible, a penalized individual remains a member of the benefit group.

(21) "Recoupment" means recovery of an overpayment of an assistance payment.

(22) "Sanctioned individual" means a person who is required to be included in the benefit group but who is excluded from the benefit group due to failure to fulfill an eligibility requirement.

(23) "Self-employment income" means income from a business enterprise if taxes are not withheld prior to receipt of the income by the individual.

(24) "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1384 to the aged, blind and disabled.

(25) "Unavailable" means that the income is not accessible to the K-TAP benefit group for use toward basic food, clothing, shelter, and utilities.

(26) "Workforce Investment Act" or "WIA" means a program to assist adults, dislocated workers, and youth with entering, retraining, and advancing within employment, as established by 29 U.S.C. 2801.

(27) "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, and tools.

Section 2. Technical Eligibility. (1) A benefit group shall include:

(a) A dependent child;

(b) A child's parent living in the home with the dependent child who is:

1. Eligible for K-TAP; or

2. Ineligible for K-TAP due to benefit time limitations pursuant to 921 KAR 2:006, Section 21;

(c) An eligible sibling living in the home with a dependent child, except for a sibling who is an applicant or recipient of the Kinship Care Program pursuant to 922 KAR 1:130; or

(d) An eligible child who is:

1. In full-time school attendance or part-time school attendance; and

2.a. Sixteen (16) through eighteen (18) years of age; or

b. A minor parent.

(2) If the K-TAP benefits to a household would be greater by excluding an otherwise eligible child related by subsidized adoption to the other members, the child shall not be included in the benefit group.

(3) If a dependent child's parent is a minor living in the home with an eligible parent, the minor's parent shall also be included in the benefit group if the minor's parent applied for assistance.

(4) An incapacitated or unemployed natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors of 921 KAR 2:006 are met.

Section 3. Resource Limitations. (1) A liquid asset shall be considered a countable resource if it is:

(a) Available to the benefit group; and

(b) Owned in whole or in part by:

1. An applicant or recipient;

2. A sanctioned or penalized individual; or

3. The parent of a dependent child, even if the parent is not an applicant or recipient, if the dependent child is living in the home of the parent.

(2) The total amount of resources reserved by a benefit group shall not be in excess of \$2,000 in liquid assets, excluding an asset listed in subsection (3) of this section.

(3) Excluded resources.

(a) Resources from the following individuals shall be excluded from consideration:

1. A recipient of SSI or the state supplementation program living in the home;

2. A child excluded from the K-TAP grant; or

3. An individual not receiving assistance but living in the home including:

a. The stepparent;

b. The parent or legal guardian of a minor parent;

c. The spouse of a nonresponsible specified relative; or

d. The spouse of a minor dependent child.

(b) The following resources shall not be included in the \$2,000 resource limit:

1. Proceeds (sale price less indebtedness) from the sale of a home, including initial or down payment from land contract sale, for six (6) months if client plans to invest in another home;

2. Funds in an individual retirement account, retirement or deferred compensation account during the period of unavailability;

3. An excluded income payment, pursuant to Section 5 of this administrative regulation;

4. Principal and accrued interest of an irrevocable trust during a period of unavailability;

5. Prepaid burial funds;

6. Cash surrender value of all burial insurance policies per family member;

7. Principal of a verified loan;

8. Up to \$12,000 to Aleutians and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for hardship experienced during World War II;

9. Payment made from the Agent Orange Settlement Fund issued by Aetna Life and Casualty to a veteran or veteran's survivor;

10.a. Any federal tax refund or advance payment of a refundable federal tax credit for a period of twelve (12) months from receipt in accordance with 26 U.S.C. 6409[Pub. L. 111-342]; or

b. After December 31, 2012, earned income tax credit payment in the month of receipt and the following month;

11. A payment received from the Radiation Exposure Compensation Trust Fund;

12. A nonrecurring lump sum SSI retroactive payment that is made to a K-TAP recipient who is not ongoing eligible for SSI, in the month paid and the next following month;

13. Up to a total of \$5,000 in individual development accounts, excluding interest accruing, pursuant to subsection (7) of this section; and

14. A payment received from the National Tobacco Growers Settlement Trust.

(4) Disposition of resources.

(a) An applicant or recipient shall not have transferred or otherwise disposed of a liquid asset in order to qualify for assistance.

(b) The household's application shall be denied, or assistance discontinued if:

1. The transfer was made expressly for the purpose of qualifying for assistance; and

2. The amount of the transfer, when added to total resources, exceeds the resource limit.

(c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.

(d)1. If the amount of excess transferred resources does not exceed \$500, the period of ineligibility shall be one (1) month.

2. The period of ineligibility shall be increased one (1) month for every \$500 increment up to a maximum of twenty-four (24) months.

(5) Lifetime care agreement.

(a) The existence of a valid agreement between the applicant or recipient and another individual or organization that the applicant or recipient surrendered resources in exchange for lifetime care shall make the case ineligible.

(b) The agreement shall be considered invalid if the individual or organization with whom the agreement was made provides a written statement that the resources have been exhausted.

(6) Resources held jointly by more than one (1) person.

(a)1. For a bank account requiring one (1) signature for withdrawal, the total balance of the account shall be considered available to the K-TAP applicant or recipient, unless the other owner is a recipient of SSI.

2. If the other owner receives SSI, the:

a. Balance shall be divided evenly by the number of owners; and

b. K-TAP applicant or recipient's share shall be considered available.

(b) For a bank account that requires more than one (1) signature for withdrawal, the K-TAP applicant or recipient's share shall be determined by obtaining a written statement from the other owners as to the division.

(c) If there is no predetermined allocation of shares from a business enterprise, the applicant or recipient's available share shall be determined by dividing the value of the business enterprise by the number of owners.

(d) If a resource is held jointly, other than a resource pursuant to paragraphs (a) through (c) of this subsection, the applicant or recipient's share shall be determined by dividing the value of the resource by the number of owners.

(e) Rebuttal of ownership shall be accomplished if the applicant or recipient asserts no contribution to or benefits from a jointly held resource and provides:

1. A written statement regarding ownership, who may deposit and withdraw;

2. A written statement from each of the other owners that corroborates the applicant's or recipient's statement, unless the account holder is a minor or is incompetent; and

3. Verification that the applicant's or recipient's name has been removed from the resource.

(7)(a) To be considered an exempt resource, the individual development account shall have been:

1. Established on or after May 1, 1997; and

2. Funded through periodic contributions by a member of the benefit group using funds derived from earned income that was earned after May 1, 1997, for a qualified purpose.

(b) A qualified purpose to establish an individual development account shall be for:

1. Postsecondary educational expense that shall include:

a. Tuition and fees required for the enrollment or attendance of a student at an eligible educational institution;

b. Fees, books, supplies, and equipment required for a course of instruction at an eligible educational institution; and

c. An eligible educational institution that shall be an:

(i) Institution pursuant to 20 U.S.C. 1088(b)(1); or

(ii) Area vocational education school pursuant to 20 U.S.C. 2302(3) or (13);

2. First home purchase that includes:

a. Costs of acquiring, constructing, or reconstructing a residence; and

b. Usual or reasonable settlement, financing, or other closing costs;

3. A business capitalization expenditure for a business that does not contravene a law or public policy, as determined by the cabinet, pursuant to a qualified plan which shall:

a. Include capital, plant, equipment, working capital, and inventory expenses;

b. Be approved by a financial institution; and

c. Include a description of a service or a good to be sold, a marketing plan, and projected financial statement. An applicant may use the assistance of an experienced entrepreneurial advisor if needed; or

4. Other purpose allowed by a federal regulation or clarification.

(c) Funds held in an individual development account shall not be withdrawn except for one (1) or more of the qualified purposes pursuant to paragraph (b) of this subsection.

(d) To be considered an exempt resource, an individual development account shall be matched by funds from a:

1. Nonprofit organization; or

2. State or local government agency, funding permitted, acting

in cooperation with an organization pursuant to subparagraph 1 of this paragraph.

Section 4. Income Limitations. In determining eligibility for K-TAP, the following shall apply: (1) Gross income test:

(a) The total gross non-K-TAP income shall not exceed the gross income limitation standard and shall include:

1. Income of the benefit group;

2. Income of a parent who does not receive SSI or state supplementation pursuant to 921 KAR 2:015;

3. Income of a sanctioned or penalized individual; and

4. An amount deemed available from:

a. The parent of a minor parent living in the home with the benefit group;

b. A stepparent living in the home; or

c. ~~The spouse of a minor dependent child living in the home; or~~  
d.] An alien's sponsor and sponsor's spouse if living with the sponsor;

(b) Excluded income types pursuant to Section 5(1) of this administrative regulation shall apply; and

(c) If total gross income exceeds the gross income limitation standard, the benefit group shall be ineligible.

(2) Benefit calculation:

(a) If the benefit group meets the criteria pursuant to subsection (1) of this section, benefits shall be determined by subtracting excluded income and applicable deductions pursuant to Section 5(1), (2), and (3) of this administrative regulation;

(b) If the benefit group's income, after subtracting excluded income and applicable deductions, exceeds the standard of need for the appropriate benefit group size pursuant to Section 9 of this administrative regulation, the benefit group shall be ineligible; and

(c) Amount of assistance shall be determined prospectively.

(3) Ineligibility period:

(a) A period of ineligibility shall be established for a benefit group whose income in the month of application or during a month the assistance is paid exceeds a limit pursuant to subsection (2) of this section due to receipt of lump sum income;

(b) The ineligibility period shall be:

1. The number of months that equals the quotient of the division of total countable income by the standard of need pursuant to Section 9 of this administrative regulation for the appropriate benefit group size; and

2. Effective with the month of receipt of the nonrecurring lump sum amount; and

(c) The ineligibility period shall be recalculated if:

1. The standard of need pursuant to Section 9 of this administrative regulation increases and the amount of grant the benefit group would have received also changes;

2. Income, that caused the calculation of the ineligibility period, has become unavailable for a reason that was beyond the control of the benefit group;

3. The benefit group incurs and pays a necessary medical expense not reimbursable by a third party;

4. An individual, who is required to be a member of the benefit group, joins the K-TAP household during an established ineligibility period; or

5. The benefit group reapplies during an established ineligibility period and the cabinet determines that policy has changed to exclude the criteria originally used to establish the ineligibility period.

Section 5. Excluded Income and Deductions. (1) Gross non-K-TAP income received or anticipated to be received shall be considered with the application of excluded income and deduction policy:

(a) By the:

1. Benefit group;

2. Sanctioned or penalized individual;

3. Natural parent;

4. Spouse of a dependent child;

5. Parent of a minor parent living in the home with the benefit group; or

6. Stepparent living in the home; and

(b) Pursuant to subsections (2) to (4) of this section.  
(2) Gross income test. An income listed in this subsection shall be excluded:

(a) A deduction applicable to stepparent income, income of the spouse of a minor dependent child, or income of the parent of a minor parent in the home with the benefit group, pursuant to Section 7 of this administrative regulation;

(b) A deduction applicable to an alien sponsor's income, pursuant to Section 8 of this administrative regulation;

(c) A deduction applicable to self-employment income;

(d) Allowances, earnings, and payments received under WIA programs in accordance with 29 U.S.C. 2931(a)(2);

(e) Value of United States Department of Agriculture program benefits including:

1. Donated food;

2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;

3. Special food service program for a child pursuant to 42 U.S.C. 1775;

4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and

5. The monthly Supplemental Nutrition Assistance Program allotment;

(f) Reimbursement for transportation in performance of an employment duty, if identifiable;

(g) The value of Kentucky Works supportive services payment pursuant to 921 KAR 2:017;

(h) Nonemergency medical transportation payment;

(i) Payment from complementary program if no duplication exists between the other assistance and the assistance provided by the K-TAP program;

(j) Educational grant, loan, scholarship, and work study income;

(k) Highway relocation assistance;

(l) Urban renewal assistance;

(m) Federal disaster assistance and state disaster grant;

(n) Home produce utilized for household consumption;

(o) Housing subsidy received from federal, state or local governments;

(p) Funds distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(q) Funds distributed per capita to or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(r) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as a:

1. Senior health aide; or

2. Member of the:

a. Service Corps of Retired Executives; or

b. Active Corps of Executives;

(s) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5084 if less than the minimum wage under state or federal law, whichever is greater including:

1. Volunteers in Service to America (VISTA);

2. Foster Grandparents;

3. Retired and Senior Volunteer Program; or

4. Senior Companion;

(t) Payment from the cabinet for:

1. Child foster care; or

2. Adult foster care;

(u) Energy assistance payment made under:

1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or

2. Other energy assistance payment made to an energy provider or provided in-kind;

(v) The first fifty (50) dollars of child support payment;

(w) Earnings of an individual attending school who is age nineteen (19) or under;

(x) Earnings of a dependent child under eighteen (18) who is a high school graduate;

(y) Nonrecurring monetary gifts totaling thirty (30) dollars or less per month per individual;

(z) The principal of a verified loan;

(aa) Up to \$12,000 to Aleuts and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;

(bb) Income of an individual receiving SSI, including monthly SSI benefits and any retrospective SSI benefits;

(cc) The essential person's portion of the SSI check;

(dd) Income of an individual receiving mandatory or optional state supplementary payment pursuant to 921 KAR 2:015;

(ee) 1. Any federal tax refund or advance payment of a refundable federal tax credit ~~in accordance with Pub. L. 111-312~~; or

2. After December 31, 2012, the advance payment or refund of earned income tax credit;

(ff) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(gg) Interest and dividend income unless derived from a corporate business;

(hh) In-kind income;

(ii) Income of a technically ineligible child;

(jj) Payment made from the Agent Orange Settlement Fund;

(kk) K-TAP payment including back payment;

(ll) Income of legal guardian of a minor parent, unless the guardian meets the degree of relationship pursuant to 921 KAR 2:006, Section 11;

(mm) Payment made from the Radiation Exposure Compensation Trust Fund;

(nn) Up to \$2,000 per year of income received by individual Indians denied from a lease or other use of individually-owned trust or restricted lands;

(oo) Payment made to an individual because of the individual's status as a victim of Nazi persecution;

(pp) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;

(qq) A payment received from the National Tobacco Growers Settlement Trust;

(rr) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 42 U.S.C. 10602(c);

(ss) A payment received from the Kinship Care Program, pursuant to 922 KAR 1:130, including back payment;

(tt) A payment made to children of Vietnam veterans and certain other veterans, pursuant to 38 U.S.C. 1833;

(uu) A discount or subsidy provided to Medicare beneficiaries pursuant to Section 1860D-31(g)(6) of the Social Security Act, 42 U.S.C. 7(xviii) and (D)(4);

(vv) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d); and

(ww) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5).

(3) Benefit calculation. Excluded income pursuant to subsection (2) of this section and an applicable deduction listed in this subsection shall be applied:

(a) Work expense standard deduction of ninety (90) dollars for full-time and part-time employment;

(b) If the caregiver is not the parent, legal guardian, or a member of the benefit group, the dependent care disregard shall:

1. Be allowed as a work expense for:

a. An able bodied child age thirteen (13) or over and not under court supervision;

b. An incapacitated adult living in the home and receiving K-TAP;

c. A K-TAP case that is otherwise ineligible for K-TAP without the benefit of the disregard for child care, at the option of the recipient; or

d. The month of application for K-TAP benefits; and

2. Not exceed:

a. \$175 per month per individual for full-time employment;

b. \$150 per month per individual for part-time employment; or

c. \$200 per month per individual for child under age two (2);

(c) Child support payment received and retained until



notification of eligibility for K-TAP is received;

(d) Child support payment assigned and actually forwarded or paid to the cabinet;

(e) First thirty (30) dollars and one-third (1/3) of the remainder of earned income not already deducted for each member of the benefit group calculated as follows:

1. The one-third (1/3) portion of this deduction shall be applied to each member's earned income for four (4) months;

2. The thirty (30) dollar portion of this deduction shall be applied concurrently with the one-third (1/3) deduction and for an additional eight (8) consecutive months following the expiration of the concurrent period; and

3. Until the individual has earnings, reported timely, from new employment, the deductions shall not be available to the individual after expiration of the time limits; and

(f) For new employment, or increased wages, acquired after approval and reported timely, a one (1) time only disregard per employed adult member of the benefit group, the amount of two (2) full calendar months earnings calculated as follows:

1. The two (2) months earnings disregard shall be consecutive, and at the option of the recipient; and

2. If otherwise eligible, a sanctioned or penalized member of the benefit group may receive the two (2) months earnings disregard.

(4) Deductions from earnings pursuant to subsection (3)(a), (b) and (e) of this section shall not apply for a month the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists pursuant to 921 KAR 2:370, Section 6(1); or

(b) Fails to report an increase in earnings, that impacts eligibility, within ten (10) days of the change, unless good cause exists as follows:

1. The benefit group has been directly affected by a natural disaster;

2. An immediate family member living in the home was institutionalized or died during the ten (10) day report period; or

3. The responsible relative in the case and the member employed, if different, is out of town for the entire ten (10) day report period.

Section 6. Child Care Expense. With the exception of those circumstances pursuant to Section 5(3)(b) of this administrative regulation, a child care expense incurred as a result of employment shall be paid pursuant to 922 KAR 2:160.

Section 7. Income and Resources of an Individual Not Included in the Benefit Group. (1) The income provisions of this section shall apply to the following individuals, living in the home but not included in the benefit group, pursuant to subsection (2) of this section:

(a) A stepparent;

(b) The spouse of a minor dependent child;

(c) The spouse of a specified relative other than a parent; and

(d) A parent of a minor parent.

(2) The gross income of the individual shall be considered available to the benefit group, subject to the following deductions:

(a) The first ninety (90) dollars of the gross earned income; and

(b) 1. An amount equal to the K-TAP standard of need for the appropriate family size, pursuant to Section 9 of this administrative regulation for:

a. The support of the individual; and

b. A person living in the home if:

(i) The needs of the person are not included in the K-TAP eligibility determination; and

(ii) The person is or may be claimed as a dependent for the purpose of determining his federal personal income tax liability by the individual;

2. An amount actually paid to a person not living in the home who is or may be claimed by him as a dependent for the purpose of determining his personal income tax liability by the individual; or

3. Payment for alimony or child support to a person not living in the home by the individual.

(3) A resource shall not be considered in determining eligibility

of the parent, minor dependent child, or specified relative other than a parent or the benefit group that belongs solely to the:

(a) Stepparent;

(b) Spouse of a minor dependent child;

(c) Spouse of a specified relative other than a parent; or

(d) Parent of a minor parent.

Section 8. Alien Sponsor Income and Resources. (1)(a) For the purpose of this section, the alien's sponsor and sponsor's spouse, if living with the sponsor, shall be referred to as sponsor.

(b) This subsection and subsections (2) through (6) of this section shall apply to an immigrant who has an agreement executed other than an agreement pursuant to 8 U.S.C. 1183a.

(2) The gross non-K-TAP income and resources of an alien's sponsor shall be deemed available to the alien, subject to a deduction set forth in this section, for a period of three (3) years following entry into the United States.

(3) If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens.

(4) If adequate information on the sponsor or sponsor's spouse is not provided, a sponsored alien shall be ineligible for a month.

(5) If an alien is sponsored by an agency or organization, that has executed an affidavit of support, the alien shall be ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization:

(a) Is no longer in existence; or

(b) Does not have the financial ability to meet the alien's needs.

(6) The provisions of this subsection shall not apply to an alien pursuant to subsection (5) or (7) of this section.

(a) The gross income of the sponsor shall be considered available to the benefit group subject to the following deductions:

1. Twenty (20) percent of the total monthly gross earned income, not to exceed \$175;

2. An amount equal to the K-TAP standard of need for the appropriate family size pursuant to Section 9 of this administrative regulation of:

a. The sponsor; and

b. Other person living in the household:

(i) Who is or may be claimed by the sponsor as a dependent in determining the sponsor's federal personal income tax liability; and

(ii) Whose needs are not considered in making a determination of eligibility for K-TAP;

3. An amount paid by the sponsor to a nonhousehold member who is or may be claimed as a dependent in determining the sponsor's federal personal tax liability;

4. Actual payment of alimony or child support paid to a nonhousehold member; and

5. Income of a sponsor receiving SSI or K-TAP.

(b) Resources deemed available to the alien shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if the sponsor were a K-TAP applicant in this state, less \$1,500.

(7)(a) For a sponsored alien who enters the United States on or after December 19, 1997, who is required to complete a sponsorship agreement pursuant to 8 U.S.C. 1183a, the total gross income and resources of an alien's sponsor and sponsor's spouse shall be deemed available to the alien.

(b) The sponsor's obligation shall be available until the:

1. Immigrant:

a. Becomes a United States citizen;

b. Is credited with forty (40) quarters of work; or

c. Ceases to hold the status of an alien lawfully admitted for permanent residence; or

2. Sponsor dies.

(c) The immigrant shall provide the sponsorship agreement pursuant to 8 U.S.C. 1183a.

(8)(a) The actual amount provided by the sponsor shall be considered for a period up to twelve (12) months from the date of determination, if an:

1. Amount less than the amount in the sponsorship agreement

is made available to the immigrant; and

2. Alien is determined indigent.

(b) An alien shall be determined indigent if:

1. The amount of the sponsor's income and resources given to the alien is less than the amount in the agreement; and

2. Without K-TAP assistance and after consideration of the alien's own income, cash, food, housing or assistance provided by an individual including the sponsor, the alien is unable to obtain food and shelter.

(9) Deeming of the sponsor's income shall not apply for twelve (12) months if the:

(a) Alien or alien's child has been subjected to extreme cruelty or battery while living in the United States and the individual committing the battery or extreme cruelty does not live with the child or parent if committed by a:

1. Spouse or parent; or

2. Spouse or parent's family living with the alien or alien's child and the spouse or parent allows the cruelty or battery; or

(b) Alien is a child who lives with a parent who has been subjected to extreme cruelty or battery while living in the United States, and the individual committing the battery or extreme cruelty does not live with the child or parent if committed by a:

1. Spouse; or

2. Member of the spouse's family living in the same household and the spouse allows the cruelty or battery.

Section 9. Payment Maximum. (1) The K-TAP payment maximum includes an amount for food, clothing, shelter, and utilities.

(2)(a) Countable income, pursuant to Section 10 of this administrative regulation, shall be subtracted in determining eligibility for and the amount of the K-TAP assistance payment as follows:

Number of Eligible Persons	Payment Maximum	Standard of Need
1 person	\$186	\$401
2 persons	\$225	\$460
3 persons	\$262	\$526
4 persons	\$328	\$592
5 persons	\$383	\$658
6 persons	\$432	\$724
7 or more persons	\$482	\$790

(b) The gross income limit shall be as follows for the appropriate family size:

Number of Eligible Persons	Maximum Gross Income Limits
1 Person	\$742
2 Persons	\$851
3 Persons	\$974
4 Persons	\$1,096
5 Persons	\$1,218
6 Persons	\$1,340
7 or more Persons	\$1,462

(3) Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size.

(4)(a) The assistance payment shall be the lesser amount of either:

1. Fifty-five (55) percent of the deficit pursuant to subsection (3) of this section; or

2. The payment maximum pursuant to subsection (2)(a) of this section.

(b) As a result of applying the forty-five (45) percent ratable reduction pursuant to subsection (3) of this section, an eligible payment to an otherwise eligible family with no income shall be calculated pursuant to KRS 205.200(2).

(5) If a benefit group's assistance payment equals zero (0), the benefit group shall be ineligible for K-TAP.

Section 10. Best Estimate. (1) The benefit shall be computed by using a best estimate of income that may exist in the payment month.

(2) The following method shall be used to calculate a best estimate:

(a) For a case with earned income, other than self-employment earned income, a monthly amount shall be determined as follows:

1. Cents shall:

a. Not be rounded to the nearest dollar before adding or multiplying hourly or daily earnings; and

b. Be rounded to the nearest dollar before adding or multiplying weekly, biweekly, semimonthly, monthly, quarterly, or annual amounts.

2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding calendar month~~[two (2) calendar months]~~ shall be used.

3. A monthly amount shall be determined by:

a. Adding gross income from each pay period;

b. Dividing by the total number of pay periods considered;

c. Converting the pay period figure to a monthly figure by multiplying a:

(i) Weekly amount by four and one-third (4 1/3);

(ii) Biweekly amount by two and one-sixth (2 1/6); or

(iii) Semimonthly amount by two (2); and

d. Rounding to the nearest dollar.

4. If income has recently begun, and the applicant or recipient has not received a calendar month~~[two (2) calendar months]~~ of earned income, the anticipated monthly income shall be computed by:

a. Multiplying the hourly rate by the estimated number of hours to be worked in a pay period; or

b.(i) Multiplying the daily rate by the estimated number of days to be worked in the pay period; and

(ii) Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3c of this paragraph and rounding to the nearest dollar.

(b) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:

1. Rounding cents to the nearest dollar;

2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and

3. Averaging the amount of unstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.

(c) For a case with self-employment income, a monthly amount shall be determined as follows:

1. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);

2. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and

3. Profit shall be determined by:

a. Rounding the total gross income to the nearest dollar;

b. Rounding the total amount of allowable expenses to the nearest dollar;

c. Dividing each by twelve (12), or the appropriate number of months, and rounding to the nearest dollar; and

d. Subtracting the rounded monthly expense from the rounded monthly income.

(3) The best estimate shall be recalculated:

(a) At six (6) month intervals for a case with earned, unearned, or self-employment income;

(b) If the agency becomes aware of a change in a circumstance; or

(c) To reflect a mass change in the standard of need or payment maximum standard pursuant to Section 9 of this administrative regulation.

Section 11. K-TAP Recoupment. The following provisions shall apply for recoupment of a K-TAP overpayment.

(1) Necessary action will be taken promptly to correct and

recoup an overpayment.

(2) An overpayment shall be recovered:

(a) From an adult claimant, whether currently receiving K-TAP benefits:

1. After notice and an opportunity for a fair hearing pursuant to 921 KAR 2:055 is given;

2. After administrative and judicial remedies have been exhausted or abandoned; and

3. Including assistance paid:

a. Pending the hearing decision; or

b. Due to cabinet error; and

(b) Through:

1. Repayment by the claimant to the cabinet;

2. Reduction of future K-TAP benefits, that shall result in the benefit group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income pursuant to Section 9 of this administrative regulation;

3. Civil action in the court of appropriate jurisdiction; or

4. If the cabinet becomes aware of expunged electronic benefits transfer (EBT) payments, reduction of the overpayment balance by an amount equal to the expunged benefits.

(3) In a case that has both an overpayment and an underpayment, the overpayment and underpayment shall be offset one against the other in correcting the payment to a current recipient.

Section 12. Aid to Families with Dependent Children Recoupment. (1) The cabinet shall recoup an Aid to Families with Dependent Children overpayment discovered on or after April 1, 1982, pursuant to 45 C.F.R. 233.20(a)(13).

(2) An Aid to Families with Dependent Children overpayment shall be recovered from an adult or child member of the benefit group:

(a) Pursuant to 45 C.F.R. 233.20(a)(13); and

(b) In accordance with the recoupment process specified in Section 11 of this administrative regulation.

Section 13. Avoiding an Overpayment. (1) A K-TAP recipient may voluntarily:

(a) Return a benefit payment; or

(b) Give permission to the cabinet to use EBT benefits by completing and returning a written statement requesting a written statement requesting this option to avoid an overpayment if the case:

1. Is totally ineligible for the month the payment is issued; and

2. Has not been reduced for recoupment of a previous overpayment.

(2) If a payment is voluntarily returned, the cabinet shall determine whether the recipient is due a refund as described in Section 14 of this administrative regulation.

Section 14. Refund. A recipient shall be due a refund in the following situations:

(1) An amount in excess of the actual overpayment is recouped;

(2) An overpayment and an underpayment is offset and a balance is owed to the recipient; or

(3) A K-TAP payment that is voluntarily returned to avoid an overpayment is compared to the current month obligation of child support collected by the cabinet during the month the K-TAP check was intended to cover, leaving a balance owed to the recipient.

Section 15. Correction of Underpayments. The following provisions shall apply to a K-TAP payment:

(1) An underpayment shall be promptly corrected to:

(a) A current K-TAP recipient; or

(b) One (1) who would be a current recipient if the error causing the underpayment had not occurred.

(2) The difference between the payment received by the recipient and the actual entitlement amount shall be issued to the underpaid assistance group.

(3) In a determination of ongoing eligibility, the corrective

payment to the assistance group shall not be considered as income or a resource in the:

(a) Month the payment is paid; or

(b) Next following month.

TERESA C. JAMES, LCSW, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 7, 2015

FILED WITH LRC: July 9, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 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 August 14, 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 August 31, 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 standards of need and the amount of a Kentucky Transitional Assistance Program (K-TAP) payment.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish financial eligibility criteria for the K-TAP program and the benefit amount to a qualifying household.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the standards of need and the amount of a K-TAP payment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting forth the standards of need for and the amount of K-TAP payment.

(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 revises the period of time income will be considered when determining eligibility for K-TAP. Specifically, the amendment clarifies that income for the preceding calendar month will be used to determine the best estimate of income if the income is from an ongoing situation or has recently begun, and if the income is not from self-employment. In addition, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to align with the requirements of a new web-based enrollment and eligibility system. This system promises further programmatic modernization, greater efficiency in the eligibility determination process and ongoing case maintenance, and enhanced reporting and archiving functionalities. While financial eligibility thresholds are unchanged, this change to the period of income used for a K-TAP eligibility determination is anticipated to reduce the income verification requirements on K-TAP applicants.

In addition, the policy change should reflect the latest month of income to improve determination accuracy.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this regulation conforms to the content of the authorizing statutes by clarifying the standards of need for and the amount of a K-TAP payment.

(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 clarifying financial eligibility criteria for K-TAP and assuring process and policy alignment, resource maximization, and programmatic accountability.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of March 2015, 20,590 families received K-TAP assistance.

(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 require no new or additional action by K-TAP 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): The amendment to this administrative regulation will create no new or additional cost to K-TAP applicants or recipients.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): While financial eligibility thresholds are unchanged, this change to the period of income used for a K-TAP eligibility determination is anticipated to reduce the income verification requirements on K-TAP applicants. In addition, the policy change should reflect the latest month of income to improve determination accuracy and income actualities. Regulated entities will also benefit from the updates and clarity provided within the regulatory amendment and the enhanced programmatic efficiencies promised by the new web-based eligibility and enrollment system.

(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 is anticipated to impose no new or additional cost to the administrative body to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and is anticipated to impose no new or additional ongoing costs to the administrative body to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Temporary Assistance for Needy Families (TANF) Block Grant funds under Title IV-A of the Social Security Act and General Funds used to meet Maintenance of Effort requirements are the funding sources for this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 U.S.C. 601-619

2. State compliance standards. KRS 194A.50(1), 205.200(2),

205.210(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 601-619

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.200(2), 205.210(1), 42 U.S.C. 601-619

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in any 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 2:017. Kentucky Works Program (KWP) supportive services.**

RELATES TO: KRS 45.237-241, 205.200, 205.211, 205.2003, 45 C.F.R. Parts 260-265, 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), 205.2003(1), 42 U.S.C. 601-619

NECESSITY, FUNCTION, AND CONFORMITY: 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. KRS Chapter 205 requires the Cabinet for Health and Family Services to administer

the public assistance programs. KRS 205.200(2) requires the secretary to promulgate administrative regulations prescribing the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601 to 619 and federal regulations. KRS 205.2003(1) requires the cabinet to promulgate administrative regulations to develop a work program for recipients of public assistance to provide for immediate employment or preparation for employment, and to provide supportive services to assist in the pursuit of work and self-sufficiency. This administrative regulation establishes requirements for receiving Kentucky Works Program (KWP) supportive services.

Section 1. Definitions. (1) "Approved KWP[~~Kentucky Works~~] activity" means participation in an allowable activity in accordance with 921 KAR 2:370, Section 2(1)(c).

(2) "Component" means a service or activity in accordance with 921 KAR 2:370, Section 2(1)(c).

(3) "Component preparation" means the period in which assessment, testing, completion of the transitional assistance agreement, in accordance with 921 KAR 2:370, and referral for removal of barriers takes place.

(4) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(5) "Improper payment" is defined by KRS 45.237(1)(d).

(6) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's "Temporary Assistance for Needy Families" or "TANF" money payment program for a child as defined in 921 KAR 2:006.

(7) "Kentucky Works Program" or "KWP" means a program, in accordance with 921 KAR 2:370, that assists a recipient of K-TAP in obtaining education, training, experience, and employment necessary to leave public assistance.

(8) "Precomponent" means a waiting period between the dates of component assignment and component commencement.

(9) "Preemployment" means a waiting period between the dates of hiring and employment commencement.

(10) "Work-eligible individual" is defined by 45 C.F.R. 261.2(n).

Section 2. Kentucky Works Program (KWP) Participation and Supportive Services Payment. The cabinet shall make a payment for a supportive service cost:

(1) For an individual participating in the KWP[~~Kentucky Works Program~~], except for the exclusions listed in Section 12 of this administrative regulation;

(2) Necessary for participation in an approved KWP[~~Kentucky Works~~] activity; and

(3) To the extent funds are available.

Section 3. Transportation. Transportation reimbursement shall be paid in the following situations:

(1) Precomponent;

(2) Component preparation; or

(3) Component participation.

Section 4. Transportation Payment Amount and Authorization.

(1)(a) To the extent funds are available, payment for transportation shall be provided for an individual participating in an approved KWP[~~Kentucky Works~~] activity, if:

1. Free transportation that meets the needs of the work-eligible individual is unavailable; and

2. The individual is required to incur a transportation expense in order to participate.

(b) If a need for transportation reimbursement for four (4) days or more is determined, a direct payment of \$200 per month to the individual shall be made through the Online Tracking Information System (OTIS)[~~System Tracking for Employability Program or "STEP"~~].

(c) If a need for transportation reimbursement for less than four (4) days is determined, a payment of fifteen (15) dollars to the individual shall be made through the OTIS[~~System Tracking for Employability Program or "STEP"~~].

(2) A payment shall be issued in accordance with 921 KAR 2:050.

(3) In precomponent, if necessary to guarantee that the transportation arrangement shall not be lost, a transportation payment shall be provided for the period of up to:

(a) Two (2) weeks prior to the scheduled start of component activity; or[~~and~~]

(b) One (1) month during a break in component activity if subsequent component activity is scheduled to begin within that period.

Section 5. Restriction on Authorization of a Transportation Payment. A transportation payment shall not be made if the work-eligible individual is not in compliance with a KWP[~~Kentucky Works~~] activity, in accordance with 921 KAR 2:370.

Section 6. Other Supportive Services. (1) To the extent funds are available, the cabinet shall provide other supportive services to a work-eligible individual if necessary for the individual's participation in the approved KWP[~~Kentucky Works~~] activity for:

(a) Component preparation;

(b) Component participation while the K-TAP case remains active; or

(c) Acceptance of a new job or retention of an existing one if the parent or other adult:

1. Has accepted employment and a start date of employment is provided, except if an item is required as a condition of being hired by the employer; or

2. Is employed.

(2) If requirements of subsection (1) of this section are met, the cabinet may approve an item or service needed by the work-eligible individual for participation in a KWP[~~Kentucky Works~~] activity, such as:

(a) A drug screening test fee;

(b) Up to three (3) uniforms for employment, if:

1. Not reimbursable by the employer; and

2. The work-eligible individual provides an estimate;

(c) One (1) suitable interview outfit for pre-employment purposes;

(d) Required clothing or shoes particular to a service, profession, or company, if:

1. Not reimbursable by the employer; and

2. The work-eligible individual provides an estimate;

(e) School supplies and books;

(f) A licensing fee which includes:

1. Exam costs required to obtain a professional license or certificate; or

2. Driver's license fee;

(g) A timepiece necessary for employment or training;

(h) The cost to have a photo identification;

(i) The cost of a criminal records check fee, if required by the provider or employer;

(j) A driver's education class fee; or

(k) Tools required for employment.

(3) Payment for other supportive services shall be limited to a cumulative total of \$400 per individual in a twelve (12) month period, beginning with the first day[~~of the month~~] in which the initial form KW-32[~~PA-32~~], Authorization for Supportive Services Payments, is issued to the work eligible individual.

(4) A penalized or sanctioned work-eligible individual shall not be eligible for other supportive services.

(5) A retroactive payment for other supportive services shall not be made for an item purchased by a penalized or sanctioned work-eligible individual who later cures the penalty. After the individual cures the penalty or sanction, an eligible expense may be authorized.

(6) Except in accordance with Section 7 of this administrative regulation, a medical service or item shall not be an allowable supportive service.

Section 7. Allowable Medical Service or Item. To the extent non-TANF funding is available, the purchase of the following item or service shall be allowed for a work-eligible individual, if needed for participation in the KWP[~~Kentucky Works~~] activity and not reimbursable through Medicaid and limited to:

- (1) Eyeglasses or corrective lens;
- (2) Dentures;
- (3) Hearing aids; and
- (4) Medical service or item required as a condition of employment.

Section 8. Car Repairs. (1) If a free service for car repairs, including a vocational school automotive program, is unavailable that meets the needs of the work-eligible individual, a car repair expenditure shall be provided, to the extent funds are available, if necessary for participation in the approved KWP[Kentucky Works] activity of:

- (a) Component preparation; or
- (b) Component participation, including employment while the K-TAP case remains active.

(2) Car repair expense shall meet the following criteria to be considered for payment:

- (a) Car repair that makes the car functional;
- (b) Property tax on the vehicle;
- (c) Vehicle registration;
- (d) Licenses fee;
- (e) Up to three (3) months coverage of liability insurance for the work-eligible individual to drive a vehicle;

(f) New or used automotive part to be purchased by the work-eligible individual to make the car functional; and

(g) Other car expense needed by the work-eligible individual that would allow participation in the KWP[Kentucky Works] activity.

(3) Prior to the approval of a car repair expenditure listed in subsection (2) of this section, the work-eligible individual shall provide an estimate of the cost.

(4) Auto repair work shall:

(a) Be completed by a garage, unless the repair is completed by a vocational school automotive program; or

(b) Be the responsibility of the work-eligible individual if a payment is made for a new or used automotive part as specified in subsection (2)(f) of this section.

(5) Prior to approval of a car repair expenditure, the cabinet shall verify the work-eligible individual owns the vehicle.

(6) The restrictions on authorization and verification of a supportive service payment described in Section 12 of this administrative regulation shall apply to a car repair expense and payment.

(7) Payment for car repairs shall be limited to a cumulative total of \$1,500 per eligible family during a twelve (12) month period, beginning with the first day of the month in which the initial payment is issued.

Section 9. Short-term Training. To the extent funds are available, a fee for a short-term training program shall be eligible for payment for a work-eligible individual if the training program is:

- (1) Not eligible for federal financial aid; and
- (2) Likely to lead to paid employment, in accordance with:

(a) The work-eligible individual's transitional assistance agreement; and

(b) 921 KAR 2:370.

Section 10. Required Fees. (1) To the extent funds are available, the following payment may be made for a work-eligible individual in compliance with KWP[Kentucky Works] requirements:

- (a) A training registration fee;
  - (b) Financial aid application fee;
  - (c) Testing fee;
  - (d) Application fee required by a vocational school for a specified program;
  - (e) Liability insurance fee;
  - (f) Copy of records fee;
  - (g) Activity fee if mandated by the institution; or
  - (h) Other required fee.
- (2) Required fees shall not exceed \$200 per payment.

Section 11. Educational Bonus. (1) An educational bonus of \$250 per individual shall be paid to a K-TAP adult or child who reports and verifies:

- (a) Receiving a:
  - 1. High school diploma;
  - 2. GED certificate; or
  - 3. Postsecondary school certificate or degree; or
- (b) Graduating from English as a second language class.
- (2) A short-term training program shall not qualify for postsecondary education.
- (3) A K-TAP adult or child shall be limited to only one (1) payment for:
  - (a) Receiving a postsecondary certificate or degree; or
  - (b) Graduating from an English as a second language class.
- (4) A K-TAP adult or child shall earn the diploma, certificate, or degree while receiving K-TAP.
- (5) A K-TAP applicant or recipient shall be advised of the educational bonus and be reminded of available work incentives:
  - (a) During application;
  - (b) At recertification; and
  - (c) Through periodic mailings.

Section 12. Restrictions on Authorization of Supportive Service Payments. (1)(a) To verify an expense and authorize a supportive service payment, except as provided in Section 5 of this administrative regulation, a KW-32[PA-32, Authorization for Supportive Services Payments] shall be completed.

(b) A KW-32[PA-32, Authorization for Supportive Services Payments] shall be valid for thirty (30) calendar days from the date issued by the cabinet.

(2) A payment shall not be made for the period during which:

(a) A valid KW-32[PA-32, Authorization for Supportive Services Payment] is not returned; or

(b) The work-eligible individual is:

- 1. Penalized for noncompliance with a KWP[Kentucky Works] activity, as specified in 921 KAR 2:370; or
- 2. Ineligible.

(3) A supportive service payment shall be issued in accordance with 921 KAR 2:050.

Section 13. Hearings and Appeals. An applicant or recipient of supportive services who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing in accordance with 921 KAR 2:055.

Section 14. Improper Payments. The cabinet shall recover the amount of an improper payment pursuant to KRS 45.237-241 and 205.211, including assistance paid pending the outcome of a hearing, from the claimant-payee.

Section 15. Incorporation by Reference. (1) The "KW-32[PA-32], Authorization for Supportive Services Payments", 12/15, [edition 11/09] 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: July 7, 2015

FILED WITH LRC: July 9, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 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 August 14, 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 August 31, 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 is necessary to establish requirements for receiving Kentucky Works Program (KWP) supportive services.

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform conditions and requirements regarding KWP supportive services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing KWP supportive services and related requirements.

(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 through its establishment of eligibility criteria and financial limitations for all KWP supportive services, including transportation, other supportive services, allowable medical services or items, car repairs, short-term training, required fees, and educational bonuses.

(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 this administrative regulation by including references to the full title of the program and the Online Tracking Information System (OTIS). The amendment changes the name of form PA-32, Authorization for Supportive Services Payments, to KW-32, Authorization for Supportive Services Payments, to more readily associate the form with KWP. The amendment adds criteria regarding the approval of work-related uniforms, clothing or shoes, and car insurance supportive service payments to eliminate possible abuses of the program. Lastly, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment reflects necessary updates to the administrative regulation since its last amendment and aligns the administrative regulation with the new web-based eligibility and enrollment system. This new system promises further programmatic modernization, greater efficiency in the eligibility determination process and ongoing case maintenance, and enhanced reporting and archiving functionalities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this regulation conforms to the content of the authorizing statutes by clarifying the types and conditions of KWP supportive services to assist a work-eligible household member in his or her efforts to work and become self-sufficient.

(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 assuring process and policy alignment, resource maximization, and programmatic accountability.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of March 2015, there were 7,392 recipients required to participate in KWP.

(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 require no new or additional action by regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the updates and clarity provided within the regulatory amendment and the enhanced programmatic efficiencies promised by the new web-based eligibility and enrollment system. The requirements of KWP supportive services have otherwise remained unchanged.

(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 is anticipated to impose no new or additional cost to the administrative body to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and is anticipated to impose no new or additional ongoing costs to the administrative body to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Temporary Assistance for Needy Families (TANF) Block Grant funds under Title IV-A of the Social Security Act and General Funds used to meet Maintenance of Effort requirements are the funding sources for this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be applied in a like manner statewide.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 U.S.C. 601-619

2. State compliance standards. KRS 194A.050(1), 205.200(2), 205.2003(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 601-619

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

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.200(2), 205.2003(1), 42 U.S.C.

601-619

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in any 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 2:046. Adverse action; conditions.**

RELATES TO: KRS 205.010, 205.200, 205.245, 605.120(5), 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), 605.120(6)

NECESSITY, FUNCTION, AND CONFORMITY: 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. KRS Chapter 205 requires the Cabinet for Health and Family Services to administer public assistance programs including the Kentucky Transitional Assistance Program (K-TAP)[or "K-TAP"] and mandatory and optional supplementation of persons who are aged, blind, and have a disability. KRS 205.200(2) requires the cabinet to promulgate administrative regulations concerning the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601-619 and federal regulations. KRS 605.120(6) requires the Cabinet for Health and Family Services to promulgate administrative regulations to establish uniform conditions and requirements for kinship care. This administrative regulation establishes the conditions under which an application is denied or assistance is decreased or discontinued and advance notice requirements.

Section 1. Definitions. (1) "Applicant" means an individual applying for:

(a) State Supplementation Program (SSP) benefits;

(b) K-TAP benefits; or

(c) Kinship Care Program benefits.

(2) "Application" means the process set forth in:

(a) 921 KAR 2:035 for K-TAP or ~~SSP[State Supplementation Program]~~; or

(b) 922 KAR 1:130 for Kinship Care Program.

(3) "Recipient" means a:

(a) Person who is aged, blind, or has a disability receiving

~~SSP[State Supplementation Program]~~ benefits;

(b) Member of a K-TAP assistance group as defined in 921 KAR 2:016; or

(c) Member of a Kinship Care Program assistance group as defined in 922 KAR 1:130.

Section 2. Reasons for Adverse Action. (1) An application shall be denied if:

(a) Income or resources exceed the standards for the specific assistance program as set forth in 921 KAR 2:016, 921 KAR 2:015, or 922 KAR 1:130;

(b) The applicant does not meet technical eligibility criteria or fails to comply with a technical requirement as set forth in 921 KAR 2:006, 921 KAR 2:015, 921 KAR 2:370, or 922 KAR 1:130;

(c) The applicant fails to provide sufficient information or clarify conflicting information necessary for a determination of eligibility despite receipt of written notice detailing the additional information needed for a determination;

(d) The applicant fails to ~~complete[keep the appointment for]~~ an interview;

(e) The applicant requests in writing voluntary withdrawal of application;

(f) Department staff is unable to locate the applicant; or

(g) The applicant is no longer domiciled in Kentucky.

(2) Assistance shall be discontinued or decreased if:

(a) Income or resources of the recipient increase or deductions decrease resulting in reduced or discontinued benefits as set forth in 921 KAR 2:016, 921 KAR 2:015, or 922 KAR 1:130;

(b) The recipient does not meet technical eligibility criteria or fails to comply with a technical requirement as set forth in 921 KAR 2:006, 921 KAR 2:015, 921 KAR 2:370, or 922 KAR 1:130;

(c) The recipient fails to provide sufficient information or clarify conflicting information necessary for a redetermination of eligibility despite receipt of written notice detailing the additional information needed for a redetermination;

(d) The recipient fails to ~~complete[keep the appointment for]~~ an interview;

(e) The cabinet is recovering K-TAP or Kinship Care Program overpayments through recoupment;

(f) Department staff is unable to locate recipient;

(g) The recipient is no longer domiciled in Kentucky; or

(h) Change in program policy adversely affects the recipient.

Section 3. Notification of Denial of an Application. (1) If an application is denied, the applicant shall be given a notice of such action[form as follows:

(a) ~~KIM-105-Adult MA for a State Supplementation Program recipient;~~

(b) ~~KIM-105-KC for a Kinship Care applicant; or~~

(c) ~~KIM-105-KTAP for a K-TAP applicant who does not concurrently apply for the Supplemental Nutrition Assistance Program (SNAP)].~~

(2) ~~The notice pursuant to~~[A form listed in] subsection (1) of this section shall include:

(a) The reason for the denial;

(b) Citation of the applicable state administrative regulation; and

(c) Information regarding:

1. The opportunity to confer with the worker; and

2. The right to a fair hearing as provided by 921 KAR 2:055.

Section 4. Advance Notice of a Decrease or Discontinuance.

(1) The recipient shall be given ten (10) days advance notice of the proposed action if a change in circumstances indicates:

(a) A money payment shall be:

1. Reduced;

2. Suspended; or

3. Discontinued; or

(b) An individual shall be removed from the K-TAP or Kinship Care Program grant, even if the grant increases.

(2) The ten (10) days advance notice of the proposed action shall:

(a) Be given in accordance with[on a form listed in] Section



3[(4)] of this administrative regulation;

- (b) Explain the reason for the proposed action;
- (c) Cite the applicable state administrative regulation; and
- (d) Extend the opportunity to confer with the worker or to request a fair hearing pursuant to 921 KAR 2:055.

(3) A hearing request received during the advance notice period may result in delay of the decrease or discontinuance pending the hearing officer's decision, as provided in 921 KAR 2:055.

Section 5. Exceptions to the Advance Notice Requirement. An advance notice of proposed action shall not be required, but written notice of action taken shall be given[on a form listed] in accordance with Section 3[(4)] of this administrative regulation, if:

- (1) A decrease or discontinuance results from:
  - (a) Information reported by the recipient, if the recipient signs a waiver of the notice requirement indicating understanding of the consequences;
  - (b) A clear written statement, signed by a recipient that the recipient no longer wishes to receive assistance from the department;
  - (c) Factual information received by the department that the:
    - 1. State supplementation recipient has died; or
    - 2. K-TAP payee has died and a new payee is unavailable;
  - (d) Whereabouts of a recipient are unknown and mail addressed to the recipient is returned indicating no known forwarding address; however, a returned check shall be made available if whereabouts of the recipient becomes known during the payment period covered by the returned check;
  - (e) Establishment by the agency that assistance has been accepted in another state;
  - (f) Removal from the home of a K-TAP or Kinship Care Program child by judicial order or voluntary placement in foster care by his legal guardian;
  - (g) The person who is aged, blind, or has a disability and is an SSP[a State Supplementation Program] recipient, enters a nursing facility resulting in vendor payment status;
  - (h) The recipient enters a:
    - 1. Penal institution;
    - 2. Tuberculosis hospital, if under sixty-five (65); or
    - 3. Psychiatric hospital, if between twenty-one (21) and sixty-five (65); or
- (2) A recipient is granted a special allowance, or time limited assistance, that is terminated at the end of a specified period.

~~[Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:~~

- ~~(a) "KIM-105-Adult MA", 11/13;~~
- ~~(b) "KIM-105-KC", 11/13; and~~
- ~~(c) "KIM-105-KTAP", 11/13.~~

~~(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: July 7, 2015

FILED WITH LRC: July 9, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 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 August 14, 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 August 31, 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 conditions under which an application is denied or assistance is decreased or discontinued and advance notice requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish notice requirements and the conditions under which an application is denied or benefits decreased or discontinued for an applicant or recipient of K-TAP, Kinship Care, or SSP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the notice requirements and conditions for application denial or benefit decrease or discontinuance for an applicant or recipient of K-TAP, Kinship Care, or SSP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation assists in the effective administration of the statutes by establishing the conditions under which an application is denied or assistance is decreased or discontinued and advance notice requirements.

(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 updates notice requirements with the new forthcoming web-based eligibility and enrollment system. Forms incorporated will be obsolete upon implementation of the new system. In addition, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to align with the requirements of a new web-based enrollment and eligibility system. This system promises further programmatic modernization, greater efficiency in the eligibility determination process and ongoing case maintenance, and enhanced reporting and archiving functionalities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its update to notice requirements if public assistance benefits are denied, decreased, or discontinued.

(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 assuring process and policy alignment, resource maximization, and programmatic accountability.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In March 2015, there were 20,590 K-TAP families, 4,687 Kinship Care recipients, and 2,893 State Supplementation recipients.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will require no new or additional action by 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): The amendment to this administrative regulation will create no new or additional cost to applicants or recipients.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the updates and clarity provided within the regulatory amendment and the enhanced programmatic efficiencies promised by the new web-based eligibility and enrollment system. The criteria and requirements for adverse actions have otherwise remained unchanged.

(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 is anticipated to impose no new or additional cost to the administrative body to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and is anticipated to impose no new or additional ongoing costs to the administrative body to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Temporary Assistance for Needy Families (TANF) Block Grant funds under Title IV-A of the Social Security Act and General Funds used to meet Maintenance of Effort requirements are the funding sources for both K-TAP and Kinship Care. General Funds are the source of funding for the State Supplementation Program (SSP).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 U.S.C. 601-619

2. State compliance standards. KRS 194A.050(1), 205.200(2), 605.120(6)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 601-619

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.200(2), 605.120(6), 42 U.S.C. 601-619

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

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

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

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

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in any 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 2:050. Time and manner of payments.

RELATES TO: KRS 205.220, 205.245, 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.220, 205.245, 42 U.S.C. 601-619

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate the programs and fulfill the responsibilities vested in the cabinet 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. KRS 205.220 prescribes who is eligible for public assistance and requires the cabinet to prescribe by administrative regulation the time and manner of payments of public assistance grants for eligible individuals. KRS 205.245 provides for a money payment to the needy aged, needy blind, and needy permanently and totally disabled. This administrative regulation establishes the time and manner of payments for the Kentucky Transitional Assistance Program (K-TAP) and the Kentucky Works Program (KWP) in conformity with the Social Security Act, 42 U.S.C. 601 - 619, and federal regulations. It also establishes the time and manner of State Supplementation Program (SSP) payments and Mental Illness or Intellectual Disability (MI/ID)~~Mental Retardation (MIMR)~~ Supplement Program payments.

Section 1. Authorization of K-TAP Payments. (1) Method of payment.

(a) A payment shall be issued monthly by:

1. Check;

2. Electronic benefit transfer (EBT); or

3. Direct deposit into a recipient's checking account upon completion by the recipient of the "Direct Deposit Authorization, Form PA-63.

(b) A payment shall be issued prospectively.

(2) Initial payment.

(a) A K-TAP approval shall not be made for a period prior to the date of application.

(b) The effective date of an initial payment for a K-TAP approval shall be the date an application is filed if eligibility factors are met as of that date.

(c) If eligibility factors are not met as of the day of application,

the approval shall be effective the date on which all factors are met.

(3) Subsequent and special payment.

(a) Except in a situation pursuant to paragraph (b) of this subsection, a subsequent K-TAP payment shall be made for an entire month in which technical eligibility factors are met as of the first day of the month.

(b) A special payment shall be issued:

1. If the regular monthly payment received is less than the entitled amount based on a household circumstance; and

2. For a period of up to twelve (12) months preceding the month of error correction, if the error existed in the preceding months.

(4) Inalienability of payment.

(a) A K-TAP payment shall be unconditional and exempt from a remedy for the collection of a debt, lien, or encumbrance from an individual or agency other than the Cabinet for Health and Family Services.

(b) The Cabinet for Health and Family Services may initiate recoupment to recover overpayment of benefits pursuant to 921 KAR 2:016.

(c) The Cabinet for Health and Family Services shall make adjustments to an EBT account to correct an auditable, out-of-balance settlement condition that occurs during the redemption process as a result of a system error.

(5) EBT Account Inactivity.

(a) If an EBT account has not been debited in 365 days, the cabinet shall:

1. Expunge a monthly benefit on a monthly basis as each individual benefit month reaches a date that is 365 days in the past; and

2. Notify the household in writing:

a. That the household's EBT account has not been debited in the last 365 days; and

b. Of the amount of EBT benefits that have been expunged.

(b) If a recipient debits the EBT account, the expungement process shall cease.

(6) Eligible payee.

(a) A money payment shall be issued in the name of the approved applicant.

(b) Upon request of an individual specified in this subsection, a K-TAP payment for the month of death shall be reissued to the:

1. Widow or widower;

2. Parent;

3. Guardian; or

4. Executor or administrator of the estate.

(c) If the payment is reissued to an executor or administrator, a copy of the appointment order shall be obtained as verification.

(7) In accordance with 42 U.S.C. 608(a)(12), a K-TAP payment received on EBT shall not be accessed via an EBT transaction, such as a point-of-sale terminal or an automated teller machine, at a:

(a) Liquor store;

(b) Business that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment;

(c) Casino;

(d) Gambling casino; or

(e) Gaming establishment.

(8) The terms used in subsection (7) of this section shall be defined in accordance with 42 U.S.C. 608(a)(12)(B).

Section 2. Supportive Services for KWP Participants. A supportive services payment for a KWP participant shall be made according to the type of service provided, as follows:

(1) A child care payment shall be issued pursuant to 922 KAR 2:160.

(2) A transportation payment pursuant to 921 KAR 2:017 shall be made directly to the K-TAP recipient.

(3) Other approved supportive services payments shall be made:

(a) Directly to the provider; and

(b) Within thirty (30) days of receipt of appropriate verification

of service delivery of billing, pursuant to 921 KAR 2:017.

Section 3. Authorization of an SSP payment. (1) Method of payment.

(a) A payment shall be issued monthly by:

1. Check; or

2. Direct deposit into a recipient's checking account upon completion by the recipient of the PA-63, Direct Deposit Authorization form; and

(b) A payment shall be issued prospectively.

(2) Initial payment.

(a) The effective date for SSP approval shall be the first day of the month in which:

1. An application is filed; and

2. Eligibility factors are met.

(b) An SSP payment shall be made for the entire month of which eligibility factors are met.

(3) Subsequent and special payment.

(a) A subsequent SSP payment shall be made for an entire month in which eligibility factors are met as of the first day of the month.

(b) A special payment shall be made:

1. If the regular monthly payment received is less than the entitled amount based on a household circumstance; and

2. For a period of up to twelve (12) months preceding the month of error correction, if the error existed in the preceding months.

(4) Inalienability of a payment.

(a) An SSP money payment shall be unconditional and is exempt from a remedy for the collection of a debt, lien, or encumbrance from an individual or agency other than the Cabinet for Health and Family Services.

(b) The Cabinet for Health and Family Services shall initiate recoupment to recover overpayment of benefits.

(5) Eligible payee.

(a) A money payment shall be issued in the name of the eligible applicant except as provided in paragraph (b) of this subsection.

(b) A money payment may be issued to the:

1. Legally appointed committee or guardian; or

2. Person serving as the representative payee for another statutory benefit such as Supplemental Security Income.

(c) Upon request of an individual specified in this subsection, an SSP payment for the month of death shall be reissued to the:

1. Widow or widower;

2. Parent;

3. Guardian; or

4. Executor or administrator of the estate.

(d) If the payment is reissued to an executor or administrator, a copy of the appointment order shall be obtained as verification.

Section 4. Authorization of Persons with MI/ID[MIMR] Supplement Program Payment. (1) Method of payment.

(a) The MI/ID[MIMR] supplement payment shall be made:

1. Quarterly;

2. By the last day of the month following the month that the certified quarter ends; and

3. Following receipt of appropriate documentation, pursuant to 921 KAR 2:015.

(b) The training reimbursement payment for the MI/ID[MIMR] Supplement Program shall be made:

1. Quarterly;

2. By the last day of the month following the month that the certified quarter ends; and

3. Following receipt of appropriate documentation, pursuant to 921 KAR 2:015.

(2) Initial payment.

(a) Following the notification to the Cabinet for Health and Family Services by the personal care home (PCH) of its intent to participate, the effective date of the MI/ID[MIMR] supplement shall be the first day of a month that certification requirements pursuant to 921 KAR 2:015 are met.

(b) If a Type A citation issued from the Office of Inspector

General occurs, payment shall be made only for eligible months pursuant to 921 KAR 2:015.

(3) A subsequent payment shall be made for a month within a quarter in which eligibility factors are met.

(4) Eligible payee.

(a) Payment for the MI/ID[MIMR] supplement shall be made to the participating PCH, meeting MI/ID[MIMR] certification requirements, for an eligible calendar quarter, pursuant to 921 KAR 2:015.

(b) Payment for the MI/ID[MIMR] training reimbursement shall be made to the participating PCH.

Section 5. Incorporation by Reference. (1) The "PA-63, Direct Deposit Authorization", 12/15[44/44], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, 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: July 7, 2015

FILED WITH LRC: July 9, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 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 August 14, 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 August 31, 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 time and manner of payments made to Kentucky Transitional Assistance Program (K-TAP) recipients, Kentucky Works Program (KWP) participants for supportive services, and State Supplementation Program (SSP) recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the time and manner in which public assistance payments are issued.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the time and manner of K-TAP, KWP supportive services, and SSP payments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the time and manner of public assistance payments.

(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 incorporates changes on the PA-63, Direct Deposit Authorization,

to align with the requirements of a new forthcoming web-based enrollment and eligibility system, and it updates references made to Mental Illness or Mental Retardation (MIMR) to Mental Illness or Intellectual Disability (MI/ID), as the program name has changed. The amendment also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment reflects necessary updates to the administrative regulation since its last amendment and aligns the administrative regulation with the new web-based eligibility and enrollment system. This new system promises further programmatic modernization, greater efficiency in the eligibility determination process and ongoing case maintenance, and enhanced reporting and archiving functionalities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its update to regulatory content and alignment with forthcoming business processes and technology.

(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 assuring process and policy alignment, resource maximization, and programmatic accountability.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In March 2015, there were 20,590 K-TAP families, 4,687 Kinship Care recipients, and 2,893 State Supplementation recipients.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will require no new or additional action by regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the updates and clarity provided within the regulatory amendment and the enhanced programmatic efficiencies promised by the new web-based eligibility and enrollment system. The time and manner of payments have otherwise remained unchanged.

(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 is anticipated to impose no new or additional cost to the administrative body to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and is anticipated to impose no new or additional ongoing costs to the administrative body to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Temporary Assistance for Needy Families (TANF) Block Grant funds under Title IV-A of the Social Security Act and General Funds used to meet Maintenance of Effort requirements are the funding sources for both K-TAP and Kinship Care. General Funds are the source of funding for the State Supplementation Program (SSP).

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees or directly or

indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 U.S.C. 601-619

2. State compliance standards. KRS 194A.050(1), 205.220, 205.245

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 601-619

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.200, 205.245, 42 U.S.C. 601-619

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in any 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 2:055. Hearings and appeals.

RELATES TO: KRS Chapter 13B, 45.237, 205.211, 205.231, 205.237, 45 C.F.R. 205.10, 30 U.S.C. 901-944, 38 U.S.C. 1101-1163, 1501-1525, 42 U.S.C. 401-434, 601-619, 1381-1383f, 8621-8630, 45 U.S.C. 231-231v

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1), 205.231(5), 42 U.S.C. 602, 8624

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, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 602 and 42 U.S.C. 8624 require states receiving Temporary Assistance for Needy Families (TANF) and Low Income Home Energy Assistance Program (LIHEAP) grants, respectively, to provide a grievance procedure for participants and outline this procedure in the applicable state plan. KRS Chapter 13B establishes the hearing process to be followed in the Commonwealth, and KRS 205.231(5) requires the cabinet to promulgate administrative regulations for the hearing process. This administrative regulation establishes the requirements to be followed in conducting a hearing related to the Kentucky Transitional Assistance Program (K-TAP), the Low-Income Home Energy Assistance Program (LIHEAP), or the State Supplementation Program (SSP).

Section 1. Hearing Information. (1) A participant shall be informed of:

(a) The right to a hearing;

(b) The procedures for requesting a hearing, as established in Section 3 of this administrative regulation; and

(c) Who may represent the participant in a hearing, as established in Section 2 of this administrative regulation.

(2) When the participant files an application, the cabinet shall inform the participant of the right to hearing both orally and in writing.

(3) When an action is taken which affects the benefits of the participant, the cabinet shall inform the participant of the right to hearing in writing.

Section 2. Request for a Hearing. (1) An individual shall request a hearing by:

(a) Completing and submitting a PAFS-78, Request for Hearing, Appeal, or Withdrawal;

(b) Submitting a written request; or

(c) Making an oral request.

(2) The hearing request may be:

(a) Submitted to the local Department for Community Based Services office; or

(b) Sent to the Cabinet for Health and Family Services, Division of Administrative Hearings, Families and Children Administrative Hearings Branch, 105 Sea Hero Road, Suite 2[275 East Main], Frankfort, Kentucky 40601[40624].

(3) The reason for the hearing shall be included in the hearing request.

Section 3. Timeframe for Hearing Request. (1) A written or oral request for a hearing shall be considered timely if received by the cabinet within:

(a) Forty (40) days of the date of the advance notice of adverse action;

(b) Thirty (30) days of the notice of:

1. Denial of an application; or

2. Decrease or discontinuance of an active case; or  
(c) The time period the action is pending if the hearing issue is a delay in action.

(2) If a hearing officer determines an appellant meets good cause criteria in accordance with subsection (3) of this section, the appellant may be granted up to an additional thirty (30) days to submit a hearing request.

(3) An appellant may be granted good cause by the cabinet:

(a) For:

1. A delay in requesting a hearing;
2. A delay in requesting a continuation of benefits;
3. Failure to appear for a hearing; or
4. Postponement of a scheduled hearing; and

(b) If the appellant:

1. Was away from home during the entire filing period;
2. Is unable to read or to comprehend the right to request a hearing on an adverse action notice;
3. Moved, resulting in delay in receiving or failure to receive the adverse action notice;
4. Had a household member who was seriously ill; or
5. Was not at fault for the delay of the request, as determined by the hearing officer.

Section 4. Continuation of Assistance Program Benefits. (1) If a hearing is requested, benefits shall remain inactive or reduced pending the issuance of a final order unless the appellant requests a continuation of benefits.

(2) Benefits shall be reinstated to the benefit level that was received prior to the adverse action being taken if the request for a continuation of benefits is received within:

(a) Ten (10) days of the date on the notice of adverse action; or

(b) Twenty (20) days of the date on the notice of adverse action or notice if the reason for delay meets the good cause criteria contained in Section 3(3) of this administrative regulation.

(3) If the program benefit has been reduced or discontinued as a result of a change in law or administrative regulation, subsection (2) of this section shall not apply.

(4) If the action taken by the agency is upheld, continued or reinstated benefits shall be:

- (a) Considered overpayments as defined in KRS 205.211; and
- (b) Collected in accordance with KRS 45.237.

Section 5. Hearing Notification. (1) The Division of Administrative Hearings, Families and Children Administrative Hearings Branch shall acknowledge a hearing request.

(2) In accordance with KRS 13B.050, the notice of the hearing shall contain information regarding the:

- (a) Hearing process, including the right to case record review prior to the hearing;
- (b) Right to representation;
- (c) Availability of free representation by legal aid or assistance from other organizations within the community; and
- (d) Time and location of the hearing.

(3) The cabinet may deny or dismiss a hearing request in accordance with 45 C.F.R. 205.10(a)(5)(v).

Section 6. Withdrawal or Abandonment of Request. (1) The appellant may withdraw a hearing request prior to the:

- (a) Hearing; or
- (b) Final order being issued if the hearing has already been conducted.

(2) The cabinet shall consider a hearing request abandoned if the appellant or authorized representative fails to:

- (a) Appear for the scheduled hearing without notifying the cabinet prior to the hearing; and
- (b) Establish good cause for failure to appear, in accordance with the criteria specified in Section 3(3) of this administrative regulation, within ten (10) days of the scheduled hearing date.

Section 7. Appellant's Hearing Rights. (1) In addition to the rights described in Section 5 of this administrative regulation, the appellant shall have the right to submit additional information in

support of the claim.

(2) The appellant shall have the right to a medical assessment or professional evaluation at the expense of the cabinet by a source:

- (a) Not associated with the original action; and
- (b) Agreeable to both the appellant and the cabinet if:
  1. The hearing involves medical issues; and
  2. The hearing officer considers it necessary.

(3) If a request for a medical assessment at cabinet expense is received and denied by the hearing officer, the denial shall:

- (a) Be in writing; and
- (b) Specify the reason for the denial.

Section 8. Postponement of a Hearing. (1) An appellant shall be entitled to a postponement of a hearing if the:

(a) Request for the postponement is made prior to the hearing; and

(b) Need for the delay is due to an essential reason beyond the control of the appellant in accordance with good cause criteria contained in Section 3(3) of this administrative regulation.

(2) The hearing officer shall decide if a hearing is postponed.

(3) The postponement of a hearing shall not exceed thirty (30) days from the date of the request for postponement.

Section 9. Conduct of a Hearing. (1) A hearing shall be:

- (a) Scheduled by the hearing officer; and
- (b) Conducted in accordance with KRS 13B.080 and 13B.090.

(2) A hearing officer shall make an effort to conduct a hearing at a location within the state that is convenient for the appellant and other parties involved.

(3) To secure all pertinent information on the issue, the hearing officer may:

- (a) Examine each party or witness who appears; and
- (b) If necessary, collect additional evidence from a party.

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

(b) Parties to a telephonic hearing shall:

1. Submit all available documentary evidence to be used during the hearing to the hearing officer and the opposing party prior to the hearing being convened; and

2. Within the timeframe specified by the hearing officer, mail the hearing officer and opposing party any documents or written materials that:

- a. Are introduced as evidence into the hearing record; and
- b. Have not been supplied to the opposing party prior to the hearing.

(5) If evidence addressed in subsection (4)(b) of this section is not provided to the hearing officer and the opposing party, the evidence may be excluded from the hearing record.

Section 10. Recommended Order. (1) After the hearing has concluded, the hearing officer shall draft a recommended order in accordance with KRS 13B.110, 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.

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

- (a) Appellant or representative;
- (b) Appeal Board for Public Assistance established in accordance with KRS 205.231; and
- (c) Department for Community Based Services' Division of Family Support.

Section 11. Written Exceptions and Rebuttals. (1) If a party to a

hearing disagrees with the recommended order, the party may file a written exception in accordance with KRS 13B.110(4) with the Appeal Board for Public Assistance.

(2) A written exception or rebuttal shall:

- (a) Be filed within fifteen (15) days of the date the 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 12. Appeal Board Review. (1) In accordance with KRS 13B.120 and 205.231, the Appeal Board for Public Assistance shall send a written acknowledgement of the exception to the recommended order and subsequent appeal 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 13. The Appeal Board Decision. (1) The decision of the Appeal Board for Public Assistance shall be in accordance with KRS 13B.120 and 205.231.

(2) The Appeal Board for Public Assistance may reverse the decision in subsection (1) of this section if the following criteria are met:

- (a) The correct determination of eligibility based on incapacity or disability is the only issue being considered in the appeal board decision; and
- (b) Within twenty (20) days of the Appeal Board for Public Assistance's decision, the appellant, or household member whose incapacity or disability is the issue of the hearing, receives and provides to the appeal board an award letter for benefits based on disability including:

1. Supplemental Security Income pursuant to 42 U.S.C. 1381-1383f;
2. Retirement, Survivors, and Disability Insurance, pursuant to 42 U.S.C. 401-434;
3. Federal Black Lung Benefits pursuant to 30 U.S.C. 901-944;
4. Railroad Retirement Benefits pursuant to 45 U.S.C. 231-231v; or
5. Veterans Administration Benefits based on 100 percent disability pursuant to 38 U.S.C. 1101-1163 or 1501-1525.

(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 14. Payments of Assistance. (1) Payments of assistance shall be made within ten (10) days of the receipt of a final order issued by the Appeal Board for Public Assistance and shall include:

- (a) The month of application; or

(b) If it is established that the appellant was eligible during the entire period in which assistance was withheld, a month in which incorrect action of the cabinet adversely affected the appellant.

(2) For reversals involving reduction of benefits, action shall be taken to restore benefits within ten (10) days of the receipt of a final order issued by the Appeal Board for Public Assistance.

Section 15. Limitation of Fees. (1) The cabinet shall not be responsible for payment of attorney fees.

(2) Pursuant to KRS 205.237, an attorney representing an appellant shall not charge more than the following amounts for his services:

- (a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;
  - (b) Seventy-five (75) dollars for preparation and presentation, including any briefs, of appeals to the appeal board;
  - (c) \$175 for preparation and presentation, including pleadings and appearance in court, of appeals to the circuit court; or
  - (d) \$300 for preparatory work, briefs, and other materials related to an appeal to the Court of Appeals.
- (3) The cabinet shall approve the amount of a fee, if the:
- (a) Appellant and legal counsel agree to the fee; and
  - (b) Fee is within the maximums specified in subsection (2) of this section.
- (4) Collection of an attorney fee shall:
- (a) Be the responsibility of the counsel or agent; and
  - (b) Not be deducted from the benefits provided to an appellant.

Section 16. Incorporation by Reference. (1) The form, "PAFS-78, Request for Hearing, Appeal, or Withdrawal", 12/15/6/44, 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: July 7, 2015

FILED WITH LRC: July 9, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 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 August 14, 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 August 31, 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 requirements to be followed in conducting a hearing related to the Kentucky Transitional Assistance Program (K-TAP), the Low-income Home Energy Assistance Program (LIHEAP), and the State Supplementation Program (SSP).

(b) The necessity of this administrative regulation: This

administrative regulation is needed to establish uniform standards for conducting hearings regarding public assistance programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the hearing process for K-TAP, LIHEAP, and SSP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the hearing process for public assistance programs.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates material incorporated by reference, form PAFS-78, Request for Hearing, Appeal, or Withdrawal, to comply with the formatting requirements of a new eligibility and enrollment system. The amendment also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative aligns the administrative regulation with the new web-based eligibility and enrollment system. This new system promises further programmatic modernization, greater efficiency in the eligibility determination process and ongoing case maintenance, and enhanced reporting and archiving functionalities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its update to regulatory content and alignment with forthcoming business processes and technology.

(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 assuring process and policy alignment, resource maximization, and programmatic accountability.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In March 2015, there were 20,590 K-TAP families, 4,687 Kinship Care recipients, and 2,893 State Supplementation recipients. LIHEAP served 129,657 households in Federal Fiscal Year 2014.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will require no new or additional action by regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the updates and clarity provided within the regulatory amendment and the enhanced programmatic efficiencies promised by the new web-based eligibility and enrollment system.

(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 is anticipated to impose no new or additional cost to the administrative body to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and is anticipated to impose no new or additional ongoing costs to the administrative body to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding will be state General Funds and federal

funds made available through the Temporary Assistance for Needy Families and the Low Income Home Energy Assistance Program Block Grants. The 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: An increase in fees or funding will not be required to implement this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 U.S.C. 602, 8624

2. State compliance standards. KRS 13B.170, 194.010(2), 194.050(1), 205.231(5)

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The 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), 42 U.S.C. 602, 8624

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 revenues in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenues in subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in any new or additional cost in the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in any new or additional cost in subsequent years.

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

Revenues (+/-):



Expenditures (+/-):  
Other Explanation:

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

**921 KAR 2:060. Delegation of power for oaths and affirmations.**

RELATES TO: KRS 205.170(1), 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.170(1), 205.200, 42 U.S.C. 601-619

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. KRS 205.200 requires the Cabinet for Health and Family Services to administer the public assistance program in conformity with the Public Assistance Titles of the Social Security Act, its amendments, and other federal acts and regulations, including 42 U.S.C. 601 to 619, and to provide supplemental payments to persons who are aged, blind, or have a disability. This administrative regulation establishes the designation of certain employees by the secretary of the cabinet to administer oaths and affirmations, in conformity with KRS 205.170(1).

Section 1. Specific Worker Designation. The following classifications of employees shall be designated as duly authorized representatives of the Secretary of the Cabinet for Health and Family Services to administer an oath or affirmation to an applicant or recipient:

- (1) Family support specialist III;
- (2) Case management specialist[III];
- (3) Program specialist;
- (4) Field services supervisor;
- (5) Service region administrator associate; and
- (6) Service region administrator.

Section 2. Purpose. An oath or affirmation shall be administered by a designated representative to an applicant or recipient to:

- (1) Obtain a sworn statement regarding a claim that a check issued through a cabinet program has been:
  - (a) Lost;
  - (b) Misplaced; or
  - (c) Stolen;
- (2) Request a replacement check; or
- (3) View a check endorsement.

Section 3. Process. (1) A PAFS-60, Affidavit, shall be used if:

- (a) A check is reported lost or stolen to request a replacement check within twelve (12) months of intended receipt; or
- (b) A check endorsement is viewed when a reported lost or stolen check is cashed.

(2) If the payee reports non-receipt, loss, or theft of a check, the payee shall come into the office to complete a PAFS-60 within four (4) work days of reporting non-receipt of the check in effort to place a stop payment on the check.

(3) If the original check has been cashed, a photocopy of the cashed check shall be forwarded to the local office.

- (a) The payee shall view the endorsement; and
- (b) If the signature is not that of the payee, the payee shall sign the PAFS-60 stating the:

1. Signature on the photocopy is not the payee's signature; and
2. Payee received no benefit from the cashing of the check.

Section 4. Incorporation by Reference. (1) The "PAFS-60,

Affidavit", 12/15[9/14], is incorporated by reference.

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

TERESA C. JAMES, LCSW, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 7, 2015

FILED WITH LRC: July 9, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 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 August 14, 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 August 31, 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 designation of certain employees by the secretary of the cabinet to administer oaths and affirmations in conformity with KRS 205.170(1).

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish employee designations for the administration of oaths and affirmations in accordance with KRS 205.170(1).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the designation of specific employees by the secretary of the cabinet to administer oaths and affirmations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the designation of specific employees to administer oaths and affirmations when a cash benefit check is reported stolen or lost.

(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 revises form PAFS-60, Affidavit, to comply with the requirements of a new web-based eligibility and enrollment system and makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment aligns the administrative regulation with the new web-based eligibility and enrollment system. This new system promises further programmatic modernization, greater efficiency in the eligibility determination process and ongoing case maintenance, and enhanced reporting and archiving functionalities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its alignment with forthcoming business processes and technology.

(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 assuring process and policy alignment, resource maximization, and programmatic accountability.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In March 2015, there were 20,590 Kentucky Transitional Assistance Program (K-TAP) families, 4,687 Kinship Care recipients, and 7,392 K-TAP recipients required to participate in the Kentucky Works Program. Participation in the Supplemental Nutrition Assistance Program (SNAP) Employment and Training Program (E&T) is voluntary in Jefferson County only at this point in time.

(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 require no new or additional action by regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the updates and clarity provided within the regulatory amendment and the enhanced programmatic efficiencies promised by the new web-based eligibility and enrollment system.

(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 is anticipated to impose no new or additional cost to the administrative body to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and is anticipated to impose no new or additional ongoing costs to the administrative body to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding sources for this administrative regulation include federal funds under the Temporary Assistance for Needy Families Block Grant, Supplemental Nutrition Assistance Program (SNAP) Employment and Training Program, and General Funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 U.S.C. 601-619

2. State compliance standards. KRS 194A.050(1), 205.170(1), 205.200

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 601-619

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

required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.170(1), 205.200, 42 U.S.C. 601-619

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 administrative regulation will not generate any revenues in the first year.

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in any new or additional cost in the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in any new or additional cost in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

#### 921 KAR 2:370. Technical requirements for Kentucky Works Program (KWP).

RELATES TO: KRS 205.200(7), 205.2003, 45 C.F.R. 98.2, 260-265, 29 U.S.C. 651-678, 42 U.S.C. 601-619, 12101-12213

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), 205.200(7), 205.2003, 42 U.S.C. 601-619, Pub. L. 109-174

NECESSITY, FUNCTION, AND CONFORMITY: 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. The Cabinet for Health and Family Services has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program for the Kentucky Transitional Assistance Program, the block grant program funded pursuant to 42 U.S.C. 601 to 619. KRS 205.200(2) and (7) require the secretary to promulgate administrative regulations prescribing the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601 to 619, and federal regulations. KRS 205.2003 requires that a work program for a recipient of Kentucky Transitional

Assistance Program (K-TAP) be prescribed by administrative regulations.~~[Pub. L. 109-171, effective October 1, 2006, reauthorized the Temporary Assistance for Needy Families Program known as the Kentucky Transitional Assistance Program in Kentucky.]~~ This administrative regulation sets forth the technical requirements of the Kentucky Works Program (KWP).

Section 1. Definitions. (1) "Affordable child care arrangements" means appropriate child care at a reasonable distance that is suitable and with a charge at or below the maximum provider payment rate pursuant to the Child Care and Development Fund plan.

(2) "Appropriate child care" means eligible child care as provided by an "eligible child care provider", pursuant to 45 C.F.R. Part 98.2.

(3) "Assessment" means the ongoing evaluation of an individual's strengths and needs relative to achieving self-sufficiency.

(4) "Assistance" is defined by 45 C.F.R. 260.31.

(5) "Barriers" means a limitation in an individual's ability to become employed and self-sufficient or to comply with K-TAP requirements.

(6) "Community service activities" means "community service programs", as defined by 45 C.F.R. 261.2(h).

(7) "Conciliation" means a process in which a participation problem in the Kentucky Works Program can be resolved.

(8) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(9) "Family member" means an individual:

(a) Related by blood, marriage, or adoption to a child or a work-eligible individual, as defined by 45 C.F.R. 261.2(n), in the benefit group; or

(b) Who is a member of an unmarried couple and has a child in the benefit group in common with the work-eligible individual, as defined by 45 C.F.R. 261.2(n).

(10) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in:

1. An adult basic education program;
2. A general educational development (GED) program; or
3. A literacy program;

(b) The number of hours required by the individual program for participation in a college or university; or

(c) The equivalent of paragraph (b) of this subsection in a college or university if other than a semester system is used; or

(d) The number of hours required by the individual high school or vocational school to fulfill the high school or vocational school's definition of full time.

(11) "Job search and job readiness assistance" is defined by 45 C.F.R. 261.2(g).

(12) "Job skills training directly related to employment" is defined by 45 C.F.R. 261.2(j).

(13) "Kentucky Transitional Assistance Program" or "K-TAP" means a money payment program for a child pursuant to 921 KAR 2:006, Section 1.

(14) "Kentucky Works Program" or "KWP" means a program that assists a recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance.

(15) "On-the-job training" is defined by 45 C.F.R. 261.2(f).

(16) "Part-time enrollment" means enrollment with a postsecondary institution at a minimum of half of full-time enrollment as defined by subsection (12)(b) or (c) of this section.

(17) "Qualifying Parent" means a parent who meets prior labor market attachment in accordance with 921 KAR 2:006, Section 1.

(18) "Reasonable distance" means the distance customarily available within a locality.

(19) "Subsidized employment" is defined by 45 C.F.R. 261.2(c) and (d).

(20) "Unsubsidized employment" is defined by 45 C.F.R. 261.2(b).

(21) "Unsuitability of informal child care" means care not regulated pursuant to Kentucky law that does not meet the quality

child care need as defined by the parent or the health and safety requirements applicable to unregulated child care in the commonwealth.

(22) "Vocational education" means "vocational educational training" as defined by 45 C.F.R. 261.2(i).

(23) "Work-eligible individual" is defined by 45 C.F.R. 261.2(n).

(24) "Work Experience Program" or "WEP" means the definition of "work experience if sufficient private sector employment is not available" pursuant to 45 C.F.R. 261.2(e).

Section 2. Program Participation. (1) Unless the K-TAP recipient meets the exception criteria in Section 3 of this administrative regulation, the cabinet shall determine a work-eligible individual as follows:

(a)1. A one (1) parent household shall be required to participate in a specific activity pursuant to paragraph (c) of this subsection no less than the number of hours per week required in the activity, pursuant to subparagraph 2 of this paragraph.

2. The activity shall be required to have at least a minimum of thirty (30) hours per week, ten (10) hours of which may be satisfied through participation in an education or training activity pursuant to paragraph (c) 8, 9, and 11 of this subsection or in literacy or adult education.

(b) A two (2) parent household shall participate in a specific activity no less than the number of hours per week required in the activity, pursuant to this paragraph. The activity shall be required to meet the following requirements:

1. If the family receives federally funded child care assistance, the activity shall be required to have at least a minimum of fifty-five (55) hours combined from both parents, five (5) of which may be satisfied through participation in an education activity pursuant to paragraph (c)8, 9, and 11 of this subsection or in literacy or adult education.

2. If the family does not receive federally-funded child care, a two (2) parent household shall participate thirty-five (35) hours per week combined, five (5) of which may be satisfied through participation in an education activity pursuant to paragraph (c)8, 9, and 11 of this subsection or in literacy or adult education.

3. If an adult is needed to care for a child in the home with a severe disability pursuant to 921 KAR 2:006, a two (2) parent household shall participate pursuant to paragraph 2 of this paragraph.

4. A two (2) parent household eligible for K-TAP based on the deprivation of incapacity, pursuant to 921 KAR 2:006, shall meet the number of hours of participation in a work activity listed in paragraph (a) of this subsection.

(c) In accordance with 45 C.F.R. 261.2, to be in compliance with the[program] participation requirement in KWP[Kentucky Works], a countable activity may include:

1. Unsubsidized employment;
2. Subsidized employment;
3. Work experience training;
4. On-the-job training;
5. Job search and job readiness assistance;
6. Community service activities;
7. Full-time enrollment, as defined by the educational institution or program, in post-secondary or vocational education not to exceed twelve (12) cumulative months;

8. Full or part-time enrollment, as defined by the educational institution or program, in postsecondary or vocational education at any time if combined with an activity pursuant to subparagraph 1 through 4 and 6 of this paragraph;

9. Attendance at secondary school or equivalent if the recipient:

- a. Has not completed secondary school or equivalent; or
- b. Couples the attendance with work or work activity in the amount of hours per week pursuant to paragraphs (a) and (b) of this subsection;

10. Provision of child care services to an individual participating in community service activities;

11. Job skills training directly related to employment; and

12. Based on the findings of the assessment, an allowable activity that includes:

- a. Domestic violence counseling;
  - b. Life skills training;
  - c. A substance abuse program;
  - d. Mental health counseling;
  - e. Vocational rehabilitation;
  - f. Literacy;
  - g. Adult education; or
  - h. Another preparation or service:
    - (i) To address an individual's barriers; and
    - (ii) Approved in advance by the cabinet.
- (2) Excused absences shall:
- (a) Include:
    - 1. Scheduled hours missed due to holidays; and
    - 2. A maximum of ten (10) additional days or eighty (80) hours of excused absences in any twelve (12) month period with no more than two (2) days or sixteen (16) hours occurring in a month; and
  - (b) Count as actual hours of participation.
  - (3) To verify the actual number of hours of participation in approved activities, the K-TAP recipient shall provide the following:
    - (a) A KW-33[PA-33], Verification of Kentucky Works Program Participation; or
    - (b) A monthly calendar sheet or log that requires the signature of the ~~work-eligible individual and~~ person supervising the work-eligible individual.

Section 3. Exceptions to Program Participation. (1) A work-eligible individual shall be considered to be engaged in work for a month in a fiscal year if the individual:

- (a) Is a head of household;
  - (b) Has not obtained a high school diploma or a GED;
  - (c) Has not attained twenty (20) years of age; and
  - (d) 1. Maintains regular attendance and satisfactory progress at a secondary school or the equivalent during the month; or
  - 2. Participates in education that is directly related to employment for at least twenty (20) hours a week while maintaining regular attendance and satisfactory progress.
- (2)(a) A work-eligible individual shall not be required to comply with a program participation requirement for up to twelve (12) months if the individual is:
- 1. A single custodial parent; and
  - 2. Caring for a child who has not attained twelve (12) months of age.
- (b) The twelve (12) months of exemption from a work participation requirement shall be limited to a total of twelve (12) months in a lifetime for the adult and may be:
- 1. Consecutive; or
  - 2. Cumulative.
- (3)(a) For a work-eligible individual whose compliance with program participation would make it difficult to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence, compliance shall not be mandated.

(b) If a K-TAP applicant or work-eligible individual is identified as a victim of domestic violence or with a history of domestic violence, an appropriate services plan shall be required for the individual pursuant to 921 KAR 2:006, Section 25.

(4) A work-eligible individual shall be considered to be engaged in work for a month if the individual is:

- (a) A single custodial parent or caretaker relative in the family with a child who has not attained six (6) years in age; and
- (b) Engaged in work for an average of at least twenty (20) hours per week during the month pursuant to Section 2(1)(c) 1, 2, 3, 4, 5, 6, or 7 of this administrative regulation.

(5) In accordance with 45 C.F.R. 261.2(n)(2)(i), the cabinet shall exclude from program participation a parent providing care to a disabled family member as verified by the completion of the PA-4, Statement of Required Caretaker Services.

(6) In accordance with 45 C.F.R. 261.2(n)(2), the cabinet shall exclude from program participation a parent who is a recipient of Social Security Disability Insurance (SSDI) benefits.

(7)(a) If an individual with an ADA disability cannot participate in a countable work activity as specified in Section 2 of this administrative regulation.

(b) A reasonable accommodation or program modification may include:

- 1. Excused participation from an activity;
- 2. Participation for a reduced number of hours;
- 3. Participation in an activity for a longer period of time than is countable; or
- 4. Participation in an activity that is not countable in accordance with Section 2 (1) (c) 12 of this administrative regulation.

(8) An applicant of K-TAP shall be informed in writing of the availability of the exceptions to KWP participation~~[in Kentucky Works]~~ pursuant to this section.

Section 4. Program Participation Requirements. (1) Assessment.

(a) The cabinet or its designee shall make an assessment of the work-eligible individual's employability on KW-200, Kentucky Works Assessment Form.

(b) The cabinet shall request another agency to assist in the assessment process if the need for a diagnostic assessment or an additional professional skill set is indicated.

(c) The assessment shall include consideration of:

- 1. Basic skills;
- 2. Occupational skills;
- 3. Barriers and other relevant factors;
- 4. An ADA disability; and
- 5. A reasonable accommodation or program modification needed for an individual with an ADA disability.

(2) The self-sufficiency plan. Based on the findings of the assessment, the cabinet or its designee and work-eligible individual shall jointly develop a self-sufficiency plan by completing the KW-202, K-TAP Transitional Assistance Agreement. This plan shall contain:

- (a) An employment goal for the individual;
- (b) A service to be provided by the cabinet including child care;
- (c) An activity to be undertaken by the individual to achieve the employment goal;
- (d) A reasonable accommodation or program modification needed due to an ADA disability; and
- (e) Other needs of the family.

(3) In accordance with KRS 205.200(7)(a), an adult applicant or recipient of the K-TAP benefit group shall register for work except for a member who is:

- (a) Under age eighteen (18);
- (b) Age sixty (60) or over;
- (c) Age eighteen (18) or nineteen (19) years old in full-time school attendance pursuant to 921 KAR 2:006, Section 3;
- (d) Receiving benefits based on 100 percent disability;
- (e) An individual who has received benefits based on 100 percent disability within the past twelve (12) months but lost the benefits due to income or resources and not an improvement in the disability; or
- (f) Employed thirty (30) hours or more per week at minimum wage or more.

Section 5. Conciliation. (1) Conciliation shall be conducted:

(a) At the request of a work-eligible individual or a KWP[Kentucky Works] participant;

(b) At the request of a service provider; or

(c) If a situation is identified that could result in a penalty pursuant to Section 7 of this administrative regulation.

(2) The conciliation shall be conducted by the cabinet or its designee.

(3) During conciliation, the cabinet or its designee shall determine if an additional service is needed to assist with KWP[Kentucky Works] participation.

(4)(a) During conciliation, participation shall be monitored for up to fifteen (15) days following the issuance of form KW-204, Conciliation Notice.

(b) The fifteen (15) day period may be extended for an additional fifteen (15) days, if necessary, to determine if participation is in compliance with the terms of the conciliation.

(5) At the conclusion of the conciliation period, the participant

shall be notified in writing of an adverse action in accordance with 921 KAR 2:046.

Section 6. Excused from Penalties. (1) A work-eligible individual shall be excused from a penalty for failure to comply with ~~KWP[the Kentucky Works Program]~~, pursuant to Section 7 of this administrative regulation, if one (1) of the following good cause criteria is met:

(a) The individual is a single custodial parent who has a demonstrated inability to obtain needed child care for a child under six (6) years of age. A demonstrated inability to obtain needed child care for a child under six (6) years of age shall be met if the single custodial parent:

1. Cannot locate appropriate child care;
2. Cannot locate child care at a reasonable distance from home;
3. Determines the unsuitability of informal child care; or
4. Cannot locate affordable child care arrangements;

(b) Dependent care is not available for an incapacitated individual living in the same household as a dependent child;

(c) Child care is terminated through no fault of the individual;

(d) Child care does not meet the needs of the child, for example, a child with a disability;

(e) 1. The individual is unable to engage in employment or training for a mental or physical reason as verified by the cabinet; and

2. No reasonable accommodation or program modification exists;

(f) The individual is temporarily incarcerated or institutionalized for thirty (30) days or less;

(g) The cabinet determines there is discrimination by an employer and a formal complaint has been filed based on:

1. Age;
2. Race;
3. Sex;
4. Color;
5. Disability;
6. Religious belief;
7. National origin; or
8. Political belief;

(h) Work demand or condition renders continued employment unreasonable including:

1. Consistently not being paid on schedule; or
2. The presence of a risk to the individual's health or safety;

(i) Wage rate is decreased subsequent to acceptance of employment;

(j) The individual accepts a better job that, because of a circumstance beyond the control of the individual, does not materialize; or

(k) The work activity site is so far removed from the home that commuting time would exceed three (3) hours per day.

(2) The duration of good cause criteria may vary according to the individual's circumstance.

Section 7. Penalties. (1) If a work-eligible individual fails to comply with a requirement of the ~~KWP[the Kentucky Works Program]~~, the recipient shall be subject to a ~~KWP[the Kentucky Works Program]~~ and ~~K-TAP[Kentucky Transitional Assistance Program]~~ penalty. Failure to comply shall be found if the work-eligible individual:

(a) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in a required activity, including:

1. An assessment interview;
2. An assessment; or
3. Self-sufficiency plan development including completion of KW-202;

(b) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in a program activity in accordance with form KW-202;

(c) Refuses without good cause, pursuant to Section 6 of this administrative regulation, to accept employment;

(d) Terminates employment or reduces earnings without good cause, pursuant to Section 6 of this administrative regulation; or

(e) Fails to register for work unless an exception in Section 4(3) of this administrative regulation applies.

(2)(a) Except for a requirement listed in paragraph (b) of this subsection:

1. A work-eligible individual who has failed to comply with a ~~KWP[the Kentucky Works Program]~~ requirement without good cause, pursuant to Section 6 of this administrative regulation, shall be penalized by reducing the amount of the assistance otherwise payable to the benefit group on a pro rata basis; or

2. Assistance otherwise payable to a benefit group consisting of a two (2) parent household shall be discontinued if neither the work-eligible individual who is a qualifying parent nor the other parent complies with a ~~KWP[the Kentucky Works Program]~~ requirement without good cause, pursuant to Section 6 of this administrative regulation.

(b) Assistance to the benefit group shall be denied if the work-eligible individual, fails, without good cause pursuant to Section 6 of this administrative regulation, to:

1. Keep an appointment for an assessment interview; or
2. Pursuant to Section 4 of this administrative regulation:
  - a. Complete an assessment; or
  - b. Register for work.

(c) The penalties in subsection (2)(a) of this section shall continue to be applied until the work-eligible individual complies with a program requirement.

(3) The penalties in subsection (2) of this section shall not be applied until after a conciliation procedure is conducted pursuant to Section 5 of this administrative regulation.

Section 8. Hearings and Appeals. An applicant or recipient of benefits pursuant to a program described herein who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing pursuant to 921 KAR 2:055.

Section 9. Work Experience Program Training Site Agreement.

(1) A cost incurred by a training site agency because of participation in a WEP shall not be reimbursed.

(2) A WEP participant shall not be removed from training without prior notice to the Department for Community Based Services.

(3) A WEP participant shall not infringe upon the promotional opportunity of a currently employed individual.

(4) An individual shall not be subjected to discrimination, or denied training or employment or benefits, in the administration of, or in connection with, the training program because of:

- (a) Race;
- (b) Color;
- (c) Religion;
- (d) Sex;
- (e) National origin;
- (f) Age;
- (g) Disability; or
- (h) Political belief or affiliation.

(5) Prior to placement in a WEP activity, a WEP participant shall sign form KWET 241, WEP Training Site Agreement.

(6) A training site agency shall:

(a) Complete surveying or reporting relating to the operation of the training site agreement upon the request of the cabinet;

(b) Not displace a currently employed worker by a WEP participant, including a partial displacement including a reduction of the:

1. Hours of ~~non-overtime~~[nonevertime] work;
2. Wages; or
3. Employment benefits;

(c) Comply with 42 U.S.C. 12101 to 12213;

(d) Report a personnel problem to the departmental representative designated by the cabinet;

(e) Maintain accurate time and attendance records daily for a WEP participant;

(f) Verify time and attendance records for a WEP participant pursuant to Section 2(3) of this administrative regulation to ensure the WEP participant's compliance with subsection (7) of this section;

(g) Grant access for the Department for Community Based

Services to the training site during working hours to counsel a participant and to monitor the site;

(h) Immediately report an injury to the designated representative;

(i) Conduct an investigation and submit a report upon the request of the Department for Community Based Services;

(j) Not encourage or require a WEP participant to take part in partisan political activity, or involve a WEP participant in partisan political activity;

(k) Maintain the confidentiality of information provided by or about a WEP participant who seeks or receives a service pursuant to form KWET-241, except as authorized by law or in writing by a WEP participant;

(l) Hold the cabinet harmless from a loss, claim, expense, action, cause of action, cost, damage, and obligation arising from a negligent act or omission of the training site agency, its agent, employee, licensee, invitee, or WEP participant that results in injury to a person, or damage or loss relative to a person, corporation, partnership, or other entity;

(m) Provide:

1. Sufficient training to ensure development of appropriate skills;

2. New task after mastery of a skill; and

3. Adequate participation instruction and supervision at all times;

(n) Provide the participant a safe training place;

(o) Assure a participant, engaged in an activity not covered pursuant to 29 U.S.C. 651 to 678, is not required or permitted to receive training or a service in a building or surrounding, or under a training condition that is unsanitary, hazardous, or dangerous to the health and safety of the participant;

(p) Provide adequate material to complete a training activity in a safe environment; and

(q) Sign form KWET-241[KWEP-241] with the cabinet and the participant containing a statement of:

1. The conditions established by subsections (1) through (10) of this section; and

2. The period covered by the agreement, including the required weekly number of hours of participation.

(7) The WEP participant shall submit verification pursuant to Section 2(3) of this administrative regulation completed monthly in accordance with subsection (6)(e) and (f) of this section.

(8) If an amendment is made to the agreement, a new form KWET-241 shall be issued.

(9) A WEP participant or WEP provider shall be notified in writing of discontinuance of a WEP placement on form KWET-241.

(10) A WEP participant shall have the right to request an administrative hearing, in accordance with Section 8 of this administrative regulation, relating to a grievance or complaint.

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

(a) "KW-33, Verification of Kentucky Works Program Participation", 12/15;

(b) "KW-200, Kentucky Works Assessment Form",[edition] 2/09;

(c)[(b)] "KW-202, K-TAP Transitional Assistance Agreement", 12/15[edition 4/11];

(d)[(c)] "KW-204, Conciliation Notice", 12/15[edition 2/09];

(e)[(d)] "KWET-241, WEP Training Site Agreement",[edition] 4/11; and

(f)[(e)] "PA-4, Statement of Required Caretaker Services", 12/15[edition 10/08]; and

(f) "PA-33, Verification of Kentucky Works Participation", [edition 2/11].

(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: July 7, 2015

FILED WITH LRC: July 9, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 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 August 14, 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 August 31, 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 technical requirements for activities allowed under the Kentucky Works Program (KWP).

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish the technical requirements for an individual participating in KWP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of technical requirements for KWP.

(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 technical eligibility requirements for participation in KWP, including weekly participation requirements, allowable activities, good cause reasons for failure to participate, exemption criteria from program participation, and penalties for failure to participate without good cause.

(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 provides for the use of the full program's name, changes a numeric form title to more readily associate the form with KWP, and aligns forms and regulatory content with the new forthcoming web-based eligibility and enrollment system. In addition, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment reflects necessary updates to the administrative regulation since its last amendment and aligns the administrative regulation with the new web-based eligibility and enrollment system. This new system promises further programmatic modernization, greater efficiency in the eligibility determination process and ongoing case maintenance, and enhanced reporting and archiving functionalities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes through its technical corrections and updates clarifying requirements for KWP.

(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 assuring process and policy alignment, resource maximization, and programmatic accountability.

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

## VOLUME 42, NUMBER 2 – AUGUST 1, 2015

administrative regulation: In March 2015, there were 7,392 recipients required to participate in the Kentucky Works Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will require no new or additional action by regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the updates and clarity provided within the regulatory amendment and the enhanced programmatic efficiencies promised by the new web-based eligibility and enrollment system. The requirements of KWP have otherwise remained unchanged.

(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 is anticipated to impose no new or additional cost to the administrative body to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and is anticipated to impose no new or additional ongoing costs to the administrative body to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Temporary Assistance for Needy Families (TANF) Block Grant funds under Title IV-A of the Social Security Act and General Funds used to meet Maintenance of Effort requirements are the funding sources for this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be applied in a like manner statewide.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 U.S.C. 601-619

2. State compliance standards. KRS 194A.050(1), 205.200(2), 205.200(7), 205.2003

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 601-619

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

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.200(2), 205.200(7), 205.2003, 42 U.S.C. 600-619

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in any 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 2:500. Family Alternatives Diversion (FAD).

RELATES TO: KRS 205.200, 205.2003, 205.211, 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate the programs and fulfill the responsibilities vested in the cabinet 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. ~~[EO 2004-726 reorganizes the executive branch of government and establishes the Cabinet for Health and Family Services.]~~ KRS 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601-619, and federal regulations. This administrative regulation establishes requirements for the Family Alternatives Diversion Program (FAD).

Section 1. Definitions. (1) "Benefit group" means a group that meets the eligibility requirements established in 921 KAR 2:006.

(2) "Kentucky Transitional Assistance Program" or "K-TAP" means a money payment program for children who are deprived of parental support or care in accordance with 921 KAR 2:006.

(3) "Overpayment" means a FAD benefit received by an individual who:

(a) After an initial determination of eligibility is determined to be ineligible for the program and erroneous benefits were received by the individual; or

(b) Is determined eligible for the program and refuses to apply the benefit to the provider of the service needed to resolve the

short-term emergency as indicated by the individual at the time of the application.

(4) "Self-supporting" means an individual who:

(a) Is employed in accordance with 921 KAR 2:006, Section 1; or

(b) Shall be employed in accordance with 921 KAR 2:006, Section 1, within the subsequent three (3) months.

(5) "Unsubsidized child care" means child care for which financial assistance is not provided.

Section 2. Eligibility for ~~FAD~~[Family Alternatives Diversion]. (1) To qualify for FAD benefits, the benefit group shall:

(a) Meet monthly income and resource requirements in the month of application as established in 921 KAR 2:016, Sections 3, 4(1), 5(1) and (2), and 7;

(b) ~~Meet the technical requirements of K-TAP in accordance with 921 KAR 2:006 except for the thirty (30) day unemployment requirement for unemployed parent cases as described in 921 KAR 2:006, Section 10(7)(e)[that shall not be required, meet technical requirements of K-TAP in accordance with 921 KAR 2:006];~~

(c) Not be currently receiving ongoing K-TAP benefits;

(d) Have a verified short-term need to include:

1. Car repair, to be:

a. Completed by a mechanic who is employed by a garage;

b. Completed by a vocational school automotive program; or

c. The responsibility of the FAD recipient, if a payment is made for a new or used automotive part;

2. Other transportation assistance;

3. Unsubsidized child care;

4. Utilities payment assistance;

5. Housing payment assistance; or

6. Items required for employment; and

(e) Be determined by the cabinet to be self-supporting if the short-term need is met.

(2) The cabinet shall use the FA-1, Family Alternatives Diversion (FAD) Determination, to determine if a potential K-TAP applicant's eligible benefit group for FAD is a family eligible to receive FAD benefits.

(3) The K-TAP eligible benefit group shall be notified of the option to decline FAD benefits in lieu of applying for ongoing K-TAP benefits.

(4) FAD shall be utilized instead of K-TAP if:

(a) Requested by the benefit group; and

(b) The benefit group is deemed eligible for FAD.

(5)(a) The benefit group's countable gross income shall include earned and unearned income in accordance with 921 KAR 2:016, Sections 4 and 5.

(b) The benefit group's gross income shall be computed using the best estimate of income for the month of application in accordance with 921 KAR 2:016, Section 10.

(c) The benefit group's total gross earned and unearned income as determined in paragraph (b) of this subsection shall be compared to the maximum gross income scale for K-TAP in accordance with 921 KAR 2:016, Section 9(2)(b).

(d) If the benefit group's total gross earned and unearned income exceeds the maximum gross income limit for the appropriate benefit group size, pursuant to 921 KAR 2:016, Section 9(2), the family shall not be eligible for a FAD payment.

(6)(a) The FAD eligibility period for an approved FAD application shall be a three (3) consecutive month period beginning with the date of FAD approval[~~month of issuance of the first FAD check or voucher~~].

(b) One (1) or more checks with a combined total of up to \$1,300, to the extent funds are available, may be issued to resolve a short-term need as specified in subsection (1)(d) of this section during the three (3) month eligibility period.

(c) An adult member of a benefit group shall not be approved for FAD more than once during a twenty-four (24) month period.

(d) An adult member of a benefit group shall not be approved for FAD more than twice in a lifetime.

(e) If the adult member of a benefit group has voluntarily quit employment, the adult member shall not be eligible to receive FAD,

unless the adult meets criteria specified in 921 KAR 2:370, Section 6(1)(a) through (k).

Section 3. Authorization of a FAD Payment. (1) The amount of the eligible FAD payment shall be issued in one (1) or more checks[~~or vouchers~~] to:

(a) A vendor; or

(b) The eligible FAD benefit group and vendor, as a two (2) party check.

(2) Except for payments for purchases of merchandise or goods, a FAD payment shall not be issued to a vendor of services who is required and fails to provide signed documentation of:

(a) A tax identification number or Social Security number; and

(b) Verification of services.

(3) Total payments during the three (3) month FAD eligibility period shall not exceed \$1,300, to the extent funds are available.

Section 4. Coordination with K-TAP and Other Benefit Programs. (1) Receipt of a FAD payment shall exclude the benefit group from receiving ongoing K-TAP benefits for twelve (12) months unless nonreceipt would result in:

(a) Abuse or neglect of a child, as determined pursuant to KRS 600.020(1); or

(b) The parent's inability to provide adequate care or supervision due to the loss of employment through no fault of the parent.

(2) A benefit group shall not be eligible to receive Work Incentive (WIN),[~~and~~] K-TAP, or FAD funds concurrently.

(3) An application shall be taken or a referral made for the following benefits as needed for a FAD eligible family:

(a) Supplemental Nutrition Assistance Program (SNAP);

(b) Medicaid;

(c) Child care; and

(d) Child support.

(4) For a FAD eligible benefit group, a referral shall be made as needed for other services offered through other state agencies, contractors, or charitable organizations to include the following services:

(a) Job search;

(b) Job readiness assessment;

(c) Life skills; and

(d) Other food benefit programs.

Section 5. Overpayments. (1) The cabinet shall recover the amount of an overpayment, including assistance paid pending the outcome of a hearing, from the claimant-payee.

(2) An overpayment shall be recovered through:

(a) Repayment by the claimant-payee to the cabinet; or

(b) Cabinet initiation of a civil action in the court of appropriate jurisdiction after the claimant-payee has exhausted or abandoned the administrative and judicial remedies specified in 921 KAR 2:055.

Section 6. Hearing Rights. Hearing rights for FAD shall be the same as hearing rights for a K-TAP recipient in accordance with 921 KAR 2:055.

Section 7. Incorporation by Reference. (1) The "FA-1, Family Alternatives Diversion (FAD) Determination", [edition] 04/11, 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: July 7, 2015

FILED WITH LRC: July 9, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 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 August 14, 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 August 31, 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 requirements for the Family Alternatives Diversion Program (FAD).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide short-term temporary assistance to stabilize families and maintain self-sufficiency as an alternative to applying for ongoing cash assistance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the requirements for FAD.

(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 through its establishment of requirements under which the cabinet administers FAD.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by clarifying language that the FAD three (3) month eligibility period begins on the date of approval, and making technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative aligns the administrative regulation with the new web-based eligibility and enrollment system. This new system promises further programmatic modernization, greater efficiency in the eligibility determination process and ongoing case maintenance, and enhanced reporting and archiving functionalities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its update to regulatory content and alignment with forthcoming business processes and technology.

(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 assuring process and policy alignment, resource maximization, and programmatic accountability.

(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 families who are potentially eligible for the Kentucky Transitional Assistance Program (K-TAP), but could be self-supporting if short-term needs are met. For February 2015, twenty-one (21) families received FAD.

(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 a new action on the part of regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the updates and clarity provided within the regulatory amendment and the enhanced programmatic efficiencies promised by the new web-based eligibility and enrollment system.

(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 is anticipated to impose no new or additional cost to the administrative body to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and is anticipated to impose no new or additional ongoing costs to the administrative body to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Temporary Assistance for Needy Families (TANF) Block Grant funds under Title IV-A of the Social Security Act and General Funds used to meet Maintenance of Effort requirements are the funding sources for this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be applied in a like manner statewide.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 U.S.C. 601-619

2. State compliance standards. KRS 194A.050(1), 205.200(2)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 601-619

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), KRS 205.200(2), 42 U.S.C. 601-619

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

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

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

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

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in any 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 2:510. Relocation Assistance Program.**

RELATES TO: KRS 45.237-241, [494.030(8),] 205.211, 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulation necessary to implement programs mandated by federal law or to qualify for receipt of federal funds. KRS 205.200(2) requires the secretary to prescribe, by administrative regulation, conditions of eligibility for public assistance, in conformity with federal law. This administrative regulation establishes eligibility requirements for the Relocation Assistance Program (RAP).

Section 1. Definitions. (1) "Benefit group" means a group that meets the eligibility requirements established in 921 KAR 2:006.

(2) "Family Alternatives Diversion Program" or "FAD" means the program established in 921 KAR 2:500.

(3) "Kentucky Transitional Assistance Program" or "K-TAP", Kentucky's Temporary Assistance for Needy Families or "TANF" Program, means a money payment program for children who are deprived of parental support or care in accordance with 921 KAR 2:006.

Section 2. Relocation Assistance Program (RAP). (1) An applicant for the ~~RAP~~ Relocation Assistance Program shall:

(a) Be a current recipient of K-TAP;

(b)1. Have a verified offer of employment with wages in an amount equal to or greater than thirty (30) hours per week at the minimum hourly wage rate; or

2. Be currently employed with wages in an amount equal to or greater than thirty (30) hours per week at the minimum hourly wage rate, reporting and verifying timely, and request relocation assistance within ninety (90) days from the start date of employment; and

(c) Be in need of assistance to relocate in order to:

1. Accept or maintain a verified offer of employment if the applicant's:

a. Current residence is located ten (10) miles or more from the location of new employment; and

b. New residence is closer to the location of new employment

than the applicant's current residence; or

2. Escape a domestic violence situation, as determined by the cabinet pursuant to 921 KAR 2:006, Section 1;

(d) Not be required to comply with paragraphs (b) and (c)1 of this subsection, if moving to escape from a domestic violence situation; and

(e) Complete Form ["RA-1, Application for Relocation Assistance"].

(2) To the extent funds are available, the payment shall be issued to assist an eligible K-TAP recipient in meeting moving-related expenses. Moving-related expenses shall include:

(a) Moving van rental;

(b) First month's rent for apartment or house; and

(c) Security deposit, utility hook-up fee, or other moving-related fee approved by the cabinet for the apartment or house listed in paragraph (b) of this subsection.

(3) The amount of payment shall be up to \$500 based on the actual verified moving-related expenses, as listed in subsection (2) of this section.

(4) Except for a domestic violence situation, an otherwise eligible recipient of the ~~RAP~~ Relocation Assistance Program shall receive relocation assistance only one (1) time.

(5) The offer of employment, including hourly wage and number of hours, and the availability of a new residence, as specified in subsection (1)(b)1 and (c)1 of this section shall be verified in writing.

(6) The start date of ongoing employment, including hourly wage and number of hours and the availability of a new residence as specified in subsection (1)(b)2 and (c)1 of this section, shall be verified in writing.

(7) The cabinet shall provide follow-up case management to assist the family with the transition.

(8) A family not currently receiving K-TAP and eligible to receive FAD may receive assistance to relocate as specified in 921 KAR 2:500.

(9) A K-TAP recipient may refuse without penalty an offer of employment which would require relocation.

Section 3. Hearing Rights. Hearing rights for the ~~RAP~~ Relocation Assistance Program shall be the same as hearing rights for a K-TAP recipient in accordance with 921 KAR 2:055.

Section 4. Improper Payments. The cabinet shall recover the amount of an improper payment pursuant to KRS 45.237-241 and 205.211, including assistance paid pending the outcome of a hearing, from the claimant-payee.

Section 5. Incorporation by Reference. (1) The "RA-1, Application for Relocation Assistance", ~~12/15~~ [12/15] edition—03/07, 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. 921 KAR 2:510

TERESA C. JAMES, LCSW, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 7, 2015

FILED WITH LRC: July 9, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 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 August 14, 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 through August 31, 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 requirements for the Relocation Assistance Program (RAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide relocation assistance to families receiving the Kentucky Transitional Assistance Program (K-TAP) benefits who require relocation assistance in order to accept an offer of employment, retain employment, or escape a domestic violence situation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of RAP.

(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 through its establishment of RAP, a program to assist cash recipients in their efforts to accept or retain employment and escape domestic violence.

(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 updates material incorporated by reference, form RA-1, Application for Relocation Assistance, in order to meet the formatting requirements of a new web-based enrollment and eligibility system. The amendment also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative aligns the administrative regulation with the new web-based eligibility and enrollment system. This new system promises further programmatic modernization, greater efficiency in the eligibility determination process and ongoing case maintenance, and enhanced reporting and archiving functionalities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its update to regulatory content and alignment with forthcoming business processes and technology.

(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 assuring process and policy alignment, resource maximization, and programmatic accountability.

(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 families who are currently receiving K-TAP and require relocation assistance in order to retain employment, accept an offer of employment, or escape a domestic violence situation. For the State Fiscal Year 2014, thirty-one (31) recipients received RAP.

(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 a new or additional action on the part of

regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the updates and clarity provided within the regulatory amendment and the enhanced programmatic efficiencies promised by the new web-based eligibility and enrollment system.

(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 is anticipated to impose no new or additional cost to the administrative body to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and is anticipated to impose no new or additional ongoing costs to the administrative body to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Temporary Assistance for Needy Families (TANF) Block Grant funds under Title IV-A of the Social Security Act and General Funds used to meet Maintenance of Effort requirements are the funding sources for this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be applied in a like manner statewide.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 U.S.C. 601-619

2. State compliance standards. KRS 45:237-24, 194A.050(1), 205.200(2), 205:211

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 601-619

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.200(2), 42 U.S.C. 601-619

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government during the first year.

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

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

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in any 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 2:520. Work Incentive or "WIN".**

RELATES TO: KRS 205.200, 205.211, 205.2003, 45 C.F.R. Parts 260-265, 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2), 205.2003

NECESSITY, FUNCTION, AND CONFORMITY: 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. KRS Chapter 205 requires the Cabinet for Health and Family Services to administer the public assistance programs. KRS 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance, in conformity with the Social Security Act, 42 U.S.C. 601 to 619 and federal regulations. KRS 205.2003 requires the cabinet to promulgate administrative regulations to develop a work program for recipients of public assistance to provide for immediate employment or preparation for employment, and to provide supportive services to assist in the pursuit of work and self-sufficiency. This administrative regulation establishes requirements for receiving the work incentive payment.

Section 1. Definitions. (1) "Benefit group" means a group that meets the eligibility requirements established in 921 KAR 2:016.

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

(3) "Employed" means a person performs a physical or mental activity in exchange for direct monetary compensation.

(4) "Family Alternatives Diversion Program" or "FAD" means a money payment diversion program for families in need in accordance with 921 KAR 2:500.

(5) "Kentucky Transitional Assistance Program" or "K-TAP", means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program for a child in accordance with 921 KAR 2:006.

(6) "Overpayment" means a work incentive payment received by an individual who after an initial determination of eligibility:

(a) Is determined to be ineligible for the program; and

(b) Received erroneous benefits.

(7) "Work expense" means costs or charges accumulated as a result of items or services necessary for employment.

Section 2. Eligibility for WIN. (1) To qualify for WIN, a member of the benefit group shall:

(a) Be discontinued from K-TAP with earnings;  
 (b) Report and provide written verification to the cabinet within ten (10) calendar days of obtaining employment;  
 (c) Have an eligible child as defined in 921 KAR 2:006, Section 1;

(d) Be employed;  
 (e) Have a work expense;  
 (f) Be a resident of Kentucky; and  
 (g) Have total gross earned and unearned income at or below 200 percent of federal poverty level.

(2) An individual is not eligible for WIN if:

(a) Employment is obtained after the K-TAP case is discontinued; or

(b) The individual has previously received a WIN payment.

(3) An eligible recipient shall not receive K-TAP, FAD, or WIN concurrently.

Section 3. Eligibility Period. (1)(a) The potential WIN eligibility period for an approved WIN recipient shall be a nine (9) consecutive month period beginning with the first month of discontinuance of K-TAP.

(b) Eligibility shall be redetermined monthly.

(2) A recipient discontinued from K-TAP shall be eligible for one (1) lifetime WIN eligibility period.

(a) An eligible WIN recipient shall be eligible for up to nine (9) months of WIN payments.

(b) If an eligible recipient loses employment, the WIN payment shall stop unless:

1. New employment is obtained within one (1) month; and

2. Written verification is provided to the cabinet within ten (10) calendar days of obtaining new employment.

(c) If eligibility in accordance with Section 2(1) of this administrative regulation is no longer met, the WIN payment shall stop even if months are remaining in the eligibility period.

(d) If the eligible WIN recipient reapplies and is eligible for K-TAP, the WIN payment shall stop even if months remain in the WIN eligibility period.

(3) An eligible recipient shall not waive receipt of the WIN payment in order to receive the payment at a later date.

Section 4. Payment Amount and Authorization. (1) To the extent funds are available, the payment amount shall be \$130 per month per eligible adult.

(2) The first payment shall be automatically issued on the tenth day of the effective month of the discontinuance of K-TAP benefits.

(3) Each subsequent payment may be issued upon the cabinet receiving:

(a) A completed "[WIN-1, Work INcentive (WIN) Report]", within ten (10) calendar days of issuance; or

(b) A completed "[WIN-2, Second Notice for Work INcentive (WIN) Report]", within ten (10) calendar days of issuance.

Section 5. Overpayments. (1) The cabinet shall recover the amount of an overpayment, including assistance paid pending the outcome of a hearing, from the claimant-payee.

(2) An overpayment shall be recovered through:

(a) Repayment by the claimant-payee to the cabinet; or

(b) Cabinet initiation of a civil action in the court of appropriate jurisdiction after the claimant-payee has exhausted or abandoned the administrative and judicial remedies specified in 921 KAR 2:055.

Section 6. Hearings and Appeals. An applicant or recipient of WIN payments who is dissatisfied with an action or inaction on the part of the cabinet may seek a hearing pursuant to 921 KAR 2:055.

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

(a) "WIN-1, Work INcentive (WIN) Report", 12/15[~~edition 3/03~~]; and

(b) "WIN-2, Second Notice for Work INcentive (WIN) Report", 12/15[~~edition 3/03~~].

(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 Date, Commissioner  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: July 7, 2015

FILED WITH LRC: July 9, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 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 August 14, 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 through August 31, 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 requirements for the Work Incentive Program or "WIN".

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a monetary work incentive for former recipients of the Kentucky Transitional Assistance Program (K-TAP) upon program discontinuation due to earnings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through establishment of requirements for receiving the work incentive payment.

(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 supporting individuals' efforts to transition off cash assistance and reduce dependency on public assistance due to work earnings.

(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 revises forms, WIN-1, Work Incentive (WIN) Report, and WIN-2, Second Notice for Work Incentive (WIN) Report, to comply with the formatting requirements of a new web-based eligibility and enrollment system and makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative aligns the administrative regulation with the new web-based eligibility and enrollment system. This new system promises further programmatic modernization, greater efficiency in the eligibility determination process and ongoing case maintenance, and enhanced reporting and archiving functionalities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its update to regulatory content and alignment with forthcoming business processes and technology.

(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 assuring process and policy alignment, resource maximization, and programmatic accountability.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In February 2015, there was a total of 649 individuals who received WIN.

(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 a new or additional action on the part of regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the updates and clarity provided within the regulatory amendment and the enhanced programmatic efficiencies promised by the new web-based eligibility and enrollment system.

(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 is anticipated to impose no new or additional cost to the administrative body to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and is anticipated to impose no new or additional ongoing costs to the administrative body to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Temporary Assistance for Needy Families (TANF) Block Grant funds under Title IV-A of the Social Security Act and General Funds used to meet Maintenance of Effort requirements are the funding sources for this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

45 C.F.R. Parts 260-265, 42 U.S.C. 601-619

2. State compliance standards. KRS 194A.050(1), 205.200(2), 205.2003

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 260-265, 42 U.S.C. 601-619

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

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

required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.200(2), 205.2003, 45 C.F.R. 260-265, 42 U.S.C. 601-619

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in any 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 3:035. Certification process.

RELATES TO: 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 42 U.S.C. 5122, 5179

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4

NECESSITY, FUNCTION, AND CONFORMITY: 7 C.F.R. 271.4 requires the Cabinet for Health and Family Services to administer a Supplemental Nutrition Assistance Program (SNAP) within the state. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes the certification process used by the cabinet in the administration of SNAP.

Section 1. Eligibility and Benefit Levels. (1) Eligibility and benefit levels shall be determined by the cabinet by considering a household's circumstance for the entire period for which each household is certified.

(2) Certification criteria shall be applicable to all households.

(3) Certain households shall require special or additional certification procedures as specified in Section 5 of this administrative regulation.

Section 2. Certification Periods. (1) In accordance with 7 C.F.R. 273.10(f), the cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits.

(2) Except as provided in subsection (3) of this section, a household shall be certified for at least:

(a) Six (6) months; or

(b) Twelve (12) months if all members:

1. Are elderly or have a disability as defined in 921 KAR 3:010; and

2. Have no earned income.

(3)(a) A household shall be certified for one (1) or two (2) months if the household meets criteria to:

1. Expedite benefits in accordance with 7 C.F.R. 273.2(i)(1); and

2. Postpone verification.

(b) At the end of a one (1) or two (2) month certification, a household may be recertified for a six (6) month or twelve (12) month certification as specified in subsection (2) of this section.

(4)(a) In accordance with 7 C.F.R. 273.12, a household, in which all members are elderly or have a disability as defined in 921 KAR 3:010 and have no earned income, shall complete an interim report using Form FS-2, SNAP 6-Month Review, during the household's certification period if the household reports:

1. A new household member who is non-elderly or non-disabled; or

2. A gain of earned income.

(b) If a household fails to return a completed FS-2 or the required income verification, the cabinet shall take action in accordance with 7 C.F.R. 273.12(a)(5).

Section 3. Certification Notices to Households. In accordance with 7 C.F.R. 273.10(g), the cabinet shall provide an applicant with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:

(1) Notice of eligibility;

(2) Notice of denial; or

(3) Notice of pending status.

Section 4. Application for Recertification. The cabinet shall process an application for recertification as specified in 921 KAR 3:030, Section 1, as follows:

(1) If a household files the application:

(a) By the 15th day of the last month of the certification, the cabinet shall:

1. Allow the household to return verification or complete a required action through the last calendar day of the application month; and

2. Provide uninterrupted benefits, if the household is otherwise eligible; or

(b) After the 15th day, but prior to the last day of the last month of the certification, the cabinet shall allow the household thirty (30) days to return verification or complete a required action; or

(2) If the household fails to provide information required for the cabinet to process the application for recertification within a time period established in subsection (1) of this section, the cabinet shall take action in accordance with 7 C.F.R. 273.14(e)(2).

Section 5. Certification Process for Specific Households. Pursuant to 7 C.F.R. 273.11, certain households have circumstances that are substantially different from other households and therefore shall require special or additional certification procedures. (1) A household with a self-employed member shall have its case processed as established in this subsection.

(a) Income shall be annualized over a twelve (12) month period, if self-employment income:

1. Represents a household's annual income; or

2. Is received on a monthly basis which represents a household's annual support.

(b) Self-employment income, which is intended to meet the household's needs for only part of the year, shall be averaged over the period of time the income is intended to cover.

(c) Income from a household's self-employment enterprise that has been in existence for less than one (1) year shall be averaged over the period of time the business has been in operation and a monthly amount projected over the coming year.

(d) The cabinet shall calculate the self-employment income on anticipated earnings if the:

1. Averaged annualized amount does not accurately reflect the household's actual circumstances; and

2. Household has experienced a substantial increase or decrease in business.

(2) A household with a boarder shall have its case processed as established in this subsection.

(a) Income from the boarder shall:

1. Be treated as self-employment income; and

2. Include all direct payments to the household for:

a. Room;

b. Meals; and

c. Shelter expenses.

(b) Deductible expenses shall include:

1. Cost of doing business;

2. Twenty (20) percent of the earned income; and

3. Shelter costs.

(3) A household with a member ineligible due to an intentional program violation, or failure to comply with the work requirements or work registration requirements, shall be processed as established in this subsection.

(a) Income and resources of the ineligible member shall be counted in their entirety as income available to the remaining household members.

(b) Remaining household members shall receive standard earned income, medical, dependent care, and excess shelter deductions.

(c) The ineligible member shall not be included if:

1. Assigning benefit levels;

2. Comparing monthly income with income eligibility standards;

and

3. Comparing household resources with resource eligibility standards.

(4) A household with a member ineligible due to failure to provide a Social Security number, or ineligible alien status, shall be processed as established in this subsection.

(a) All resources of an ineligible member shall be considered available to the remaining household members.

(b) A pro rata share, as described in 7 C.F.R. 273.11(c)(2)(ii), of the ineligible member's income shall be attributed to remaining household members.

(c) The twenty (20) percent earned income deduction shall be applied to the pro rata share of earnings.

(d) The ineligible member's share of dependent care and shelter expenses shall not be counted.

(e) The ineligible member shall not be included as specified in subsection (3)(c) of this section.

(5) A household with a nonhousehold member shall be processed as established in this subsection.

(a) With the exception of an ineligible member, the income and resources of a nonhousehold member shall not be considered available to the household with whom they reside.

(b) If the earned income of a household member and a nonhousehold member are combined into one (1) wage, the cabinet shall:

1. Count that portion due to the household as earned income, if identifiable; or

2. Count a pro rata share of earned income, if the nonhousehold member's share cannot be identified.

(c) A nonhousehold member shall not be included in the household size, if determining the eligibility and benefits for the household.

(6) The cabinet shall process the case of a drug or alcoholic treatment program resident, as described in 7 C.F.R. 271.2, as established in this subsection.

(a) An eligible household shall include:

1.a. A narcotic addict; or

b. An alcoholic; and

2. A child of the narcotic addict or alcoholic.

(b) Certification shall be accomplished through use of the treatment program's authorized representative.

(c) SNAP processing standards and notice provisions shall apply to a resident recipient.

(d) A treatment program shall notify the cabinet of a change in a resident's circumstance.

(e) Upon departure of the treatment program, the resident shall be eligible to receive remaining benefits, if otherwise eligible.

(f) The treatment program shall be responsible for knowingly misrepresenting a household circumstance.

(7) The case processing procedures established in this subsection shall apply to residents of a group living arrangement, as defined in 7 C.F.R. 271.2.

(a) Application shall be made by a resident or through use of the group living arrangement's authorized representative.

(b) Certification provisions applicable to all other households shall be applied.

(c) Responsibility for reporting changes shall depend upon who files the application:

1. If a resident applies, the household shall report a change in household circumstance to the cabinet; or

2. If the group living arrangement acts as authorized representative, the group living arrangement shall report a change in household circumstance.

(d) Eligibility of the resident shall continue after departure from the group living arrangement, if otherwise eligible.

(e) Unless the household applied on its own behalf, the group living arrangement shall be responsible for knowingly misrepresenting a household circumstance.

(8) A case of a resident in a shelter for battered women and children shall be processed as established in this subsection.

(a) The shelter shall:

1. Have FNS authorization to redeem SNAP benefits at wholesalers; or

2. Meet the federal definition of a shelter as defined in 7 C.F.R. 271.2.

(b) A shelter resident shall be certified for benefits as established in 7 C.F.R. 273.11(g).

(c) The cabinet shall promptly remove the resident from the former household's case, upon notification.

(9) The case of an SSI recipient shall be processed as established in this subsection.

(a) An Application may be filed at the:

1. Social Security Administration (SSA) Office; or

2. Local Department for Community Based Services office.

(b) The cabinet shall not require an additional interview for applications filed at the SSA.

(c) The cabinet shall obtain all necessary verification prior to approving benefits.

(d) Certification periods shall conform to Section 2 of this administrative regulation.

(e) A household change in circumstance shall conform to Section 7 of this administrative regulation.

(10) A household with a member who is on strike shall have its eligibility determined by:

(a) Comparing the striking member's income the day prior to the strike, to the striker's current income;

(b) Adding the higher of the prestrike income or current income to other current household income; and

(c) Allowing the appropriate earnings deduction.

(11) Sponsored aliens.

(a) Income of a sponsored alien, as defined in 7 C.F.R. 273.4(c)(2), shall be:

1. Deemed income from a sponsor and sponsor's spouse which shall:

a. Include total monthly earned and unearned income; and

b. Be reduced by:

(i) The twenty (20) percent earned income disregard, if appropriate; and

(ii) The SNAP gross income eligibility limit for a household equal in size to the sponsor's household;

2. Subject to appropriate income exclusions as specified in 921

KAR 3:020, Section 3; and

3. Reduced by the twenty (20) percent earned income disregard, if appropriate.

(b) If the sponsor is financially responsible for more than one (1) sponsored alien, the sponsor's income shall be prorated among each sponsored alien.

(c) A portion of income, as specified in paragraph (a) of this subsection, of the sponsor and of the sponsor's spouse shall be deemed unearned income until the sponsored alien:

1. Becomes a naturalized citizen;

2. Is credited with forty (40) qualifying quarters of work;

3. Meets criteria to be exempt from deeming, in accordance with 7 C.F.R. 273.4(c)(3);

4. Is no longer considered lawfully admitted for permanent residence and leaves the United States; or

5. Dies, or the sponsor dies.

(d) Effective October 1, 2003, deeming requirements shall no longer apply to sponsored alien children under eighteen (18) years of age, in accordance with 7 U.S.C. 2014.

Section 6. Disaster Certification. The cabinet shall distribute emergency SNAP benefits, pursuant to 42 U.S.C. 5122, to a household residing in a county determined to be a disaster area in accordance with 42 U.S.C. 5179 and 7 C.F.R. 280.1.

Section 7. Reporting Changes. (1) Within ten (10) days of the end of the month in which the change occurs, a household shall report a change which causes:

(a) The household's gross monthly income to exceed 130 percent of poverty level based on household size; or

(b) A household member, who does not have an exemption from work requirements, as specified in 921 KAR 3:025, Section 3(8)(b), to work less than twenty (20) hours per week.

(2) An applying household shall report a change related to its SNAP eligibility and benefits:

(a) At the certification interview; or

(b) Within ten (10) days of the date of the notice of eligibility, if the change occurs after the interview, but prior to receipt of the notice.

Section 8. Incorporation by Reference. (1) The "FS-2, SNAP 6-Month Review", 12/15[44/44], 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: July 7, 2015

FILED WITH LRC: July 9, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 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 August 14, 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 through August 31, 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 certification process used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation establishes the certification process necessary to determine SNAP eligibility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing the certification process for SNAP eligibility determination.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the certification process for 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 this administrative regulation revises form FS-2, SNAP 6 Month Review, to comply with the requirements of the new web-based eligibility and enrollment system and makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative aligns the administrative regulation with the new web-based eligibility and enrollment system. This new system promises further programmatic modernization, greater efficiency in the eligibility determination process and ongoing case maintenance, and enhanced reporting and archiving functionalities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its update to regulatory content and alignment with forthcoming business processes and technology.

(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 assuring process and policy alignment, resource maximization, and programmatic accountability.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All SNAP recipients and potential applicants are affected by this administrative regulation. During March 2015, approximately 774,763 individuals in 372,128 households participated in SNAP, and over 52,574 SNAP applications were received in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will not require a new or additional action on the part of regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the updates and clarity provided within the regulatory amendment and the enhanced programmatic efficiencies promised by the new web-based eligibility and enrollment system.

(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 is anticipated to impose no



new or additional cost to the administrative body to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and is anticipated to impose no new or additional ongoing costs to the administrative body to implement.

(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. Administrative functions are funded at a fifty (50) percent state and fifty (50) percent federal match rate.

(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 are no increases in fees or funding required with this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

7 C.F.R. 271.4

2. State compliance standards. KRS 194A.050(1)

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

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, additional or different responsibilities or requirements, than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in any 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 3:042. Supplemental Nutrition Assistance Program Employment and Training Program.

RELATES TO: 7 C.F.R. 273.7, 273.24, 7 U.S.C. 2015(d)

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 273.7

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services is required by 7 C.F.R. 273.7 to administer a Supplemental Nutrition Assistance Program (SNAP) Employment and Training Program. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes technical eligibility requirements used by the cabinet in the administration of the SNAP Employment and Training Program (E&T).

Section 1. Definitions. (1) "Exempt" means excused by the agency from participation in the E&T.

(2) "Vocational Educational Skills Training" or "VEST" means a program in which a participant receives training in order to meet a work requirement.

(3) "Work Experience Program" or "WEP" means a program in which a participant receives work experience in order to meet a work requirement.

Section 2. Work Registration. (1) Unless exempt from work requirements as specified in subsection (4) of this section, a household member shall register for work:

(a) At the time of initial application for SNAP; and

(b) Every twelve (12) months following the initial application.

(2) Work registration shall be completed by the:

(a) Member required to register; or

(b) Person making application for the household.

(3) Unless otherwise exempt, a household member excluded from the SNAP case shall register for work during periods of disqualification. An excluded person may be an:

(a) Ineligible alien; or

(b) Individual disqualified for:

1. Refusing to provide or apply for a Social Security number; or

2. An intentional program violation.

(4) An individual meeting the criteria of 7 C.F.R. 273.7(b)(1) shall be exempt from work registration requirements.

(5) A household member who loses exemption status due to a change in circumstances shall register for work in accordance with 7 C.F.R. 273.7(b)(2).

(6) After registering for work, a nonexempt household member shall:

(a) Respond to a cabinet request for additional information regarding employment status or availability for work;

(b) In accordance with 7 C.F.R. 273.7(a)(1)(vi), accept a bona fide offer of suitable employment as specified in 7 C.F.R. 273.7(h), at a wage not lower than the state or federal minimum wage; or

(c) In accordance with 7 C.F.R. 273.7(a)(1)(ii), participate in the E&T Program, if assigned by the cabinet.

(7) A household member making a joint application for SSI and SNAP in accordance with 921 KAR 3:035, shall have work requirements waived in accordance with 7 C.F.R. 273.7(a)(6).

(8) The E&T worker shall explain to the SNAP applicant the:

(a) Work requirements for each nonexempt household member;

- (b) Rights and responsibilities of the work-registered household members; and
- (c) Consequences of failing to comply.

Section 3. E&T Participation. (1) An individual subject to the work requirement of 921 KAR 3:025, Section 3(8) shall participate in the E&T Program.

(2) An E&T participant shall:

(a) ~~Attend and~~ Complete an initial assessment interview;

(b) Be placed in:

- 1. VEST; or
- 2. WEP; and

(c) Complete and return to the cabinet a FSET-108, Job Search Contact Report, or a FSET-145, Employment and Training Program Activity Report, in order to verify participation.

(3) Payment for transportation, up to twenty-five (25) dollars per month, shall be provided to an individual participating in the E&T program if the individual:

(a) Incurs or plans to incur a transportation expense in order to participate; and

(b) Completes and returns to the cabinet a FSET-108 or a FSET-145 stating the anticipated need.

Section 4. Components. (1) A county offering the E&T Program shall offer the following services and activities:

(a) The VEST Program consisting of:

- 1. Vocational school; or
- 2. On-the-job training; and

(b) The WEP Program consisting of:

- 1. Job search; and
- 2. Work placement.

(2) An individual participating in VEST shall:

(a) Attend training courses for at least twenty (20) hours per week; and

(b) Participate in the WEP component until a VEST placement is available.

(3) An individual participating in WEP shall:

(a) Complete an initial assessment and develop an employability plan;

(b) Participate in the initial thirty (30) days of job search;

(c) Complete and file with the cabinet the FSET-108;

(d) Provide written verification by the WEP provider of E&T Program activities to the cabinet; and

(e) Satisfy the work requirement, in accordance with 921 KAR 3:025, Section 3(8), by:

1. Accepting the offer of a work site placement; and

2. Working at the assigned work site placement for the minimum monthly number of hours required by subsection (4) or (5) of this section.

(4) The minimum number of hours that a WEP participant shall perform each month to satisfy the work requirement of 921 KAR 3:025, Section 3(8), shall be determined by the participant's monthly SNAP allotment divided by the current federal minimum wage.

(5) If the SNAP household's active members include more than one (1) individual who wants to satisfy the work requirement of 921 KAR 3:025, Section 3(8), through WEP, the minimum monthly number of work hours that each individual is required to perform shall be determined by dividing the:

(a) SNAP allotment by the number of individuals who are subject to the work requirement; and

(b) Individual pro rata share of the SNAP allotment by the current federal minimum wage.

Section 5. Conciliation. (1) If a participant fails to comply with the E&T Program:

(a) The participant shall be issued a notice informing the recipient of the need for conciliation due to noncompliance; and~~mailed a FSET-102, Conciliation Contact and Request for Information form; and~~

(b) A conciliation period shall be initiated.

(2) The conciliation period shall be used to:

(a) Determine the reason for the noncompliance; and

(b) Allow the participant the opportunity to resolve the problem in order to continue participation.

(3) Conciliation shall last for fifteen (15) days, during which time the E&T worker shall:

(a) Determine if the participant demonstrates good cause for noncompliance;

(b) Encourage the participant to resume an E&T Program activity; or

(c) Recommend disqualification for failure to comply with program requirements, if the worker determines that there was no good cause for the participant's failure to comply.

(4) If the participant resumes the E&T Program activity, a disqualification shall not be imposed.

(5) If conciliation is unsuccessful and the participant fails or refuses to demonstrate good cause, a disqualification shall be imposed.

Section 6. Determining Good Cause. (1) A determination of good cause shall be undertaken if a:

(a) Work registrant has failed to comply with:

1. Work registration requirements as established in Section 2 of this administrative regulation; or

2. E&T requirements as established in Section 3 of this administrative regulation; or

(b) Household member has, as described in Section 8 of this administrative regulation, voluntarily:

1. Quit a job; or

2. Reduced his work effort.

(2) In accordance with 7 C.F.R. 273.7(i)(2), good cause shall be granted for circumstances beyond the control of the individual, such as:

(a) Illness of the individual;

(b) Illness of another household member requiring the presence of the individual;

(c) A household emergency;

(d) Unavailability of transportation; and

(e) Lack of adequate care for a child of age six (6) to twelve (12) for whom the individual is responsible.

(3) Good cause for leaving employment shall be granted if:

(a) A circumstance specified in subsection (2) of this section exists;

(b) The employment became unsuitable, in accordance with 7 C.F.R. 273.7(h); or

(c) A circumstance specified in 7 C.F.R. 273.7(i)(3) exists.

Section 7. Disqualification. (1) A mandatory participant shall be disqualified from the receipt of SNAP benefits if the participant:

(a) Fails to comply with the work registration or E&T program requirements; or

(b) Is determined to have voluntarily and without good cause quit a job or reduced the work effort, as established in Section 8 of this administrative regulation.

(2) An individual disqualified from participation in SNAP shall be ineligible to receive SNAP benefits until the latter of the:

(a) Date the individual complies; or

(b) Lapse of the following time periods:

1. Two (2) months for the first violation;

2. Four (4) months for the second violation; or

3. Six (6) months for the third or a subsequent violation.

(3) Ineligibility shall continue until the ineligible member:

(a) Becomes exempt from the work registration; or

(b) 1. Serves the disqualification period specified in subsection (2) of this section; and

2. Complies with the requirements of:

a. Work registration; or

b. The Employment and Training Program.

(4) A disqualified household member who joins a new household shall:

(a) Remain ineligible for the remainder of the disqualification period specified in subsection (2) of this section;

(b) Have income and resources counted with the income and resources of the new household; and

(c) Not be included in the household size if determining the

## SNAP allotment.

Section 8. Disqualification for Voluntary Quit or Reduction in Work Effort. (1) Within thirty (30) days prior to application for SNAP or any time after application, an individual shall not be eligible to participate in SNAP if the individual voluntarily and without good cause:

- (a) Quits a job:
    1. Of thirty (30) hours or more per week; and
    2. With weekly earnings at least equal to the federal minimum wage times thirty (30) hours; or
  - (b) Reduces his work effort to less than thirty (30) hours per week, and after the reduction, weekly earnings are less than the federal minimum wage times thirty (30) hours.
- (2) A disqualification period established in Section 7 of this administrative regulation shall be imposed.

Section 9. Curing Disqualification for Voluntary Quit or Reduction in Work Effort. (1) Eligibility and participation may be reestablished by:

- (a) Securing new employment with salary or hours comparable to the job quit;
  - (b) Increasing the number of hours worked to the amount worked prior to the work effort reduction and disqualification; or
  - (c) Serving the minimum period of disqualification imposed pursuant to Section 7(2)(b) of this administrative regulation.
- (2) If the individual applies again and is determined to be eligible, an individual may reestablish participation in SNAP.
- (3) If an individual becomes exempt from work registration, the disqualification period shall end and the individual shall be eligible to apply to participate in SNAP.

Section 10. Hearing Process. If aggrieved by an action that affects participation, a SNAP participant may request a hearing in accordance with 921 KAR 3:070.

Section 11. Reimbursement. An individual shall complete and file with the cabinet a written request to have a reimbursement check for employment or training replaced after loss or theft.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) ~~["FSET-102, Conciliation Contact and Request for Information", 9/14;~~
- (b) "FSET-108, Job Search Contact Report", 12/15[9/14]; and
- (b)(e) "FSET-145, Employment and Training Program Activity Report", 12/15[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: July 7, 2015

FILED WITH LRC: July 9, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 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 August 14, 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 through August 31, 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 technical eligibility requirements used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP) Employment and Training Program (E&T).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform standards of technical eligibility for the SNAP E&T.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of technical eligibility requirements for SNAP E&T.

(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 establishing the technical eligibility requirements for SNAP E&T.

(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 revises material incorporated by reference and regulatory language to align with the department's modernized business practices and the requirements of a new web based eligibility and enrollment system. In addition, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation aligns the administrative regulation with the new web-based eligibility and enrollment system and associated business practice. This new system promises further programmatic modernization, greater efficiency in the eligibility determination process and ongoing case maintenance, and enhanced reporting and archiving functionalities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its update to regulatory content and alignment with forthcoming business processes and technology.

(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 assuring process and policy alignment, resource maximization, and programmatic accountability.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Participation in SNAP E&T is voluntary in Jefferson County only at this point in time.

(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 a new or additional action on the part of regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the updates and clarity provided within the regulatory amendment and the enhanced programmatic efficiencies promised

by the new web-based eligibility and enrollment system.

(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 is anticipated to impose no new or additional cost to the administrative body to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and is anticipated to impose no new or additional ongoing costs to the administrative body to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky's SNAP E&T receives an annual grant from the U.S. Department of Agriculture, Food and Nutrition Service to cover 100 percent of operational costs. Transportation expenses are fifty (50) percent federally funded and fifty (50) percent state funded.

(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 are no increases in fees or funding required with this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

7 C.F.R. 273.7

2. State compliance standards. KRS 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 273.7

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 7 C.F.R. 273.7

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.

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

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

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

program in the first year.

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in any 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 3:050. Claims and additional administrative provisions.

RELATES TO: 7 C.F.R. 272.1, 272.5, 272.6, 273.16, 273.17, 273.18, 26 C.F.R. 301.6402-6

STATUTORY AUTHORITY: KRS 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 273.18

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. 273.18 requires the agency administering SNAP to develop a process to establish and collect claims. This administrative regulation establishes the criteria for recipient claims, collections provisions, and additional provisions used by the cabinet in the administration of SNAP.

Section 1. Responsibility for a Claim. The following individuals shall be responsible for paying a recipient claim as defined in 921 KAR 3:010:

(1) An individual who was an adult member of the household during the time period when the overissuance or trafficking occurred;

(2) A sponsor of an alien household member if the sponsor is at fault; or

(3) A person connected to the household, such as an authorized representative, who actually traffics or otherwise causes an overissuance or trafficking.

Section 2. Claim Category. (1) As specified in 921 KAR 3:010, a recipient claim shall be classified as an:

(a) Inadvertent household error (IHE);

(b) Agency error (AE); or

(c) Intentional program violation (IPV).

(2) Until fraud is substantiated, an IPV claim shall be established as an IHE with a Suspected Intentional Program Violation (SIPV), indicator.

Section 3. Acting on a Change. (1) A claim shall be established if a household:

(a) Fails to report a change in circumstance in accordance with the timeframes specified in 921 KAR 3:035; or

(b) Reports a change within the required timeframe, but the cabinet fails to act on the change within ten (10) days of the date the change is reported.

(2) The first month of overissuance, as defined in 921 KAR 3:010, shall:

(a) Be the first month that the change would have been effective had it been timely:

1. Reported by the household; or
2. Acted upon by the cabinet; and

(b) Not exceed two (2) months from the month the change in circumstance occurred.

Section 4. Calculating the Amount of a Recipient Claim. (1) In accordance with 7 C.F.R. 273.18(c), unless a claim is related to trafficking, the cabinet shall:

(a) Calculate:

1. An IHE or AE claim back to twelve (12) months prior to when the cabinet became aware of the overissuance, unless an IHE has an SIPV indicator; and

2. An IPV claim or an IHE claim with a SIPV indicator back to the month the fraudulent act first occurred, but not more than six (6) years prior to when the cabinet became aware of the overissuance;

(b) Determine the correct amount of SNAP benefits for each month that a household received an overissuance;

(c) Not apply the earned income deduction to the portion of earned income that a household failed to report in a timely manner, as specified in Section 3 of this administrative regulation, if:

1. The claim is classified as an IPV or IHE; and

2. The IHE or IPV is the basis for the recipient claim;

(d) Subtract the correct amount of SNAP benefits from the benefits actually received and the difference shall be the amount of the overissuance; and

(e) Deduct any SNAP benefits that are designated to be expunged from a household's EBT account from the amount of overissuance:

1. When the recipient claim is initially calculated; and

2. At each subsequent expungement until the balance of the claim is paid in full.

(2) If a claim is related to trafficking, the cabinet shall calculate the value of the trafficked SNAP benefits as determined by:

(a) An individual's admission;

(b) Adjudication; or

(c) The documentation that forms the basis for the trafficking determination.

(3) The amount of a claim may differ from a calculation obtained through the methods outlined in subsections (1) and (2) of this section if a different amount is ordered by:

(a) An administrative hearing officer or agency head in accordance with: 921 KAR 3:060 or 921 KAR 3:070; or

(b) A court.

(4) In accordance with 7 C.F.R. 273.18(e)(2), the cabinet shall not establish a recipient claim if the claim referral is \$125 or less, unless the:

(a) Household is currently participating in SNAP; or

(b) Recipient claim was established or discovered through a quality control review.

Section 5. KCD-1. (1) A KCD-1, General Claims Notice shall serve many purposes in the administration of claims collections, including the use as:

(a) An appointment notice;

(b) A demand letter;

(c) Notification of benefit reduction;

(d) A past due notice;

(e) A repayment agreement;

(f) A claim adjustment notice;

(g) A claim termination notice;

(h) A payment receipt;

(i) Notice of a suspended claim;

(j) Notice of a claim being paid in full; or

(k) Notification that a delinquent claim shall be sent to the U.S. Department of Treasury for collection.

(2) The language on the KCD-1 shall differ according to the purpose of the notice as described in subsection (1) of this section.

Section 6. Notification of a Claim. (1) A household with a suspected claim shall be mailed a KCD-1 notifying the household of an appointment to:

(a) Discuss the potential claim;

(b) Determine the classification of the claim, as specified in Section 2 of this administrative regulation; and

(c) Offer the recipient an opportunity to waive the administrative disqualification hearing if the claim is suspected to be an IPV.

(2) If a household requests to reschedule the appointment within ten (10) days of the date of the notice, the appointment shall be rescheduled.

(3) The cabinet shall determine the classification and the amount of the recipient claim based on the information that is available to the cabinet if the household:

(a) Fails to attend the appointment to discuss the potential claim; and

(b) Does not contact the cabinet to reschedule the appointment.

(4) When the cabinet determines the amount of a recipient claim, in accordance with Section 4 of this administrative regulation, collection shall be initiated and a KCD-1 shall be mailed to notify the household of the claim:

(a) Amount;

(b) Time period;

(c) Reason; and

(d) Category, as specified in Section 2 of this administrative regulation.

(5) The household shall return the KCD-1 within ten (10) days of receipt if the household chooses to:

(a) Initiate a repayment agreement; or

(b) Request a hearing on the claim.

Section 7. Collection Methods. (1) Benefit reduction.

(a) A household that is participating in SNAP shall have payments on the claim made by reducing its monthly SNAP benefits through benefit reduction by the following amount:

1. For an IPV claim, the amount reduced shall be the greater of twenty (20) dollars per month or twenty (20) percent of the household's monthly benefits or entitlement, unless the household agrees to a higher amount; or

2. For an IHE or AE claim, the amount reduced shall be the greater of ten (10) dollars per month or ten (10) percent of the household's monthly benefits, unless the household agrees to a higher amount.

(b) The cabinet shall not use additional collection methods against individuals in a household that is already having its benefits reduced unless the:

1. Additional payment is voluntary; or

2. Source of the payment is irregular and unexpected such as a federal or state tax refund or lottery winnings offset.

(2) A household may pay its claim using SNAP benefits from its EBT account if the household gives the cabinet permission:

(a) By completing and returning a KCD-1 or other written statement requesting this option; or

(b) Through an oral request for a one (1) time reduction and the cabinet provides the household with a receipt for the transaction within ten (10) days.

(3) If the cabinet becomes aware of expunged SNAP EBT benefits, the claim balance shall be reduced by an amount equal to the expunged benefits.

(4) During the claim establishment and collection process, the cabinet shall:

(a) Deduct the amount of an outstanding recipient claim from SNAP benefits that may be owed to a household; and

(b) Send the household a KCD-1 as notification of the adjustment.

(5) A lump sum payment on a recipient claim:

(a) Shall be accepted by the cabinet; and

(b) May be a full or partial payment.

(6) If a household is not participating in SNAP, the cabinet shall:

(a) Negotiate a repayment agreement, either orally or in writing, which includes a repayment schedule; and

(b) Employ additional collection methods if the claim becomes delinquent through the household's failure to submit a payment in accordance with the negotiated repayment agreement.

(7) In accordance with 7 C.F.R. 273.18(g), the cabinet may employ other collection methods to collect a recipient claim, such as:

- (a) Referral to a public or private sector collection agency;
- (b) Lottery offsets;
- (c) Wage garnishment;
- (d) The intercept of unemployment compensation benefits;
- (e) State income tax refund intercept; or
- (f) The intercept of any eligible federal payment owed the debtor through the Treasury Offset Program (TOP).

(8) The cabinet shall:

(a) Refer a recipient claim that is delinquent for 180 or more days to TOP, unless the debtor is a member of a participating household that is undergoing benefit reduction to collect a recipient claim; and

(b) Remove a recipient claim from TOP if the:

- 1. FNS or U.S. Department of the Treasury instructs the cabinet to withdraw a recipient claim;
- 2. Cabinet discovers that the debtor:
  - a. Is a member of a SNAP household undergoing benefit reduction; or
  - b. Has made an arrangement to resume payments; or
- 3. Claim:
  - a. Has been paid off;
  - b. Was disposed of through a hearing, termination, or compromise; or
  - c. Was referred to TOP in error.

Section 8. Delinquent Recipient Claims. (1) In accordance with 7 C.F.R. 273.18(e)(5), a recipient claim shall be considered delinquent if:

- (a) The claim has not been paid by the due date and a satisfactory payment arrangement has not been made; or
- (b) A payment arrangement has been established and a scheduled payment has not been made by the due date.

(2) The date of delinquency for a claim shall be the due date on the:

- (a) Initial written notification if the claim meets the criteria of subsection (1)(a) of this section; or
- (b) Missed installment payment if the claim meets the criteria of subsection (1)(b) of this section.

(3) Pursuant to 7 C.F.R. 273.18(e)(5)(ii), the claim shall remain delinquent until:

- (a) Payment is received in full;
- (b) Benefit reduction, as described in Section 7 of this administrative regulation, is implemented; or
- (c) A satisfactory payment agreement is negotiated for a claim meeting the criteria of subsection (1)(a) of this section.

(4) A claim shall not be considered delinquent if:

(a) Another claim for the same household is currently being paid either through an installment agreement or benefit reduction; and

(b) The cabinet expects to begin collection on the claim once the prior claim is settled.

(5) If the cabinet is unable to determine delinquency status because claim collection is coordinated through the court system, a claim shall not be subject to the requirements for delinquent debts.

(6) A claim awaiting a fair hearing decision shall not be considered delinquent.

(7) If a hearing official determines that a claim does, in fact, exist against the household, the cabinet shall:

- (a) Renotify the household of the claim; and
- (b) Base delinquency on the due date of the subsequent notice.

(8) If a hearing official determines that a claim does not exist, the cabinet shall:

- (a) Dispose of the recipient claim in accordance with Section 9(2) of this administrative regulation; and
- (b) Send a KCD-1 to notify the household of the terminated claim.

Section 9. Compromising, Terminating, and Writing-off Claims.

(1) Except for a recipient claim that is established by a court of the

appropriate jurisdiction, the cabinet may compromise a claim in accordance with 7 C.F.R. 273.18(e)(7) [or a portion of a claim if:

(a) A request for compromise is received from the household; and

(b) In accordance with 7 C.F.R. 273.18(e)(7), the cabinet can make a reasonable determination that the household will be unable to pay off the claim within three (3) years].

(2) In accordance with 7 C.F.R. 273.18(e)(8), a claim shall be terminated and written off if:

(a) The claim:

1. Is invalid, unless it is appropriate to pursue the overissuance as a different type of claim;

2. Balance is twenty-five (25) dollars or less and the claim has been delinquent for ninety (90) days or more, unless other claims exist against the household resulting in an aggregate claim total of greater than twenty-five (25) dollars; or

3. Has been delinquent for at least three (3) years and, in accordance with 7 C.F.R. 273.18(n), cannot be pursued through TOP;

(b) All adult household members, as specified in Section 1(1) of this administrative regulation, die; or

(c) The cabinet is unable to locate the household.

Section 10. Restoration of Benefits. (1) Benefits shall be restored to a household if the household has lost benefits:

(a) Due to an administrative error; or

(b) By an administrative disqualification for an IPV that is subsequently reversed.

(2) Benefits shall be restored for a period of not more than twelve (12) months from the date:

(a) The agency receives a request for restoration; or

(b) A final order is implemented, if no request for restoration is received.

(3) Benefits to be restored shall be calculated by determining the difference between what the household was entitled to receive and what the household actually received.

(4) Benefits to be restored shall be used to offset any unpaid or suspended claim that the household has.

Section 11. Disclosure of Information. The disclosure or use of information regarding SNAP participants shall be restricted to an individual who meets the criteria specified in 7 C.F.R. 272.1(c).

Section 12. Retention of Records. (1) In accordance with 7 C.F.R. 272.1(f), the cabinet shall retain program records:

(a) In an orderly fashion, for audit and review purposes; and

(b) Except for records specified in subsection (2) of this section, for a period of three (3) years from the:

1. Month of origin of each record; or

2. Date of fiscal or administrative closure for fiscal records and accountable documents, such as claims.

(2) The cabinet shall retain records on IPV disqualifications and work violations indefinitely.

Section 13. Civil Rights Compliance. In accordance with 7 C.F.R. 272.6, the cabinet shall not discriminate in any aspect of program administration on the basis of age, race, color, sex, disability, religion, political beliefs, or national origin.

Section 14. Incorporation by Reference. (1) "KCD-1, General Claims Notice", 12/15[9/44], 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: July 7, 2015

FILED WITH LRC: July 9, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 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 August 14, 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 through August 31, 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 for recipient claims, collections, and additional administrative provisions 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 uniform standards for establishing and collecting SNAP claims.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing claims criteria for SNAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the criteria for recipient claims, collections, and additional administrative provisions used by the cabinet in the administration of 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 this administrative regulation revises form KCD-1, General Claims Notice, to comply with the formatting requirements of a new web-based eligibility and enrollment system and makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative aligns the administrative regulation with the new web-based eligibility and enrollment system. This new system promises further programmatic modernization, greater efficiency in the eligibility determination process and ongoing case maintenance, and enhanced reporting and archiving functionalities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its update to regulatory content and alignment with forthcoming business processes and technology.

(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 assuring process and policy alignment, resource maximization, and programmatic accountability.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All SNAP recipients and potential applicants are affected by this administrative regulation. During March 2015, approximately 774,763 individuals in 372,128 households participated in SNAP, and over 52,574 SNAP applications were received in Kentucky. In April 2015, 694 SNAP claims were established.

(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 a new or additional action on the part of regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the updates and clarity provided within the regulatory amendment and the enhanced programmatic efficiencies promised by the new web-based eligibility and enrollment system.

(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 is anticipated to impose no new or additional cost to the administrative body to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and is anticipated to impose no new or additional ongoing costs to the administrative body to implement.

(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. Administrative functions are funded at a fifty (50) percent state and fifty (50) percent federal match rate.

(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 are no increases in fees or funding required with this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

7 C.F.R. 271.4, 273.18

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

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 273.18

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

273.18

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? No new or additional costs are necessary to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in any 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 3:090. Simplified assistance for the elderly program or "SAFE".**

RELATES TO: 7 C.F.R. 273.1, 273.2, 273.9, 273.10, 273.12, 273.14

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4  
 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 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 delegates the administration of the Supplemental Nutrition Assistance Program (SNAP) to the state agency. This administrative regulation establishes requirements for the Simplified Assistance for the Elderly Program (SAFE), a demonstration project administered by the cabinet to improve access to SNAP for elderly and disabled individuals.

Section 1. Definitions. (1) "Regular SNAP benefits" means SNAP benefits received in accordance with the procedures specified in:

- (a) 921 KAR 3:020, Financial Requirements;
- (b) 921 KAR 3:025, Technical Requirements;
- (c) 921 KAR 3:030, Application Process; and
- (d) 921 KAR 3:035, Certification Process.

(2) "Shelter costs" means monthly rent or mortgage expenses as stated by the applicant.

(3) "Simplified Assistance for the Elderly" or "SAFE" means an optional SNAP program for SSI participants who are age sixty (60) or older.

(4) "State Data Exchange" or "SDX" means files administered by the Social Security Administration that provide states with eligibility and demographic data relating to SSI applicants and participants.

Section 2. SAFE Program Procedures. Unless a different procedure or process for a SNAP requirement is specified in this

administrative regulation, all SNAP requirements specified in 921 KAR Chapter 3 shall apply to SAFE, including the process for:

- (1) A fair hearing;
- (2) An administrative disqualification hearing;
- (3) An appeal;
- (4) A disqualification;
- (5) A claim and collection of a claim; and
- (6) EBT issuance.

Section 3. Eligibility for SAFE. (1) An individual may qualify for SAFE benefits if the individual:

- (a) Is a Kentucky resident;
- (b) Is:
  - 1. A current SSI recipient; or
  - 2. SSI eligible, but SSI benefits are currently suspended;
- (c) Is age sixty (60) or older;
- (d) Is not institutionalized;
- (e) Is:
  - 1. Single, widowed, divorced, or separated; or
  - 2. Married and living with a spouse who meets the criteria specified in (a) through (f) of this subsection; and
- (f) Purchases and prepares food separately from another individual who shares the same residence, but is not a member of the applicant's household as defined in 921 KAR 3:010.

(2) The cabinet shall use SDX to verify an applicant's marital and institutional status.

(3) If a household member does not meet the criteria listed in subsection (1) of this section, the household:

- (a) Shall not be eligible for SAFE; and
- (b) May apply for regular SNAP benefits in accordance in 921 KAR 3:030.

(4) An individual who meets the criteria of subsection (1) of this section may apply for regular SNAP benefits instead of SAFE benefits.

(5) An individual shall not receive SAFE benefits and regular SNAP benefits at the same time.

Section 4. SAFE Application Process. (1) Through use of the SDX files, the cabinet shall:

(a) Identify SSI participants who are potentially eligible for SAFE; and

(b) Mail each identified SSI household:

1.a. A SF-1, Simplified Assistance for the Elderly (SAFE) Application, 7/15; or

b. On or after December 28, 2015, a SF-1, 12/15; and

2. A return envelope.

(2) A SAFE application shall be considered filed if the SF-1 is:

- (a) Signed; and
- (b) Received at the Department for Community Based Services, Division of Family Support.

(3) In accordance with 7 C.F.R. 273.2(g), the cabinet shall provide an eligible household an opportunity to participate within thirty (30) days of the date the application is filed.

Section 5. SAFE Certification Process. (1) The cabinet shall process a SAFE application without requiring an interview.

(2) Information necessary to certify a SAFE application shall be obtained from SDX with the exception of the information provided by the applicant on the SF-1 or the SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form.

(3) The cabinet shall certify an eligible household for SAFE benefits for up to thirty-six (36) months.

(4) In accordance with 7 C.F.R. 273.10(g), the cabinet shall send an applicant a notice upon certification or denial.

(5) In the month preceding the last month of the household's certification period, the cabinet shall send a SAFE household:

(a) A SF-2, 11/14; or

(b) On or after December 28, 2015, a SF-2, 12/15[to a SAFE household in the month preceding the last month of the household's certification period].

Section 6. SAFE Benefits. (1) The cabinet shall provide a SAFE household a standard monthly benefit amount approved by



the U.S. Department of Agriculture's Food and Nutrition Service and listed in the SF-1.

(2) The standard SAFE benefit amounts shall be based on:

- (a) Shelter costs;
- (b) Household size; and

(c) The average benefits received by a similar household in the regular SNAP.

Section 7. Changes in Household Circumstances. (1) A household receiving SAFE benefits shall not be required to report any changes during the certification period.

(2) The cabinet shall process changes in household circumstances based on information received from SDX.

(3) If information voluntarily reported by the household is contradictory to SDX data, the cabinet shall not act upon the information unless the information is a change in a household member's:

- (a) Name;
- (b) Date of birth; or
- (c) Address.

(4) Unless a change in household circumstance results in a change in benefits, the cabinet shall not provide a SAFE household with notification of a change being made in household circumstances.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "SF-1, Simplified Assistance for the Elderly (SAFE) Application", 7/15[44/44]; and

(b) "SF-1, Simplified Assistance for the Elderly (SAFE) Application", 12/15;

(c) "SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form", 11/14; and

(d) "SF-2, Simplified Assistance for the Elderly (SAFE) Recertification Form", 12/15.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, LCSW, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: June 11, 2015

FILED WITH LRC: July 2, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 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 August 14, 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 August 31, 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: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation establishes the Simplified Assistance for the Elderly (SAFE) Program, a federally approved demonstration project

administered by the cabinet to improve access to the Supplemental Nutrition Assistance Program (SNAP) for elderly and disabled individuals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform requirements for SAFE.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing requirements for SAFE.

(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 SAFE.

(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 change the monthly allotments received by SAFE recipients. The allotments are provided in the SF-1, Simplified Assistance for the Elderly (SAFE) Application, which is included in the incorporation by reference. In addition, this amendment revises incorporated material to conform to the public assistance programs' new web-based eligibility and enrollment system to be implemented in late calendar year 2015. The amendment also makes other technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to change the monthly SAFE allotment to qualified households to maintain the demonstration project's cost neutrality, a federal requirement to continue operating the project. The changes are based on the U.S. Department of Agriculture-Food and Nutrition Service's latest evaluation of the project's cost in relation to regular SNAP. In addition, the amendment also aligns incorporated material with the program's new web-based eligibility and enrollment system to be implemented in late calendar year 2015. The new eligibility and enrollment system will be more efficient than the decades-old legacy system currently in use and result in improved business processes, resource management, timeliness, and accuracy.

(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 aligning with federal requirements, new technology supports, and improved practice standards for the administering agency.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by assuring compliance with federal requirements applicable to the demonstration project and congruency with new technology supports and improve practice standards for the administering agency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All SAFE recipients and potential applicants are affected by this administrative regulation. As of April 2015, approximately 13,750 households participate in SAFE.

(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 actions on the part of SAFE 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): The amendment to this administrative regulation will change the monthly SAFE allotments to qualified individuals to assure cost neutrality of SAFE in relation to regular SNAP. Cost neutrality is a federal requirement of the SAFE demonstration project to continue its operation. An SAFE applicant or recipient may apply for regular SNAP instead of SAFE.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): The SAFE demonstration project simplifies the application and recertification processes for qualified elderly and disabled recipients. Without the amendment, the demonstration project may become non-operational and/or be subject to federal shutdown, which would curtail access to safety net food benefits for a vulnerable population.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The administrative regulation will not create a new or additional cost to the administrative body.

(b) On a continuing basis: The administrative regulation will not create a new or additional cost to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP and SAFE benefits are 100 percent federally funded by the U.S. Department of Agriculture-Food and Nutrition Service. Program administrative costs are funded by a fifty (50) percent by federal resources and fifty (50) percent by state resources. Program administrative costs have 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: An increase in fees or funding is not necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be applied in a like manner statewide.

counties, fire departments, or school districts) for subsequent years? No new revenue is anticipated in subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs will be 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 will be necessary to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 273.2

2. State compliance standards. KRS 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 273.2

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 imposes 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. This administrative regulation imposes no stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 7 C.F.R. 271.4, 273.2

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The SAFE Program has been operational for numerous years, and it does not directly generate new revenue for the state or local government. No new revenue is anticipated for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities,

NEW ADMINISTRATIVE REGULATIONS

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY  
Division of Student and Administrative Services  
(New Administrative Regulation)

**11 KAR 15:100. Comprehensive transition and postsecondary programs.**

RELATES TO: KRS 164.7871, 164.7874, 164.7877, 164.7882  
STATUTORY AUTHORITY: KRS 164.7877(3), 164.7882  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7877(3) requires the authority to administer the Kentucky Educational Excellence Scholarship (KEES) trust fund. KRS 164.7882(4) requires the authority to promulgate administrative regulations establishing the procedures for making KEES awards for students enrolled in comprehensive transition and postsecondary programs. This administrative regulation establishes those procedures relating to the Kentucky Educational Excellence Scholarship (KEES) Program.

Section 1. Definitions. (1) "Comprehensive transition and postsecondary program" is defined in KRS 164.740(3).

(2) "Eligible student" means an individual who meets the requirements set forth in KRS 164.7882(1).

Section 2. Enrollment verification. (1) The participating institution shall submit to the authority an enrollment verification file at the beginning of each academic term.

(2) For each eligible student, the enrollment verification file shall contain:

- (a) The student's name and Social Security number;
- (b) Certification of the student's enrollment in a comprehensive transition and postsecondary program; and
- (c) The full-time or part-time enrollment status, measured in credit hours or credit hour equivalent.

Section 3. Award. (1) An eligible student shall receive a KEES award as described in KRS 164.7882(2).

(2) An eligible student who has earned a base KEES award, a supplemental award, or both shall be entitled to that award in addition to an award under this provision.

Section 4. Disbursement. Funds for awards under this provision shall be disbursed as specified in 11 KAR 15:050, the administrative regulation pertaining to disbursement of funds for the Kentucky Educational Excellence (KEES) program.

Section 5. Refund and repayment. Refunds and repayments under this provision shall be completed as specified in 11 KAR 15:060, the administrative regulation establishing the procedure for refunds and repayments under the Kentucky Educational Excellence (KEES) program.

Section 6. Grade point average reporting. (1) The participating institution shall electronically submit to the authority a file containing grade point average information not later than June 30 after the completion of the award period.

(2) For each eligible student, this file shall contain:

- (a) The student's name and Social Security number; and
- (b) The student's cumulative grade point average.

Section 7. Award renewals. (1) In order to receive a subsequent award under this provision, a student shall maintain enrollment in a comprehensive transition and postsecondary program at a participating institution located in Kentucky.

(2) A student who has earned either a base or supplemental KEES award shall satisfy the renewal requirements described in KRS 164.7881 in order to be eligible for a renewal award.

(3) Failure to maintain eligibility for a base or supplemental KEES award shall not impact the student's eligibility for a subsequent award under this provision.

LISA PAYNE, Chair

APPROVED BY AGENCY: May 21, 2015

FILED WITH LRC: July 10, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, August 25, 2015, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 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: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedures for administering the Kentucky Educational Excellence Scholarship (KEES) Program relative to the recently established scholarship component for students enrolled in Comprehensive Transition and Postsecondary programs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program for students enrolled in Comprehensive Transition and Postsecondary programs pursuant to KRS 164.7882.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.7882 requires KHEAA to promulgate administrative regulations establishing procedures for making KEES awards to students enrolled in Comprehensive Transition and Postsecondary programs. This administrative regulation establishes said procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing procedures for making KEES awards to students enrolled in Comprehensive Transition and Postsecondary programs.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: 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: Those individuals enrolled in Comprehensive Transition and Postsecondary programs will be impacted by this administrative regulation.

(4) Provide an analysis of how the entities identified in (3) above will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is

an amendment, 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: These entities must enroll in Comprehensive Transition and Postsecondary programs.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost for compliance with this regulation beyond the typical expenses assessed for enrollment by the postsecondary institution.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities specified in (3) above will be eligible for awards under the KEES scholarship program as a result of their compliance with this regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to implement this administrative regulation.

(b) On a continuing basis: See (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KEES program is funded through net lottery revenues transferred in accordance with KRS 154A.130.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There will be a minimal increase in KEES program expenditures relative to this new award type. Annual awards are expected not to exceed \$5,000. As a result, only a nominal increase in funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor increase any existing fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The administrative regulation provides equal treatment and opportunity for all applicants and recipients.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.7882.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the authority during the first full year of its effectiveness.

a. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for the first year.

b. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for subsequent years.

c. How much will it cost to administer this program for the first

year? No costs are associated with administration of this regulation for the first year. However, as noted in the Regulatory Impact Analysis, there will be a minimal increase in KEES program expenditures relative to this new award type. Annual awards are expected not to exceed \$5,000. As a result, only a nominal increase in funding will be necessary to implement this administrative regulation.

d. How much will it cost to administer this program for subsequent years? See 3c above.

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:

#### OFFICE OF KENTUCKY SECRETARY OF STATE (New Administrative Regulation)

#### 30 KAR 7:010. Standard form for occupational license fee return.

RELATES TO: KRS 67.750, 67.767

STATUTORY AUTHORITY: KRS 67.767(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 67.767(1) requires the Secretary of State to promulgate an administrative regulation prescribing a standard form which shall be accepted by all tax districts and shall allow for returns of net profits and gross receipts occupational license taxes by all business entities. This administrative regulation prescribes the standard form for occupational license tax returns as mandated by KRS 67.767(1).

Section 1. Definitions. (1) "Business entity" is defined by KRS 67.750(1).

(2) "Tax district" is defined by KRS 67.750(10).

Section 2. A business entity shall:

(1) Follow the filing requirements specified by the business entity's local tax district; and

(2) Use the Standard Occupational License Tax Return to report business and occupational license taxes to the business entity's local tax district if so required.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form OL-S, Single Tax District, Occupational License Fee Return", July 2015; and

(b) "General Instructions for Form OL-S for a Single Tax District", July 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State's office, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or may be obtained from the Secretary of State's Web site at <http://www.sos.ky.gov>.

ALISON LUNDERGAN GRIMES, Secretary of State

APPROVED BY AGENCY: July 10, 2015

FILED WITH LRC: July 10, 2015 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2015 at 10:00 a.m., at the Office of the Secretary of State (add specific address here). Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31,

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: Noel Caldwell, 700 Capital Avenue, State Capitol, Suite, 152, Frankfort, Kentucky 40601, phone (502) 782-7804, fax (502) 564-5687.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Noel Caldwell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the standard form for occupational license tax returns as mandated by KRS 67.767.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 67.767(1) which requires the Secretary of State to promulgate an administrative regulation prescribing a standard form which shall be accepted by all tax districts and shall allow for returns of net profits and gross receipts occupational license taxes by all business entities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 67.767(1) mandates that the Office of Secretary of State promulgate an administrative regulation prescribing a standard form which shall be accepted by all tax districts and shall allow for returns of net profits and gross receipts occupational license taxes by all business entities. This administrative regulation prescribes the standard form for occupational license tax returns as mandated by KRS 67.767(1).

(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 KRS 67.767(1) by prescribing the mandated standard form which shall be accepted by all tax districts and shall allow for returns of net profits and gross receipts occupational license taxes by all business entities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This administrative regulation is not an amendment to an existing administrative regulation.

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect countless business entities, local government occupational license tax administrators, and certified public accountants that are located within 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: Regulated entities and individuals identified in question (3) will have to familiarize themselves with the new form and the law regarding its usage pursuant to KRS 67.767.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities identified in question (3) will incur no costs in order to use the new form.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By adopting this standardized form, entities identified in question (3) that conduct business in multiple tax jurisdictions will no longer have to file a multitude of jurisdiction specific occupational license tax return forms for net profits or gross receipts. The filing of occupational license tax

returns will be greatly streamlined because these entities will simply fill out this single form and file it in any tax jurisdiction where they conduct business.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source of funding since there is no cost to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding will not be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact only the local government occupational license tax administrator and the Office of Secretary of State since it has prescribed the form incorporated by reference in this administrative regulation.

(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 67.767(1).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will 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 subsequent years? This administrative regulation will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? There will be no cost to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program 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: No additional expenditures are necessary to implement this amendment.

**GENERAL GOVERNMENT CABINET  
Board of Pharmacy  
(New Administrative Regulation)**

**201 KAR 2:370. Pharmacy services in long-term care facility (LTCF).**

RELATES TO: KRS 315.010, 315.020, 315.030, 315.121  
STATUTORY AUTHORITY: KRS 315.002, 315.005, 315.191  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1) authorizes the Kentucky Board of Pharmacy to establish requirements to regulate and control pharmacies. KRS 315.002 and 315.005 require standards of practice in all settings where drugs are handled and requires the board to insure safety of all drug products provided to the citizens of Kentucky. This administrative regulation establishes requirements for pharmacy services in long-term care facilities.

Section 1. Definition. "Long-term care facility" or "LTCF" means:

- (1) An intermediate care facility;
- (2) A skilled nursing facility;
- (3) A hospital other than an acute care hospital licensed pursuant to 902 KAR 20:016;
- (4) An intermediate care facility for intellectually and developmentally disabled; or
- (5) A personal care facility.

Section 2. General Requirements. (1) The pharmacist-in-charge of the dispensing pharmacy shall be responsible for policy and procedures governing the procurement, distribution, and control of all drugs that are provided to a long-term care facility.

(2) Dispensing.

(a) Medications shall be dispensed only on the medical order (for a non-controlled substance) or a prescription drug order of a licensed practitioner.

(b) A medical order (for a non-controlled substance) shall be considered a prescription drug order if it is entered on the medical record of a patient at an LTCF and if the medical order contains the:

1. Name of patient;
2. Date of issuance;
3. Name, strength, and dosage form of drug prescribed;
4. Directions for use;
5. Quantity of length of therapy as defined in policy and procedures or as defined by medical order; and
6. Practitioner's name.

(3) Emergency Drugs.

(a) The pharmacist-in-charge of the dispensing pharmacy shall establish policy and procedures for supplying emergency drugs.

(b) For expediency and efficiency, emergency drugs shall be limited in number to include only thirty six (36) items, six (6) deep of which controlled substances are stocked pursuant to 902 KAR 55:070 and whose prompt use and immediate availability are generally regarded by the pharmacy and therapeutics committee as essential in the proper treatment of sudden and unforeseen patient emergencies.

(c) The pharmacist-in-charge may request from the board a waiver to increase the number of non-controlled substance items to be included in the emergency kit based upon evidence of use.

(d) Emergency drug stock shall be inspected by pharmacy personnel on at least a monthly basis and documentation maintained to determine if contents have become outdated and if the stocks are being maintained at adequate levels.

(e) Emergency drug stock shall not be stocked in a personal care facility.

(4) Long Term Care Facility Pharmacy Stock.

(a) Pharmacy stock of drugs shall be limited in number to 150 non-controlled substance items fifteen (15) deep.

(b) Pharmacy stock of drugs in a personal care facility shall be limited in number to thirty (30) non-controlled substances, five (5) deep.

(c) The pharmacist-in-charge may request from the board a

waiver to increase the number of non-controlled substance items to be placed in pharmacy stock based upon evidence of use.

(d) The pharmacist-in-charge shall be responsible for authenticating the need for pharmacy stock.

(e) A pharmacist shall review the prescription drug or medical order before the release of medication.

(f) Pharmacy stock shall be inspected by pharmacy personnel on at least a monthly basis and documentation maintained to determine if contents have become outdated and if stocks are being maintained at adequate levels.

(g) Pharmacy stock shall be used for a patient for no more than the next business day.

(h) Except for pharmacy stock of intravenous fluids with no additive drugs or irrigation solutions, the pharmacy stock shall be replenished by:

1. A secure box delivered by the pharmacy; or
2. A pharmacist or a pharmacist intern, or a certified pharmacy technician, who shall be under the immediate supervision of a pharmacist on-site, unless there is a pharmacy on-site, then the pharmacy stock shall be replenished by a pharmacist or a pharmacist intern or a certified pharmacy technician under the general supervision of a pharmacist on-site.

JOEL THORNBURY, President

APPROVED BY AGENCY: July 8, 2015

FILED WITH LRC: July 10, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2015 at 10:00 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. Monday, August 31, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Steve Hart, 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: Steve Hart

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements of pharmacy services in long term care facilities.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 315.191(1), 315.002, 315.005.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation is in conformity with the authorizing statute that requires the board to promulgate administrative regulations that establishes the requirements pharmacy services in long term care facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will set the requirements for pharmacy services in long term care facilities.

(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

## VOLUME 42, NUMBER 2 – AUGUST 1, 2015

(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 that long term care pharmacies and 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: Pharmacy services for long term care facilities are established.

(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): Multiple practitioners and pharmacists will be allowed to establish a collaborative care agreement.

(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 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 fees or directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the administrative regulation is applicable to all pharmacists and pharmacies.

### 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 315.010(4), 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 (+/-): The board anticipates no revenues.

Expenditures (+/-): The board anticipates no expenditures.

Other Explanation:

### GENERAL GOVERNMENT CABINET Kentucky Real Estate Commission (New Administrative Regulation)

#### 201 KAR 11:195. Informal Settlement Procedures.

RELATES TO: KRS 324.160, 324.170, 324.281

STATUTORY AUTHORITY: KRS 324.160, 324.170, 324.821

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.270(1) requires the commission to order a KRS Chapter 13B hearing before ordering any disciplinary action. This administrative regulation is necessary to provide a settlement option after a hearing is ordered to allow opportunity for more economical and expeditious resolution of the pending matter. This administrative regulation establishes the informal settlement process for entry of agreed orders.

Section 1. Settlement by Informal Proceedings. After ordering a hearing, the commission, through its legal counsel may at any time, enter into informal settlement proceedings with the licensee for the purpose of expeditiously resolving any disciplinary matter pursuant to KRS 324.160. (1) The commission may approve or reject any settlement proposal, however, any matter to which a licensee and the commission's legal counsel have stipulated which is rejected by the commission shall not thereafter bind the parties or the commission.

(2) The board may employ mediation as a method of resolving the matter informally.

(3) All proposed agreed orders shall be signed by the licensee, and shall advise the licensee that by entering into an agreed order, the licensee expressly acknowledges that the licensee is fully and completely informed of the due process rights afforded to the licensee under KRS Chapter 324 and KRS Chapter 13B and that the licensee knowingly, willingly, and voluntarily agrees to waive those rights and enter into an agreed order.

JIM HUFF, Chairperson

APPROVED BY AGENCY: June 22, 2015

FILED WITH LRC: June 22, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, August 24, 2015 at 9:00 a.m., in the Boardroom of the Kentucky Real Estate Commission located at 10200 Linn Station Road, Suite 201, in Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 August 31, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Rhonda K. Richardson, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rhonda K. Richardson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amendment provides for informal settlement of disciplinary matters and civil suits.

(b) The necessity of this administrative regulation: This regulation will allow for more economical and expeditious resolution of a pending matter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth the specific procedures to be used for entry of an Agreed Order.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will allow for more economical and expeditious resolution of a pending matter.

(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: Licensees facing disciplinary action will be affected by this regulation. No precise number of potential settlements is calculable.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees are not required to participate in the informal settlement process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation will reduce the financial costs for licensees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Reduced costs of defending disciplinary actions.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: NONE. Implementation will be carried out by existing staff.

(b) On a continuing basis: NONE. Implementation will be carried out by existing staff.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing agency budget. There is no additional cost to implement this regulation. Implementation will be carried out by existing staff.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: NONE.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: NONE.

(9) TIERING: Is tiering applied? Tiering has not been applied as there is no disproportionate impact on any regulated entity.

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 Real Estate Commission.

(2) Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 13B.070(3).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. NONE.

(a) 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 Real Estate Commission  
(New Administrative Regulation)**

**201 KAR 11:232. Continuing education provider requirements.**

RELATES TO: KRS 324.010(7), (8), 324.046(5), 324.085(1), (2), 324.090, 324.160(1)(c), (4)(u), 324.281(7)

STATUTORY AUTHORITY: KRS 324.085(1), (4), 324.160(1)(c), (4)(u), 324.281(5), (7), (8), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.085(1) requires an actively-licensed agent, except an agent licensed prior to June 19, 1976, to successfully complete six (6) hours of mandatory continuing education each year as a condition of license renewal, and requires that three (3) of the six (6) hours pertain to the study of real estate law. KRS 324.085(1) also requires that a licensee that receives an initial sales associate license must complete forty-eight (48) classroom or online hours of commission approved post-license education. This administrative regulation establishes the provider, course, and instructor requirements relating to real estate education.

Section 1. Continuing Education Course Criteria. (1) One (1) hour of continuing education shall be allowed for each fifty (50) minutes of actual instruction.

(2) To receive approval, courses shall:

(a) Be in hourly increments from one (1) to six (6) hours;

(b) Be real estate specific; and

(c) Consist of topics that shall:

1. Increase the student's knowledge of real estate laws and the brokerage business; and

2. Serve the public.

(3) A course that is motivational or considered to be personal development in nature shall not be approved.

(4) All course approvals shall expire on December 31 of each calendar year.

(5) All primary or secondary providers wishing to offer online or other distance education courses shall be approved in accordance with the provisions set forth in 201 KAR 11:240. The commission shall review and approve the content to ensure that it meets the requirements outlined in 201 KAR 11:240.

Section 2. Continuing Education Course Provider Requirements. (1) An education course shall be sponsored by:

(a) An accredited institution;



(b) A school that has been given a license from the Kentucky Commission on Proprietary Education;

(c) An appropriate governmental regulatory body; or

(d) An approved real estate school as defined in KRS 324.010(7)(b).

(2) To apply for approval of a continuing education course, a provider shall submit:

(a) A completed Provider Application – Form E101, which shall:

1. Include a Course Outline Form – E105, broken into fifteen (15) minute increments, to include learning objectives for the course, teaching methods, auxiliary aids, materials, and the policies of the provider; and

2. Be signed by the sponsor's administrator to indicate compliance with applicable law and the requirements of this administrative regulation;

(b) Copy of the license from the Kentucky Commission on Proprietary Education, unless the provider is an accredited college or university, an appropriate government regulatory body, or an approved real estate school as defined in KRS 324.010(7);

(c) Instructor Application – Form E100 for each instructor who will teach the course, as required by 201 KAR 11:175;

(d) Education Course Application – Form E102, along with a processing fee of fifteen (15) dollars; and

(e) Copy of all advertising or brochures advertising the continuing education course.

(3) The course provider shall agree that all instructors shall abide by the Generally Accepted Principles of Education – Form E104 as adopted by the Real Estate Educators Association and the commission as the standard for classroom performance and comply with the KREC Guidelines for Classroom Management – Form E103.

(4) The commission education director shall submit the information to the commission for approval or rejection of the course at its regularly scheduled meeting.

(5) A course and instructor that have been previously approved within the calendar year may be conducted by another provider, upon the submission of an Education Course Application Form – E102 and approval by the commission staff.

(6) A provider shall:

(a) At least thirty (30) days prior to the scheduling of a continuing education course, submit to the commission an Education Schedule – Form E106;

(b) Give to each attendee listed on the roster an Education Completion Certificate – Form E110;

(c) Within ten (10) days of a continuing education course, submit to the commission:

1. An education attendance roster;

2. Course Evaluation – Form E108 completed by each attendee listed on the roster; and

3. Course Evaluation Transmittal – Form E109;

(d) Permit monitoring of the courses and inspection of the records by the commission; and

(e) Make the course available to all licensed agents, subject only to space limitations.

(7) A provider's approval to conduct continuing education courses may be withdrawn by the commission for:

(a) A violation of the KREC Guidelines for Classroom Management – Form E103;

(b) Falsification of attendance information submitted to the commission;

(c) Allowing an instructor to solicit business or sell materials to students in the classroom;

(d) Failure to provide the commission the required materials in accordance with this administrative regulation; or

(e) Conducting courses that were not approved prior to being offered.

Section 3. Instructor Requirements. (1) A course instructor shall:

(a) Have adequate education, knowledge, and experience in the topic to be presented;

(b) Have prior teaching experience; and

(c) Be an approved instructor under the requirements established in 201 KAR 11:175.

(2) A licensee who teaches an approved continuing education course shall be entitled to credit on an hour-for-hour basis. To obtain continuing education credit, the instructor's name shall be added to the education attendance roster for the course. However, the instructor shall not receive credit more than once in a calendar year for teaching a specific course.

(3) A licensee who is a pre-license instructor of an approved course shall receive credit toward his or her continuing education requirements. The instructor's supervisor shall provide the commission with a written notice requesting teaching credit, to include the instructor's name, name of course, and dates the course was conducted, and be signed by the approved school or institution's authorized representative.

Section 4. Records Maintenance. (1) Each continuing education provider shall maintain the following records in a file for three (3) years following the end of each calendar year:

(a) A copy of the roster submitted to the commission of licensees attending the course;

(b) A copy of the Course Evaluation Transmittal – Form E109;

(c) The sign in sheet or registration list used by the provider to track attendance; and

(d) Any other documentation regarding student attendance.

(2) Records containing licensee information shall be destroyed by the provider.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Instructor Application – Form E100", 05/15 edition;

(b) "Provider Application – Form E101", 05/15 edition;

(c) "Education Course Application – Form E102", 05/15 edition;

(d) "KREC Guidelines to Classroom Management – Form E103", 05/15 edition;

(e) "Generally Accepted Principles of Education – Form E104", as adopted by the Real Estate Educators Association and the Kentucky Real Estate Commission, 05/15 edition;

(f) "Course Outline – Form E105", 05/15 edition;

(g) "Education Schedule – Form E106", 05/15 edition;

(h) "Course Evaluation – Form E108", 05/15 edition;

(i) "Course Evaluation Transmittal – Form E109", 05/15 edition; and

(j) "Education Completion Certificate – Form E110", 05/15 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

JIM HUFF, Chairperson

APPROVED BY AGENCY: June 22, 2015

FILED WITH LRC: June 22, 2015 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, August 24, 2015 at 9:00 a.m., in the Boardroom of the Kentucky Real Estate Commission located at 10200 Linn Station Road, Suite 201, in Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 August 31, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Rhonda K. Richardson, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station

## VOLUME 42, NUMBER 2 – AUGUST 1, 2015

Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rhonda K. Richardson

(1) Provide a brief summary of:

(a) What this administrative regulation does:

i. Sets forth the continuing education course criteria;

ii. Sets forth the continuing education course provider requirements;

iii. Sets forth the continuing education course instructor requirements; and

iv. Sets forth the requirements for record retention by providers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the requirements relating to the requirements for real estate education providers, courses, and instructors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth the requirements related to continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for continuing education credits, course and instructor approval, and provides options for the licensee to informally resolve non-compliance issues with the licensee.

(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: Education providers, approximately fifty-three (53), will be affected by this regulation;

4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be required to meet the new deadlines, utilize the revised forms to submit the requested applications and documentation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Education providers will be charged a fee of fifteen (15) dollars with their application for course approval;

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

i. Providers cost for course approval will be reduced; and

ii. Licensees will meet their annual continuing education requirement.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: NONE - Regulation shall be implemented using existing staff.

(b) On a continuing basis: NONE - Regulation shall be implemented using existing staff.(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Existing agency 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: N/A.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation established a fifteen (15) dollar fee for course

approval by the commission.

(9) TIERING: Is tiering applied? Tiering is not applied as there is no disproportionate impact on the different classes of licensees.

### 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 Real Estate Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.085(1), (4), 324.160(1)(c), 324.160(4)(u), 324.281(5), (7), (8), 324.282

(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? Revenues are estimated to increase by \$7,240 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? Revenues are estimated to increase by \$7,240 for subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred by the administration of this regulation shall be carried out by existing staff.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred by the administration of this regulation shall be carried out by existing staff.

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 Real Estate Commission (New Administrative Regulation)

#### 201 KAR 11:235. Post-license Education Requirements.

RELATES TO: KRS 324.010, 324.046, 324.090, 324.160

STATUTORY AUTHORITY: KRS 324.085, 324.281, 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.085, 324.281, 324.282 authorize the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.085 authorizes the commission to establish procedures for implementing the requirements for post-license education. This administrative regulation establishes procedures for implementing the requirements for post-license education.

Section 1. Definitions. (1) "Broker-affiliated training program" means one (1) or more post-license education course offered for post-license educational credit provided or sponsored by a licensed real estate principal broker.

(2) "Initial sales associate license" means the original Kentucky sales associate license issued by the commission.

Section 2. Post-license Education Course Provider Requirements. (1) A post-license education course shall be sponsored by:

(a) An accredited institution;

(b) A school that has been licensed by the Kentucky Commission on Proprietary Education;

(c) An appropriate governmental regulatory body;

(d) An approved real estate school as defined in KRS

324.010(7); or

(e) An approved broker-affiliated training program.

(2) To apply for approval of a post-license education course, a provider shall submit:

(a) A completed Provider Application – Form E101, which shall:

1. Include a Course Outline – Form E105, broken into fifteen (15) minute increments, to include learning objectives for the course, teaching methods, auxiliary aids, materials, and the policies of the provider; and

2. Be signed by the sponsor's administrator to indicate compliance with applicable law and the requirements of this administrative regulation;

(b) A completed Education Course Application – Form E102;

(c) A copy of the license from the Kentucky Commission on Proprietary Education, unless the provider is an accredited college or university, an appropriate governmental regulatory body, an approved real estate school as defined in KRS 324.010(b), or an approved broker-affiliated training program;

(d) A completed Instructor Application – Form E100 for each instructor who will teach the course, as required by 201 KAR 11:175; and

(e) A copy of all advertising or brochures advertising the post-license education course.

(3) The course provider shall agree that all instructors shall abide by the Generally Accepted Principles of Education – Form E104 as adopted by the Real Estate Educators Association and the commission as the standard for classroom performance, and comply with the KREC Guidelines for Classroom Management – Form E103.

(4) The commission education director shall submit the information to the commission for approval or rejection of the course at its regularly scheduled meeting.

(5) A course and instructor that has been previously approved within the calendar year may be sponsored by another provider, upon the submission of an Education Course Application – Form E102 and approval by the commission staff.

(6) A provider shall:

(a) At least thirty (30) days prior to the scheduling of a post-license education course, submit to the commission an Education Schedule – Form E106;

(b) Give each attendee who completes the course an Education Completion Certificate – Form E110;

(c) Within ten (10) days of conclusion of a post-license education course, submit to the commission a completed:

1. Roster that lists all attendees that completed the course;

2. Course Evaluation – Form E108 completed by each attendee listed on the roster; and

3. Course Evaluation Transmittal – Form E109;

(d) Permit unannounced monitoring of the courses and inspection of the records by the commission; and

(e) Make the course available to all licensed agents, subject only to space limitations.

(7) A provider's approval to conduct post-license education courses may be withdrawn by the commission for:

(a) A violation of the KREC Guidelines for Classroom Management – Form E103;

(b) Falsification of attendance information submitted to the commission;

(c) Allowing an instructor to solicit business or sell materials to students in the classroom;

(d) Failure to provide the commission the required materials in accordance with this administrative regulation; or

(e) Conducting courses that were not approved prior to being offered.

Section 3. Instructor Requirements. (1) A post-license education course shall be taught by an instructor approved under the requirements established in 201 KAR 11:175 and subject to the requirements in 201 KAR 11:460.

(2) A licensee who teaches an approved post-license education course shall be entitled to continuing education credit on

an hour-for-hour basis. To obtain continuing education credit, the instructor shall be included on the roster that lists all attendees that completed the course that is provided to the commission. However, the instructor shall not receive credit more than once in a calendar year for each specific course taught.

Section 4. Post-license Education Course Criteria and Requirements. (1) One (1) hour of post-license education shall be allowed for each fifty (50) minutes of actual instruction.

(2) Post-license education shall consist of thirty (30) hours from the courses specified in paragraphs (a) and (b) of this subsection and eighteen (18) hours as specified in paragraph (c) of this subsection:

(a) The three (3) hour Commission Licensee Compliance course;

(b) The requirements in each of the following course topics:

1. Six (6) hours in Agency;

2. Six (6) hours in Contracts;

3. Three (3) hours in Finance;

4. Three (3) hours in Advertising;

5. Three (3) hours in Disclosure;

6. Three (3) hours in Fair Housing; and

7. Three (3) hours in Technology & Data Security; and

(c) Eighteen (18) hours in elective topics chosen by the licensee from the electives listed in the Post-license Topics – Form E113.

(3) A licensee shall not receive post-license education credit for a duplicate course.

(4) No more than nine (9) hours of post-license education may be taken in a twenty-four (24) hour period.

(5) Post-license education courses shall meet the following standards:

(a) Consist of topics that are real estate specific, provide practical knowledge of the brokerage business, and protect the public interest;

(b) Course objectives and assessments shall be practicum based to allow application of knowledge from pre-license education to practical real estate brokerage scenarios; and

(c) A course that is motivational or considered to be personal development in nature shall not be approved.

(6) All course approvals shall expire on December 31 of each calendar year.

(7) All primary or secondary providers wishing to offer online or other distance education courses shall be approved in accordance with the provisions set forth in 201 KAR 11:240. The commission shall review the content of courses to ensure that it meets the requirements outlined in this administrative regulation and in 201 KAR 11:240.

Section 5. Compliance and delinquency. (1) The time requirements established in this administrative regulation may be extended by the commission for good cause shown. A licensee's request for an extension of time for good cause shown shall be submitted to the commission within the two (2) year timeframe set forth in KRS 324.085.

(2) If a licensee fails to provide proof of completion of the post-license education requirements within the allotted timeframe set forth in KRS 324.085, then the licensee's license shall be automatically canceled.

(3) A canceled license shall not be reactivated until the licensee has completed all of his or her post-license education requirements, complied with all commission orders, and all other applicable licensing requirements.

Section 6. Records Maintenance. (1) Each post-license education provider shall maintain the following records in a file for three (3) years following the end of each calendar year:

(a) A copy of the roster submitted to the commission of licensees attending the course;

(b) A copy of the Course Evaluation Transmittal – Form E109;

(c) The sign-in sheet or registration list used by the provider to track attendance; and

(d) Any other documentation regarding student attendance.

(2) Records containing licensee information shall be destroyed by the provider.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Instructor Application – Form E100", 05/15 edition;
- (b) "Provider Application – Form E101", 05/15 edition;
- (c) "Education Course Application – Form E102", 05/15 edition;
- (d) "KREC Guidelines for Classroom Management – Form E103", 05/15 edition;
- (e) "Generally Accepted Principles of Education – Form E104", as adopted by the Real Estate Educators Association, 05/15 edition;
- (f) "Course Outline – Form E105", 05/15 edition;
- (g) "Education Schedule – Form E106", 05/15 edition;
- (h) "Course Evaluation – Form E108", 05/15 edition;
- (i) "Course Evaluation Transmittal – Form E109", 05/15 edition;
- (j) "Education Completion Certificate – Form E110", 05/15 edition; and
- (k) "Post-License Prescribed Topics – Form E113", 05/15 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

JIM HUFF, Chairperson

APPROVED BY AGENCY: June 22, 2015

FILED WITH LRC: June 29, 2015 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, August 24, 2015 at 9:00 a.m., in the boardroom of the Kentucky Real Estate Commission located at 10200 Linn Station Road, Suite 201, in Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 August 31, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Rhonda K. Richardson, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rhonda K. Richardson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines "broker-affiliated training," establishes post-license education course provider requirements and approval process, sets the post-license education course criteria and requirements, and addresses non-compliance and record maintenance for post-license education.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish post-license education course provider requirements, and approval process, the post-license education course criteria and requirements and approval process, and to addresses non-compliance and record maintenance for post-license education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation defines "broker-affiliated training," establishes post-license education course provider requirements and approval process; sets forth the post-license education course criteria and requirements, instructor approval process, and addresses non-compliance and record

maintenance for post-license education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides procedures for post-license education course providers to obtain approval, as well as, approval of their courses and instructors.

(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 affects post-license education course 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: Regulated entities will be required to follow the procedures set forth in this administrative regulation and to utilize the required forms.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Course providers will incur the ordinary and usual costs they currently have for developing their course.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Post-license education course providers can seek approval, as well as, approval of their courses and instructors.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: None. This administrative regulation will be implemented utilizing existing staff.

(b) On a continuing basis: None. This administrative regulation will be implemented utilizing existing staff.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing agency 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: None

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: A new fee is established for applications for course approval.

(9) TIERING: Is tiering applied? Tiering has not been applied because there is no disproportionate impact on the entities impacted.

#### 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 Real Estate Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.085, KRS 324.281, KRS 324.282.

(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. This administrative regulation will be implemented utilizing existing staff.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? It is estimated that this administrative regulation will generate \$1,500 in fees the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is estimated that this administrative regulation will generate \$1,500 in fees for subsequent years.

(c) How much will it cost to administer this program for the first year? None. This administrative regulation will be implemented utilizing existing staff.

(d) How much will it cost to administer this program for subsequent years? None. This administrative regulation will be implemented utilizing existing staff.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET  
Board of Nursing  
(Repealer)**

**201 KAR 20:064. Repeal of 201 KAR 20:061.**

RELATES TO: KRS 164.298

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: 201 KAR 20:061 is no longer required because KRS 164.298 was amended by HB 402 (2015 Regular Session) to delete the reference to the Board of Nursing. This administrative regulation repeals 201 KAR 20:061.

Section 1. 201 KAR 20:061, Approval of Doctor of Nursing Practice (DNP) degree programs, is hereby repealed.

SALLY BAXTER, President

APPROVED BY AGENCY: June 12, 2015

FILED WITH LRC: July 2, 2015 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 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. on August 31, 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 repeals 201 KAR 20:061, Approval of Doctor of Nursing Practice (DNP) degree programs.

(b) The necessity of this administrative regulation: It is required

by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: House Bill 402 (2015 Regular Session) amended KRS 164.298 to remove the Board of Nursing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By repealing an administrative regulation that is no longer needed.

(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: Applicants for DNP programs, number unknown.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

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: 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:

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Corrections  
(Repealer)**

**501 KAR 6:241. Repeal of 501 KAR 6:240.**

RELATES TO: KRS 17.500, 17.550, 196.030, 196.035, 197.020, 197.170, 439.330, 439.346, 439.348, 439.470, 440.010, 520.010, 532.200, 532.210, 532.220, 532.230, 532.240, 532.250, 532.260, 532.262, 533.020, 533.030

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.346, 439.348, 439.470, 532.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, and 532.260 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations concerning the use of approved monitoring devices for inmate transfer to home incarceration and for the supervision of offenders on probation and parole. The policies and procedures previously incorporated by reference in 501 KAR 6:240 governing the use of approved monitoring devices for inmate transfer to home incarceration and for the supervision of offenders on probation and parole are being incorporated by reference in other administrative regulations, 501 KAR 6:020 and 501 KAR 6:270. 501 KAR 6:240 is no longer needed and is being repealed.

Section 1. 501 KAR 6:240, Home incarceration using an approved monitoring device, is hereby repealed.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: June 15, 2015

FILED WITH LRC: June 23, 2015 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2015 at 9:00 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing 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 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 August 31, 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: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals 501 KAR 6:240 since the policies and procedures incorporated by reference on the regulation are being incorporated

by reference in other regulations.

(b) The necessity of this administrative regulation: To repeal an unnecessary regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation repeals 501 KAR 6:240 since the policies and procedures incorporated by reference on the regulation are being incorporated by reference in other regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation repeals an unnecessary regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is not an amendment.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation may affect approximately 560 employees of the Department of Corrections, 1,200 inmates committed to the Department of Corrections, and eighty (80) jails.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

No actions are anticipated for the regulated entities beyond learning a new policy and procedure number for material incorporated by reference on another regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This repealer regulation does not affect cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This repealer regulation does not affect benefits.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No cost is anticipated with this repealer regulation.

(b) On a continuing basis: No cost is anticipated with this repealer regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required for this repealer regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary for this repealer regulation. No increase in fees or funding is anticipated for this repealer regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This repealer regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

**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 amendments to this regulation impact the operations of the Kentucky Department of Corrections.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 196.035, 197.020, 439.470

(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 repealer regulation does not 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? This repealer regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? This repealer regulation does not create a program and no costs are anticipated.

(d) How much will it cost to administer this program for subsequent years? This repealer regulation does not create a program and no costs are anticipated.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**TRANSPORTATION CABINET  
Department of Vehicle Regulation  
Division of Motor Carriers  
(New Administrative Regulation)**

**601 KAR 1:113. Transportation Network Company.**

RELATES TO: KRS 17.500, 61.878(1)(c)1., 61.930(6), 61.931(6), 186.050, 186.281, 189.290, 189A.010, 281.600, 281.630, 281.6301, 281.631, 281.640, 281.650, 281.655, 281.656, 281.912, 281.990, 304.3-070, 304.10-010-304.10-070, 304.39-020(2), 304.39-040, 304.39-320, 532.060

STATUTORY AUTHORITY: KRS 281.600, 281.630, 281.655

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.600 authorizes the Department of Vehicle Regulation to promulgate administrative regulations to regulate and establish requirements for the safe operation of motor carriers. KRS 281.630 authorizes the department to establish requirements for a transportation network company to apply for authority to operate in Kentucky. KRS 281.655 requires the department to establish standards for pre-trip acceptance policies and prearranged ride liability policies for transportation network companies. This administrative regulation establishes the standards and application requirements for a transportation network company to operate in Kentucky.

Section 1. Definitions. (1) "Basic reparation benefits" is defined by KRS 304.39-020(2).

(2) "Certificate" is defined by KRS 281.010(8).

(3) "Driver" is defined by KRS 281.010(20).

(4) "Mobile application" is defined by KRS 281.010(30).

(5) "Motor carrier" is defined by KRS 281.010(31).

(6) "Motor carrier vehicle" is defined by KRS 281.010(32).

(7) "Operating Authority" means the authority granted to operate as a TNC in the commonwealth through the application process with the department.

(8) "Passenger" is defined by KRS 281.010(36).

(9) "Personal information is defined by KRS 61.931(6)

(10) "Prearranged ride" is defined by KRS 281.010(39).

(11) "Pre-trip acceptance liability policy" is defined by KRS 281.010(40).

(12) "Regular seat" is defined by KRS 281.010(44).

(13) "Street hail" is defined by KRS 281.010(45).

(14) "Transportation network company" or "TNC" is defined by KRS 281.010(51).

(15) "Transportation network company driver" or "TNC driver" is defined by KRS 281.010(53).

(16) "Transportation network company service" or "TNC service" is defined by KRS 281.010(54).

(17) "Transportation network company vehicle" or "TNC vehicle" is defined by KRS 281.010(55).

(18) "Underinsured vehicle coverage" is defined by KRS 304.39-320(1).

(19) "Uninsured vehicle coverage" is defined by KRS 304.20-020(2).

Section 2. Application and Renewal. (1) A TNC shall register as a business organization with the Kentucky Secretary of State unless the applicant is a sole proprietor.

(2) The department may waive the filing of the certificate of assumed name if a TNC:

(a) Demonstrates compliance with the relevant provisions of KRS Chapter 365;

(b) Certifies in writing to the department that Kentucky law either prohibits or does not require the filing; and

(c) States the reasons in writing why the filing is not required.

(3) In order to apply for a certificate to operate, a TNC shall submit to the Division of Motor Carriers:

(a) A completed Transportation Network Company Authority Application, TC 95-627;

(b) An application fee of \$250 pursuant to KRS 281.630(3)(b); and

(c) A vehicle qualification fee of thirty (30) dollars per vehicle prorated for the month the vehicle is qualified pursuant to KRS 281.631(3)(a)1. and (8).

(4) A TNC shall annually submit the following to the Division of Motor Carriers to renew a certificate:

(a) A completed Motor Carrier Passenger Certificate, Vehicle Qualification and Renewal Application, TC 95-605;

(b) A certificate renewal fee of \$250 pursuant to KRS 281.630(4)(d); and

(c) A vehicle qualification fee of thirty (30) dollars per vehicle pursuant to KRS 281.631(3)(a)1. and (8).

(5) A TNC vehicle shall be added by submitting the following to the Division of Motor Carriers:

(a) A completed Motor Carrier Passenger Certificate, Vehicle Qualification and Renewal Application, TC 95-605; and

(b) A vehicle qualification fee of thirty (30) dollars per vehicle prorated for the month the vehicle is qualified pursuant to KRS 281.631(3)(a)1. and (8).

(6) An application may be submitted electronically, by mail, or by hand delivery.

(7) Operating authority obtained pursuant to this section shall not be transferable.

(8) The TNC shall submit the following documents if submitting an application for certificate, annual renewal, or adding a driver during the year:

(a) An affidavit from the corporate officer in charge of Kentucky operations certifying that the national criminal background check of TNC drivers established in KRS 281.630 and 281.6301 shall be completed prior to allowing the TNC driver to accept rides through the TNC mobile application; and

(b) One (1) copy of the current contractual agreement between the TNC and TNC drivers.

(9) A deficient application shall be returned to the applicant with no formal action taken by the department.

Section 3. Demonstration of Financial Responsibility and Insurance. (1) A TNC shall maintain primary automobile insurance that:

(a) Recognizes that a driver is a TNC driver or using a vehicle to transport passengers for compensation; and

(b) Provides insurance coverage for a TNC driver who is:

1. Logged on to the TNCs mobile application; or

2. Engaged in a prearranged ride.

(2) The following pre-trip acceptance liability automobile insurance requirements shall apply if a TNC driver is logged on to the TNC's mobile application and available to receive transportation requests but not engaged in a prearranged ride:

(a) Primary automobile liability insurance in the minimum amounts required by KRS 281.655(12);

(b) Basic reparation benefits;

- (c) Uninsured vehicle coverage; and
- (d) Underinsured vehicle coverage.

(3) The pre-trip acceptance liability insurance coverage requirements of KRS 281.655(12) shall be satisfied by one (1) of the following:

- (a) Automobile insurance maintained by the TNC;
- (b) Automobile insurance maintained by the TNC driver; or
- (c) A combination of paragraphs (a) and (b) of this subsection.

(4) The following automobile insurance requirements shall apply while a TNC driver is engaged in a prearranged ride:

- (a) Primary automobile liability insurance in the minimum amounts required by KRS 281.655(4);
- (b) Basic reparation benefits;
- (c) Uninsured vehicle coverage; and
- (d) Underinsured vehicle coverage.

(5) The prearranged ride liability insurance coverage requirements of KRS 281.655(4) shall be satisfied by one (1) of the following:

- (a) Automobile insurance maintained by the TNC;
- (b) Automobile insurance maintained by the TNC driver; or
- (c) A combination of paragraphs (a) and (b) of this subsection.

(6) If the insurance maintained by a TNC driver has lapsed or does not provide the required coverage, the TNC shall provide the required insurance coverage beginning with the first dollar of a claim. The TNC shall have the duty to defend a claim for damages.

(7) Coverage under an automobile insurance policy maintained by the TNC shall not be dependent on a personal automobile insurer or policy first denying a claim.

(8) The insurance required by this section shall be placed with an insurer licensed pursuant to KRS 304.3-070, or with a surplus lines insurer eligible under KRS 304.10-010 through KRS 304.10-070.

(9) A TNC driver shall carry proof of insurance coverage satisfying KRS Chapter 304, KRS 281.655, and this administrative regulation during his or her use of a vehicle in connection with a TNC's mobile application. In the event of an accident, and upon request, a TNC driver shall provide this insurance coverage information directly to interested parties, automobile insurers, and investigating police officers.

(10) A TNC driver shall disclose directly to interested parties, automobile insurers, the department, and investigating police officers, whether he or she was logged on to the TNC's mobile application or on a prearranged ride at the time of an accident.

Section 4. Insurance Exclusions. (1) A Kentucky automobile insurer may exclude the following coverage under a TNC driver's insurance policy for loss or injury that occurs while a TNC driver is logged on to a TNC's mobile application or while a TNC driver provides a prearranged ride:

- (a) Liability coverage for bodily injury and property damage;
- (b) Personal injury protection coverage as established in KRS Chapter 304;
- (c) Uninsured and underinsured motorist coverage;
- (d) Medical payments coverage;
- (e) Comprehensive physical damage coverage; and
- (f) Collision physical damage coverage.

(2) Nothing in this administrative regulation shall require a personal automobile insurer to provide coverage while a driver is:

- (a) Logged on to the TNC mobile application;
- (b) Engaged in a prearranged ride; or
- (c) Using a vehicle to transport passengers for compensation.

(3) Nothing in this administrative regulation shall preclude an insurer from providing coverage for the TNC driver's vehicle.

(4) An automobile insurer whose policy excludes coverage for a TNC vehicle or TNC driver shall have no duty to defend or indemnify a claim for personal or property damages.

(5) An automobile insurer that defends or indemnifies a claim against a TNC driver that is excluded under the terms of its policy shall have a right of contribution against other insurers that provide automobile insurance to the same driver.

(6) In a claims coverage investigation, the TNC and an insurer potentially providing coverage shall cooperate to facilitate the exchange of relevant information with directly involved parties.

(7) Information relevant to a claims coverage situation may include:

- (a) The name of the insurer or potential insurer of the TNC driver;
- (b) The precise times the TNC driver logged off and on the TNC mobile application in the twelve (12) hour period immediately before and after the incident; and
- (c) A complete description of the insurance coverage including the exclusions and limits.

Section 5. Vehicles. (1) A vehicle used by a driver for TNC services shall be qualified by the department to operate by submitting a completed Transportation Network Company Authority Application, TC 95-627 and submitting the fees required in Section 2 of this administrative regulation.

(2) The TNC shall ensure that the vehicles used by TNC drivers to transport passengers shall be subject to an annual inspection by an automotive technician who holds a valid automotive service excellence (A.S.E.) certification from the National Institute for Automotive Service Excellence.

(3) The annual inspection shall be completed on one (1) of the following forms:

- (a) The vehicle inspection form provided in Transportation Network Company Authority Application, TC 95-627;
- (b) Motor Carrier Passenger Certificate, Vehicle Qualification and Renewal Application, TC 95-605; or
- (c) An equivalent form provided by the TNC and approved by the Division of Motor Carriers.

(4) A TNC shall collect and maintain information on the vehicles being used to provide service by TNC drivers including:

- (a) The VIN and license plate number; and
- (b) Records of official vehicle inspections by the automotive technician.

(5) Records of vehicle inspection and VIN and license plate numbers shall be kept by the TNC for a minimum of three (3) years from the date of inspection and the TNC shall make the records available to the department or its representative on request. The information and records may be submitted as personal or proprietary information pursuant to KRS 61.878(1)(c)1 and 61.931(6).

(6) A vehicle used to provide TNC services shall be readily identifiable by the following:

- (a) A decal affixed to the front windshield on the passenger side of the vehicle provided by the department to the TNC to distribute to qualified vehicles;
- (b) An optional decal or trade dress that is company specific and issued by the TNC; and
- (c) A vehicle fee receipt card that shall be presented on inspection.

(7) A driver who is no longer providing TNC service shall return the department issued decal and the vehicle fee receipt card to the TNC who shall return it to the Division of Motor Carriers.

(8) A TNC shall ensure that the vehicles used by drivers to provide TNC services shall:

- (a) Have at least four (4) doors;
- (b) Be designed to carry no more than eight (8) persons including the driver; and
- (c) Be no more than ten (10) model years old with an odometer reading of less than 200,000 miles.

Section 6. TNC Drivers. (1) A TNC shall require each driver to undergo a national criminal background check before providing TNC services pursuant to KRS 281.6301.

(2) The TNC shall certify the criminal background check during the application process established in Section 2 of this administrative regulation. The national criminal background check shall be either:

- (a) A comprehensive background check using fingerprint analysis; or
- (b) An individual analysis using a social security number.

(3) The analysis required in subsection (1) of this section shall be conducted by a business or firm engaged in determining criminal background history.



- (4) A TNC shall also require that each TNC driver:
- (a) Is at least twenty-one (21) years old;
  - (b) Is the owner or lessee of the TNC vehicle or has a statement from the registered owner authorizing the use of the vehicle for TNC services pursuant to KRS 281.631;
  - (c) Is listed as an insured of the TNC vehicle;
  - (d) Has a valid state-issued driver's license and vehicle registration;
  - (e) Has personal automobile insurance coverage as established in Section 3 of this administrative regulation;
  - (f) Has completed an annual driver safety training course approved by the department;
  - (g) Provides a written or electronic affirmation that he or she is fit and able to operate a motor vehicle to provide TNC services; and
  - (h) Is in compliance with applicable state law and local ordinances.
- (5) A current list of drivers shall be kept on file with the TNC and made available for inspection by the department on request. A TNC driver's electronic file shall include the following:
- (a) A current driving history record to be updated annually;
  - (b) The current address of the driver;
  - (c) A copy of a valid state-issued driver's license and the operator's license number;
  - (d) Proof of his or her personal automobile insurance coverage;
  - (e) Proof of personal vehicle registration;
  - (f) Proof of the written or electronic affirmation that a TNC driver is fit and able to operate a motor vehicle to provide TNC services;
  - (g) Verification of the criminal background check required in subsection (1) of this section;
  - (h) Records indicating whether a driver has refused to accept a prearranged ride and the reason for doing so; and
  - (i) Records of complaints against a driver.

Section 7. Passenger Service. (1) A TNC shall adopt a policy of non-discrimination based on the following:

- (a) Destination;
  - (b) Race or color;
  - (c) National origin;
  - (e) Religious belief or affiliation;
  - (f) Sex and sexual orientation or identity;
  - (g) Disability;
  - (h) Age; and
  - (i) The presence of a passenger's service animal.
- (2) A TNC shall notify TNC drivers of the adopted policy of non-discrimination established in subsection (1) of this section.
- (3) After acceptance, a TNC driver may refuse to transport a passenger who is acting in an unlawful, disorderly, or endangering manner but shall comply with the non-discriminatory policy in subsection (1) of this section. A driver may also refuse to transport a passenger with a service animal if the driver has a documented medical allergy.
- (4) A TNC driver shall not transport a passenger under the age of fourteen (14) unless accompanied by a person over the age of eighteen (18).
- (5) A TNC shall establish policies regarding TNC driver behavior that shall include the following prohibitions:
- (a) Being under the influence of alcohol or another substance or combination of substances that impair the driving ability while providing TNC services;
  - (b) Accepting a street hail by a potential rider;
  - (c) Directly soliciting a passenger or responding to a direct solicitation; and
  - (d) Providing services for cash.
- (6) A driver shall immediately report the following to the driver's affiliated TNC:

- (a) A refusal to transport a passenger and the reasons for the refusal within forty-eight (48) hours after the refusal where the refusal occurred after the ride had been accepted by the driver;
- (b) Information regarding a driving citation, incident, or accident within twenty-four (24) hours after the event; or

(c) Information regarding a conviction within twenty-four (24) hours.

(7) A TNC shall provide the following information to the public on its Web site and mobile device application software:

- (a) A schedule of its rates or the method used to calculate rates and peak pricing; and
  - (b) Information indicating a zero tolerance policy related to drug and alcohol usage by its drivers while performing TNC services and a passenger support telephone number or email address where a suspected violation may be immediately reported.
- (8) A TNC shall provide the following information to a person requesting a ride through its mobile application:
- (a) The expected cost of the trip if requested by a potential passenger;
  - (b) The first name and a photograph of the TNC driver accepting the ride request; and
  - (c) A photograph or description, including license plate number, of the vehicle that will be used for the ride.
- (9) At the completion of the prearranged ride, a TNC shall electronically provide the passenger with a receipt showing:
- (a) The point of origin and destination of the ride;
  - (b) The duration and distance of the ride;
  - (c) The cost of the ride broken down into base fare and additional charges; and
  - (d) The driver's first name.
- (10) Hours of service for a TNC driver shall be the same as established in KRS 281.730(1).

Section 8. Terms of Service. (1) The TNC shall not require a hold harmless or indemnification clause in the terms of service for a TNC driver or passenger that may be used to evade the insurance requirements of this administrative regulation and KRS Chapter 281.

(2) A TNC shall not disclose to a third party the personally identifiable information of a user of the TNC's mobile application unless:

- (a) The TNC obtains the user's consent to disclose personally identifiable information;
  - (b) The disclosure is required to comply with a legal obligation; or
  - (c) The disclosure is required to protect or defend the terms of use of the service or to investigate violations of the terms of use.
- (3) A TNC may disclose a passenger's name and telephone number to the TNC driver in order to facilitate correct identification of the passenger by the driver, or to facilitate communication between the passenger and the driver.

Section 9. Penalties. (1) A TNC that operates in violation of the requirements of this administrative regulation shall be fined \$200 pursuant to KRS 281.990(1).

(2) A TNC that operates in violation of the terms of its certificate or permit or operates without a valid permit shall be fined \$500 per occurrence pursuant to KRS 281.990(2).

(3) A TNC that fails to produce requested records and information pursuant to KRS 281.820 within forty-eight (48) hours of the request by the department shall be fined \$200.

(4) A TNC shall be responsible for an affiliated TNC driver's failure to comply with this administrative regulation if the driver's violation has been previously reported to the TNC in writing and the TNC has failed to take action within ten (10) days of the report.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Transportation Network Company Authority Application," TC 95-627, November, 2014; and
  - (b) "Motor Carrier Passenger Certificate, Vehicle Qualification and Renewal Application," TC 95-605, May, 2015.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Vehicle Regulation, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be obtained by accessing the department's Web site at <http://transportation.ky.gov/>.

## VOLUME 42, NUMBER 2 – AUGUST 1, 2015

MICHAEL W. HANCOCK, P. E., Secretary  
RODNEY KUHLE, Commissioner  
D. ANN DANGELO, Office of Legal Services  
APPROVED BY AGENCY: June 30, 2015  
FILED WITH LRC: July 8, 2015 at noon

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on Friday, August 28, 2015 at 9:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C117, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of day August 31, 2015. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for a transportation network company to operate in the state of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to address the growing use of online mobile applications to connect riders with vehicles for hire.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 281.600 authorizes the cabinet to promulgate administrative regulations to establish requirements for the safe operation of motor vehicles and motor carriers. KRS 281.630 authorizes the department to establish the requirements for a transportation network company to apply for authority to operate in Kentucky. KRS 281.655 requires the department to set standards for pre-trip acceptance liability policies and prearranged ride liability insurance policies for transportation network company vehicles.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the regulatory requirements for the safe operation of a transportation network company.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: 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 companies desiring to operate as a transportation network company and the cabinet's Division of Motor Carriers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment: A business desiring to operate as a transportation network company will be required to submit an application and attachments to the department; ensure that a criminal background check is performed for each driver; ensure that a vehicle safety check has been performed on vehicles used to transport the public; and maintain up to date files on drivers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A transportation network company applying to operate in Kentucky will submit a fee pursuant to KRS 281.630.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If compliant with the requirements of this regulation, businesses desiring to operate as transportation network companies will be granted operating authority.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation:

(a) Initially: Approximately \$7,500

(b) On a continuing basis: Approximately \$1,000 annually

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: road funds

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Fees shall be pursuant to statute.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees shall be pursuant to statute.

(9) TIERING: Is tiering applied? No. Tiering is not applied. All TNC applications for operating authority will be handled 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? KYTC Division of Motor Carriers, Department of Vehicle Regulation

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 281.600, 281.630, 281.655

(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. Initial programming fees of approximately \$7,500 will affect the expenditures and revenue of the Division of Motor Carriers at KYTC.

(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 may generate approximate \$9,000 annually. The amount is dependent on the number of TNC vehicles qualified under the 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? This administrative regulation is not expected to generate revenue.

(c) How much will it cost to administer this program for the first year? Approximately \$7,500.

(d) How much will it cost to administer this program for subsequent years? Approximately \$1,000.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**PUBLIC PROTECTION CABINET**  
**Department of Financial Institutions**  
**Division of Securities**  
**(New Administrative Regulation)**

**808 KAR 10:500. Required forms, fees, filing procedures, and recordkeeping requirements for persons operating pursuant to KRS 292.411 and KRS 292.412, the Kentucky Intrastate Crowdfunding Exemption.**

RELATES TO: KRS 292.330, 292.411, 292.412

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.411(1)(f) and (s) require the commissioner to prescribe the notice filing form to be used, the filing fee to be paid, and the records to be kept by an issuer. KRS 292.412(2) requires the commissioner to prescribe the filing procedure and form to be used by registered broker-dealers operating an Internet Web site pursuant KRS 292.411(1)(r). KRS 292.412(3), (5), (6), (7), and (8) requires the commissioner to prescribe filing procedures and forms for applications and renewal applications, the filing fees to be paid, the records to be kept, and the examination fees for Internet Web site operators. This administrative regulation establishes the required forms, fees, filing procedures, and recordkeeping requirements for persons operating pursuant to KRS 292.411 and KRS 292.412, the Kentucky Intrastate Crowdfunding Exemption.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 292.310(4).

(2) "Completion of an offering" means the occurrence of one (1) of the following:

- (a) The date upon which the offering deadline expires;
  - (b) The date upon which the transaction becomes void pursuant to KRS 292.411(1)(i); or
  - (c) If the offering is closed prior to the offering deadline pursuant to KRS 292.411(k), the date of early closing.
- (3) "Internet Web site operator" means a person registered as an Internet Web site operator pursuant to KRS 292.412.

Section 2. Issuer Notice Filings. An issuer making a notice filing pursuant to KRS 292.411(1)(f) shall complete and submit the following:

- (1) Form CF 1, Kentucky Intrastate Crowdfunding Exemption Issuer Notice Filing Form with all required attachments;
- (2) Form CF 2, Final Report of Sales Form no later than thirty (30) days after the completion of an offering conducted pursuant to KRS 292.411; and
- (3) A filing fee of \$500.

Section 3. Registration of Internet Web site operators. (1) A person applying for registration as an Internet Web site operator shall complete and submit the following:

- (a) Form CF 3, Internet Web Site Operator Registration Form with all required attachments;
  - (b) Form CF 4, Internet Web Site Operator Surety Bond Form; and
  - (c) A filing fee of \$250.
- (2) An Internet Web site operator applying to renew its registration pursuant to KRS 292.412(6) shall complete and submit the following between December 1 and December 15:
- (a) Form CF 3, Internet Web Site Operator Registration Form with all required attachments; and
  - (b) A renewal fee of \$250.
- (3) Except as provided in subsection (4) of this section, a registration shall be effective until December 31 of the year in which the registration is approved by the commissioner.
- (4) A renewal registration shall be effective for the calendar year designated by the commissioner.

Section 4. Broker-dealer Notice Filings. (1) Form CF 5, Broker-

Dealer Internet Web Site Operator Notice Filing Form shall be completed by a broker-dealer making a notice filing pursuant to KRS 292.412(2).

(2) A notice filing shall be filed before the broker-dealer operates an Internet Web site pursuant to KRS 292.411(1)(r).

(3) Except as provided in subsection (4) of this section, a notice filing made pursuant to this section shall be effective until December 31 of the year in which the filing is made.

(4) A notice filing made between December 1 and December 31 of the year in which a previous notice filing expires shall be effective for the subsequent calendar year.

Section 5. Recordkeeping requirements. (1) An issuer shall accurately make and keep the following books and records relating to any offer or sale made pursuant to KRS 292.411:

- (a) All forms and documents that are required by KRS 292.411 or this administrative regulation to be filed with the commissioner;
  - (b) Evidence of residency from each purchaser in any offering made by the issuer as required by KRS 292.411(1)(o);
  - (c) Evidence of accredited investor status for each purchaser making an investment exceeding \$10,000 as required by KRS 292.411(1)(o);
  - (d) Evidence reflecting all offers made by the issuer;
  - (e) Evidence reflecting all sales made by the issuer;
  - (f) Manually or electronically signed copies of all purchaser certifications as required by KRS 292.411(1)(n);
  - (g) All limited notices distributed in accordance with KRS 292.411(1)(r)7;
  - (h) All notices of cancellation of commitment to invest pursuant to KRS 292.411(1)(j);
  - (i) All notices of closing of an offering prior to the offering deadline delivered pursuant to KRS 292.411(1)(k);
  - (j) Quarterly reports made pursuant to KRS 292.411(1)(t); and
  - (k) All other communications with purchasers in the offering.
- (2) An Internet Web site operator shall accurately make and keep the following books and records:
- (a) Records of fees received pursuant to KRS 292.412(4)(a);
  - (b) All agreements with issuers offering securities through the Internet Web site operator's Web site;
  - (c) All information provided to the Internet Web site operator by an issuer to establish that the issuer is organized under the laws of Kentucky and authorized to do business in Kentucky as required by KRS 292.411(1)(r)1;
  - (d) Evidence reflecting the limitation of Web site access as required by KRS 292.411(1)(r)3;
  - (e) All correspondence or other communications with issuers, prospective purchasers, or purchasers;
  - (f) All information made available through the Internet Web site relating to an offering; and
  - (g) Any other information provided by or through the Internet Web site operator to issuers, prospective purchasers, or purchasers.

Section 6. Kentucky intrastate crowdfunding examination fees. The fee for a routine examination of an Internet Web site operator shall be fifty (50) dollars per working hour. A fee shall not be charged for examination work by an examiner-trainee.

Section 7. Incorporation by reference. (1) The following material is incorporated by reference:

- (a) "Form CF 1, Kentucky Intrastate Crowdfunding Exemption Issuer Notice Filing Form", July 2015;
- (b) "Form CF 2, Final Report of Sales Form", July 2015;
- (c) "Form CF 3, Internet Web Site Operator Registration Form", July 2015;
- (d) "Form CF 4, Internet Web Site Operator Surety Bond Form", July 2015; and
- (e) "Form CF 5, Broker-Dealer Internet Web Site Operator Notice Filing Form", July 2015.

(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 4:30 p.m. This

material may also be obtained at [www.kfi.ky.gov](http://www.kfi.ky.gov).

CHARLES A. VICE, Commissioner  
AMBROSE WILSON IV, Secretary

APPROVED BY AGENCY: July 15, 2015

FILED WITH LRC: July 15, 2015 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 2015 at 9:00 a.m. EST, at 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 five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who 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 August 31, 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 Sharpe, General Counsel or Simon Berry, Staff Attorney Manager, 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 Sharpe or Simon Berry

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the forms, fees, and recordkeeping requirements for issuers offering and selling securities pursuant to the exemption from registration set forth in KRS 292.411. It also establishes the forms, registration procedures, fees, and recordkeeping requirements for persons seeking to become registered as Internet Web site operators. Finally, it establishes the forms and filing procedures for broker-dealers operating an Internet Web site pursuant to KRS 292.411.

(b) The necessity of this administrative regulation: KRS 292.411 and KRS 292.412 require the commissioner to establish forms, procedures, fees, and recordkeeping requirements for issuers, Internet Web site operators, and Kentucky-registered broker-dealers relying on the Kentucky Intrastate Crowdfunding Exemption.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes forms, fees, procedures, and recordkeeping requirements as directed by KRS 292.411(1)(f) and (s) and KRS 292.412(2),(3),(5),(6),(7), and (8)(c).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of KRS Chapter 292 by prescribing the forms, fees, procedures, and recordkeeping requirements for the offer and sale of securities under the Kentucky Intrastate Crowdfunding Exemption.

(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 regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation affects Kentucky-based companies (issuers) that want to use the recently

enacted Kentucky Intrastate Crowdfunding Exemption to offer and sell their securities to Kentucky residents. It also affects Kentucky-based companies (Internet Web site operators) and broker-dealers registered in Kentucky that want to operate an Internet Web site to facilitate the sale of these securities. The number of potential issuers, Internet Web site operators, and broker-dealers that would be affected by this regulation is unknown.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Companies seeking to rely on the Kentucky Intrastate Crowdfunding Exemption to offer and sell their securities will only need to file a two page form, pay a filing fee, make a final sales report filing, and maintain certain books and records as a result of the implementation of this administrative regulation. Operators of crowdfunding web sites who are not registered as a broker-dealer in Kentucky will need to register with the department by filing an application, paying a filing fee, and thereafter renewing the registration on a yearly basis. The operators are also subject to examination by the department and must maintain certain books and records. Broker-dealers registered in Kentucky who wish to operate a crowdfunding web site will need to make an annual notice filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is a \$500 filing fee for the issuers. For Internet Web site operators, there is a \$250 application fee and a \$250 registration renewal fee. The operators are also subject to an examination fee of fifty (50) dollars per hour. There are no fees for broker-dealers registered in Kentucky.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The issuers will be able to raise money for their businesses by using the power of the internet to reach potential investors in Kentucky. The Internet Web site operators and Kentucky-registered broker-dealers will be able to earn money through the operation of internet web sites that display information about investment opportunities in Kentucky-based companies.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No net change is anticipated.

(b) On a continuing basis: Additional costs for an additional staff member could be incurred depending on the volume of filings and registrations received. The revenue generated is anticipated to cover a minimal portion of the staff member's salary and benefits.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The current funding for Department of Financial Institutions, Division of Securities plus revenue generated by the fees required under the administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The implementation of this administrative regulation will require the imposition of fees as required by KRS 292.411 and KRS 292.412.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes it establishes the following fees: (1) \$500 filing fee for the issuers making a notice filing, (2) \$250 application fee for Internet Web site operators, and (3) \$250 registration renewal fee for Internet Web site operators. The Internet Web site operators are also subject to an examination fee of fifty (50) dollars per hour.

(9) TIERING: Is tiering applied? Tiering is not applicable. This administrative regulation treats each class of regulated entities 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 Financial Institutions, Division of Securities.

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 292.411 and KRS 292.412.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation is not anticipated to increase expenditures in the first year. Revenue may increase minimally in the first year if filing fees are paid.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of revenue that will be generated cannot be quantified. The revenue will depend upon how many issuers and Internet Web site operators use the crowdfunding process established by KRS 292.411 and KRS 292.412, and as a result pay the fees established 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? The amount of revenue that will be generated in subsequent years cannot be quantified. The revenue will depend upon how many issuers and Internet Web site operators use the crowdfunding process established by KRS 292.411 and KRS 292.412, and as a result pay the fees established by this administrative regulation.

(c) How much will it cost to administer this program for the first year? There will be no additional costs beyond what the Department already expends on the administration and review of securities filings.

(d) How much will it cost to administer this program for subsequent years? Depending on the number of filings and registrations received, additional costs for a staff member could be incurred to administer the 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 (+/-): Revenues will be increased by the fees that are paid by issuers and Internet Web site operators making filings pursuant to this administrative regulation. The number of filings cannot be quantified as this is a new legislative initiative that has been enacted in Kentucky.

Expenditures (+/-): Unchanged for the first year (filings under this administrative regulation will be administered with the same personnel and resources that manage other filings for the entire Division of Securities), but may increase in subsequent years by an additional staff member if there is a substantial volume of filings and registrations made pursuant to this administrative regulation.

Other Explanation: None.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of July 14, 2015

**Call to Order and Roll Call**

The July 2015 meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, July 14, 2015, at 1 p.m. in Room 149 of the Capitol Annex. Representative Mary Lou Marzian, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the June 2015 meeting were approved.

**Present were:**

**Members:** Senators Ernie Harris, Perry Clark, and Alice Forgy Kerr; and Representatives Denver Butler, Will Coursey, Mary Lou Marzian, and Tommy Turner.

**LRC Staff:** Donna Little, Sarah Amburgey, Carrie Klaber, Karen Howard, Emily Harkenrider, Emily Caudill, Ange Bertholf, and Betsy Cupp.

**Guests:** Maryellen Allen, Matt Steph, Board of Elections; Ryan Barrow, Steve Jones, Doug Hendrix, Finance Cabinet; Michael Burleson, Board of Pharmacy; Charles Lykins, Board of Cosmetology; Pamela Hagan, Board of Nursing; Matt James, Board of Licensed Diabetic Educators; Steve Beam, Ron Brooks, Steven Dobey, David Wicker, Department of Fish and Wildlife Resources; Leah MacSwords, Division of Forestry; Kerry Holleran, Barney Kinman, Justice and Public Safety Cabinet; Gerald Ross, Law Enforcement Council; Kevin Brown, Amanda Ellis, Greta Hylton, Department of Education; Steve Humphress, Melissa McQueen, Department of Alcoholic Beverage Control; Kim Collings, Steve Hollmann, Department of Natural Resources; James Chandler, Brian Judy, Board of Home Inspectors; Jack Coleman, Michael Davis, Tina Quire, Department of Housing, Buildings and Construction; Bill Nold, Chandra Venetozzi, Office of Health Benefit and Health Information Exchange; Laura Begin, Kathy Fowler, Department for Public Health; Stephanie Brammer Barnes, Maryellen Myneer, Office of Inspector General; Stuart Owen, Neville Wise, Department for Medicaid Services; Bobbie Holsclaw, Board of Elections; Kathryn Callahan, The Humane Society of the United States; Chet Hayes, Ed Morris, League of Kentucky Sportsman, Doug Morgan, Kentucky Houndsmen Association; Ronnie Wells, Kentucky Grouse Hunters Association; Patty Swiney, MD, Kentucky Academy of Family Physicians; Shirley Michelle Vittatow, The Little Clinic; Dr. Brent Wright, Kentucky Medical Association; Gay Dwyer, Kentucky Retail Federation; Scott Lockard, Kentucky Health Department Association; Matt Rhodes, Louisville Metro Public Health and Wellness.

**The Administrative Regulation Review Subcommittee met on Tuesday, July 14, 2015, and submits this report:**

**Administrative Regulations Reviewed by the Subcommittee:**

**BOARD OF ELECTIONS: Statewide Voter Registration**

31 KAR 3:040. Electronic Voter Registration System. Maryellen Allen, executive director, and Matt Selph, assistant director, represented the board. Bobbie Holsclaw, Jefferson County Clerk, appeared in support of this administrative regulation.

In response to questions by Co-Chair Marzian, Mr. Selph stated that the Electronic Voter Registration (EVR) System was a better system than the current card-style protocol because the data was more accurate, and the procedure was more efficient. The card system was inefficient and labor intensive because staff was required to interpret sometimes difficult-to-read handwriting. The board expected to save approximately \$100,000 yearly compared with the current system. This administrative regulation was approved unanimously by the bipartisan board. Twenty-seven (27) other states and the military already used similar systems. The EVR System process included the prospective voter entering personal data into the on-line program, that data being verified against existing records, and the data cross-referenced for use with the on-file signature from the Transportation Cabinet, Department of Driver Licensing. Ms. Holsclaw stated that Jefferson County supported the EVR System

established by this administrative regulation.

Co-Chair Marzian stated that the EVR System seemed fiscally responsible.

In response to questions by Co-Chair Harris, Mr. Selph stated that Kentucky was unable to use the exact same system used by the military, but the system was developed after reverse engineering the military system in order to provide as much security as possible. The system initially required information such as the proposed voter's full name, county of residence, and Social Security Number. Any data that contradicted data already on file automatically invalidated the application. The application included a perjury statement to discourage fraud. Additionally, the system was able to determine how many applications were made from a single IP address. It was not yet determined how many applications from a single IP address would trigger an investigation for fraud, probably over ten (10). Sixty-six (66) percent of those using the system were changing party affiliation or an address. A virtual signature was not substantively different from an actual signature pursuant to the card system. The board was not attempting to bypass the legislative process. Legislation and this administrative regulation were filed simultaneously in order to prepare for registration for the 2016 presidential election.

Co-Chair Harris stated that he was concerned about the possibility of fraud and the security of the EVR System. The County Clerk's Association was opposed to the EVR System. The board seemed to be attempting to bypass a legislative determination. Twenty-one (21) of the twenty-seven (27) states that used similar systems made the changes via determination of their legislatures. Co-Chair Harris made a motion, seconded by Senator Kerr, to find this administrative regulation deficient. A roll call vote was taken. There being four (4) votes to find this administrative regulation deficient and three (3) votes not to find it deficient, the motion failed.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; (2) to amend Section 3 to comply with the drafting requirements of KRS Chapter 13A; and (3) to add a new Section 5 to incorporate by reference the Voter Registration Form. Without objection, and with the agreement of the agency, the amendments were approved.

**Forms and Procedures**

31 KAR 4:120. Additional and emergency precinct officers.

A motion was made and seconded to approve the following amendments: (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 Sections 1, 2, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

31 KAR 4:180 & E. Activities prohibited within 100 feet of the entrance to a building in which a voting machine is located.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph 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 2: (a) for clarity; and (b) to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**FINANCE AND ADMINISTRATION CABINET: Office of the Secretary: State Investment Commission**

200 KAR 14:011. Qualified Investments. Ryan Barrow, executive director; Stephen Jones, deputy executive director and portfolio manager; and Doug Hendrix, deputy general counsel, represented the commission.

200 KAR 14:081. Repurchase agreement.

**GENERAL GOVERNMENT CABINET: Board of Pharmacy: Board**

201 KAR 2:015. Continuing education. Michael Burleson, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to update citations; and (2) to amend Sections 1 through 5, 8, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 2:360 & E. Naloxone dispensing.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 6 and the material incorporated by reference to align the application requirements with the application form; (2) to amend Section 3 to clarify that the protocol shall have physician notification procedures only if desired by the physician in accordance with KRS 217.186(5)(b)3; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Board of Hairdressers and Cosmetologists: Board**

201 KAR 12:083. Educational requirements. Charles Lykins, administrator, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a citation; and (2) to amend Section 3 to require a written request to obtain special board permission. Without objection, and with agreement of the agency, the amendments were approved.

**Board of Nursing: Board**

201 KAR 20:063. Restrictions on use of amphetamine-like anorectic controlled substances. Pamela Hagan, APRN practice and education consultant, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 2 and 3 to comply with KRS 314.011(8) and to delete "dispense"; (4) to amend Sections 2 and 5 to cross-reference 201 KAR 20:057 that includes the Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances (CAPA-CS); (5) to amend Section 4 for clarity by providing examples of what the board considers as a "legitimate medical purpose" for applying for a written waiver; and (6) to amend Sections 2 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Board of Licensed Diabetes Educators: Board**

201 KAR 45:120. Renewal, reinstatement, and inactive status. Matt James, assistant attorney general, represented the board.

201 KAR 45:170. Application procedures.

In response to a question by Co-Chair Harris, Mr. James stated that this administrative regulation was being amended to close a loophole regarding an apprentice diabetes educator working under supervision.

A motion was made and seconded to approve the following amendments: to amend Section 1 to remedy an apparent conflict with KRS 309.335. Without objection, and with agreement of the agency, the amendments were approved.

**TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Fish**

301 KAR 1:122. Importation, possession, and prohibited

aquatic species. Steve Beam, wildlife division director; Ron Brooks, fisheries director; Steven Dobey, wildlife program coordinator; and David Wicker, general counsel, represented the department.

In response to a question by Co-Chair Harris, Mr. Brooks stated that the department was trying to avoid encroachment of round goby because the invasive species was becoming a problem in nearby states. A Kentucky sportsman had requested to use round goby as bait. Round goby supplants native species and may accidentally be released into the ecosystem if used as bait.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 3 to make technical corrections; and (2) to amend Section 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Game**

301 KAR 2:049. Small game and furbearer hunting and trapping on public lands and other federally owned areas. Steve Beam, wildlife division director; Steven Dobey, wildlife program coordinator; and David Wicker, general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 4 through 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:300. Black bear seasons and requirements. Steve Beam, wildlife division director; Steven Dobey, wildlife program coordinator; and David Wicker, general counsel, represented the department. Chet Hayes, president, Fifth District Federation of the League of Kentucky Sportsmen; Doug Morgan, president, Kentucky Houndsmen Association; and Ed Morris, president, League of Kentucky Sportsmen, appeared in support of this administrative regulation. Senator Robin Webb and Representative John Short appeared in support of this administrative regulation. Kathryn Callahan, state director, The Humane Society of the United States, appeared in opposition to this administrative regulation.

In response to questions by Representative Turner, Mr. Dobey stated that the 2013 statistics demonstrated a black bear population of approximately 500 to 700 bears. The population was growing at approximately eighteen (18) percent per year; therefore, the current population was probably higher than the 2013 estimates. Black bear nuisance reports had increased significantly in the last few years, as had the black bear population and the geographic spread. Bear locations ranged through Kentucky and Tennessee. Tennessee has also determined it was appropriate to establish a regulated black bear hunt.

In response to questions by Co-Chair Marzian, Mr. Dobey stated that the maximum number of permits was thirty-five (35). Mr. Beam stated that if the quota was met, the hunt would be adjourned, even if the season was not yet ended. The quota for females was more restrictive than the quota for males. Seventy-two (72) percent of harvested bears were male.

Ms. Callahan stated that The Humane Society of the United States opposed this administrative regulation and requested that the subcommittee find this administrative regulation deficient. Kentucky biologists have stated that the black bear populations need protection, including monitoring, limiting hunting, stopping poaching, and preserving female populations. Black bears had only recently returned to Kentucky, and the hunting program puts them at risk again. Kentucky was home to two (2) fragile black bear populations, the Big South Fork subpopulation and Eastern Kentucky bears. The Big South Fork subpopulation was especially at risk, and hunting of this subpopulation should be prohibited. Kentucky researchers, Sean Murphy and Steven Dobey, have stated that the subpopulation contains a total of only thirty-eight (38) black bears. Those thirty-eight (38) are closely related and may lack genetic diversity, which puts them further at risk. The stated growth rate was not the same as population recovery and did not support increased hunting. An expanded hunt,

especially with hounds, was dangerous to the female bear population and their cubs. This administrative regulation may contribute to the extinction of the black bear in Kentucky again.

Mr. Morgan stated that the Kentucky Houndsmen Association supported this administrative regulation, which provided opportunities for youth hunters with the two (2) day youth season.

Mr. Morris stated that Kentucky Department of Fish and Wildlife Resources was the nationwide standard for reestablishing wildlife because of the department's success in maintaining populations and healthy wildlife. The League of Kentucky Sportsmen consisted of thousands of members, and the league supported this administrative regulation.

Mr. Hayes stated that the Fifth District Federation of the League of Kentucky Sportsmen supported this administrative regulation. The department had been successful in reestablishing deer, elk, wild turkey, and river otters, among other animals. The department was funded by fees from sportsmen, not from the general fund. The Humane Society was misleading its donors because the Humane Society emphasized helping domestic animal shelters but used little of the donations for that purpose.

Senator Webb stated that the black bear population was stable and that the Kentucky Department of Fish and Wildlife Resources employed world-class biologists to ensure the health of Kentucky's wildlife. The Humane Society was generally opposed to hunting.

Representative Short stated that Knott County had to hire a wildlife warden solely to address the high number of nuisance complaints related to black bears. A bear had even been spotted on a school's playground during school hours. He stated support for this administrative regulation.

Co-Chair Marzian stated that the department may want to consider Minnesota's hunting program, which raised funds for arts and conservation programs.

**ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Forestry: Forestry**

402 KAR 3:010. Timber sales. Leah MacSwords, director, represented the department.

In response to a question by Co-Chair Harris, Ms. MacSwords stated that these administrative regulations applied to state forests only. State parks entered into agreements with the department for technical support; however, proceeds from timber sales in state parks went exclusively to the parks.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

402 KAR 3:030. Best management practices for timber harvesting operations.

402 KAR 3:050. Bad actor notice provisions.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 for consistency with terminology. Without objection, and with agreement of the agency, the amendments were approved.

**JUSTICE AND PUBLIC SAFETY CABINET: Internal Investigations Branch: Abuse Investigation**

500 KAR 13:020. Internal Investigations Branch. Kerry Holleran, assistant general counsel, and Barney Kinman, staff assistant, represented the branch.

A motion was made and seconded to approve the following amendments: (1) to amend Section 4 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 6 to clarify the reporting procedures. Without objection, and with agreement of the agency, the amendments were approved.

**Law Enforcement Council: Council**

503 KAR 1:110. Department of Criminal Justice Training basic training: graduation requirements; records. Gerald Ross, assistant general counsel, represented the council.

In response to questions by Co-Chair Harris, Mr. Ross stated that the initial eight (8) training hours were for orientation. The

council was transitioning from a written exam to a practical assessment that had criteria thresholds and was treated as a pass – fail scoring system. The practical assessments added rigor to the evaluation process.

In response to a question by Representative Butler, Mr. Ross stated that funding for the training was directed to the local government units, which used insurance to finance the training.

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 Section 4 to: (a) clarify that each training section shall at a minimum include one (1) or more of the listed training topics; (b) clarify that all of the listed training topics shall be covered before graduation; and (c) comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: Office of Instruction**

704 KAR 3:370. Professional growth and effectiveness system. Kevin Brown, associate commissioner and general counsel; Amanda Ellis, associate commissioner; and Gretta Hylton, policy advisor, represented the department.

In response to a question by Co-Chair Harris, Ms. Ellis stated that public preschool teachers were certified in early childhood education. They were given an extra year to comply with this administrative regulation, and they were provided with specialized guidance for their unique educational setting. Private preschools were not subject to this administrative regulation.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 5, 7, 8, 10, and 15 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Kindergartens and Nursery Schools**

704 KAR 5:070. Common kindergarten entry screener.

**PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Advertising Distilled Spirits and Wine**

804 KAR 1:061. Repeal of 804 KAR 1:060. Steve Humphress, general counsel, and Melissa McQueen, staff attorney, represented the department.

**Local Administrators**

804 KAR 10:010. County alcoholic beverage control administrator.

In response to a question by Co-Chair Harris, Mr. Humphress stated that an alcoholic beverage control administrator issued licenses at the local level. Usually the county executive or an appointee of the county executive served as the alcoholic beverage control administrator. For example, the county executor may appoint the local sheriff to serve in that capacity.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

804 KAR 10:020. City alcoholic beverage control administrator.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

804 KAR 10:025. Urban-county alcoholic beverage control administrator.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and



with agreement of the agency, the amendments were approved.

**ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Oil and Gas: Oil and Gas**

805 KAR 1:100. Commission's rules of procedure; spacing of deep well drilling; wildcat wells and pooling of interests. Kim Collings, director, and Steve Hohmann, commissioner, represented the division.

805 KAR 1:130. Administrative regulation relating to casing, cementing, plugging, gas detection and blow-out prevention in oil and gas wells.

805 KAR 1:140. Directional and horizontal wells.

805 KAR 1:170. Content of the operations and reclamation plan.

**PUBLIC PROTECTION CABINET: Office of Occupations and Professions: Board of Home Inspectors: Board**

815 KAR 6:010. Home inspector licensing requirements and maintenance of records. James Chandler, chair, and Brian Judy, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, 3, and 9 through 12 to comply with the drafting requirements of KRS Chapter 13A; and (2) to revise the Initial Licensure Application incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

**Department of Housing, Buildings and Construction: Electrical Division: Electrical**

815 KAR 35:015. Certification of electrical inspectors. Michael Davis, general counsel, and Tina Quire, assistant director, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend Section 5 to correct a cross-reference citation; and (2) to amend Section 6 to clarify the cross-referenced building codes. Without objection, and with agreement of the agency, the amendments were approved.

**CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Office of the Health Benefit and Health Information Exchange: Health Benefit Exchange**

900 KAR 10:020. KHBE small business health options program. Bill Nold, former executive director and advisor, and Chandra Venetozzi, health data administrator, represented the cabinet.

In response to a question by Co-Chair Harris, Mr. Nold stated that the recent decision by the Supreme Court of the United States did not affect Kentucky's health benefit exchange because it was not a federal exchange program.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to: (a) authorize a small employer to offer stand-alone dental plan coverage to only its full-time employees; and (b) clarify the formula for determining the employee participation rate; (2) to amend Section 3 to: (a) delete the requirement that a dependent be at least three (3) years of age; and (b) clarify provisions for enrolling a qualified employee, or the spouse or dependent of a qualified employee, in a stand-alone dental plan; (3) to amend Section 9 to authorize a small employer to change its election to offer dependent or spousal coverage or the waiting period for newly qualified employees; (4) to amend Sections 11 and 14 to clarify new employee waiting periods and the effective date of termination of SHOP participation; (5) to amend Sections 2, 3, and 15 to delete a required application form that was incorporated by reference; (6) to amend Sections 1, 2, 3, 9, and 11 through 14 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (7) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to change the name of the agency to comply with Executive Order 2015-387 issued June 16, 2015. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 10:040. KHBE Consumer Assistance Program and kynector certification.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 3 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 5 to specify the number of public education activities to be conducted each month; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to change the name of the agency to comply with Executive Order 2015-387 issued June 16, 2015. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 10:050. Individual agent participation with the Kentucky Health Benefit Exchange.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 3, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to change the name of the agency to comply with Executive Order 2015-387 issued June 16, 2015. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 10:100. Appeals of eligibility determinations for KHBE participation and insurance affordability programs.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, 6, 7, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 7, 9, 10, 12, 13, and 14 to change the name of the agency to comply with Executive Order 2015-387 issued June 16, 2015. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 10:110. KHBE formal resolution process related to SHOP employers and employees.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to change the name of the agency to comply with Executive Order 2015-387 issued June 16, 2015. Without objection, and with agreement of the agency, the amendments were approved.

**Department for Public Health: Division of Public Health Protection and Safety: Sanitation**

902 KAR 10:022. Repeal of 902 KAR 10:020 and 10:021. Laura Begin, regulation coordinator, and Kathy Fowler, division director, represented the cabinet.

**Health Services and Facilities**

902 KAR 20:400. Limited services clinics. Stephanie Brammer-Barnes, regulation coordinator, and Maryellen Myneer, inspector general, represented the cabinet. Shirley Vittitow, Little Clinics of Kroger, appeared in support of this administrative regulation. Patty Swiney, MD, Kentucky Academy of Family Physicians, and Brent Wright, MD, Kentucky Medical Association, appeared in opposition to this administrative regulation.

Ms. Vittitow stated examples of patients for whom limited service clinics (LSCs) were the appropriate providers for the treatment of chronic conditions included patients who refused to receive care from a general practitioner due to fear or other reasons. Shift workers and patients with limited transportation were also common users of LSCs. Not every patient fit into a 9 to 5 world in order to receive care for a chronic condition. LSCs that treated chronic conditions provide access and save money, which would bring down healthcare costs in Kentucky.

Dr. Swiney stated that the Kentucky Academy of Family Physicians was opposed to LSCs treating chronic conditions. These clinics did not improve access for Medicaid patients because Medicaid did not reimburse LSCs. This was not a physicians versus nurses debate. Chronic disease management

was complex, and primary care physicians were the best choice for the management of chronic conditions. LSC care was often fractured. Collaboration of care was best. If this administrative regulation was not found deficient, the Kentucky Academy of Family Physicians requested that chart review and oversight provisions be added to this administrative regulation.

Dr. Wright stated that the Kentucky Medical Association was opposed to LSCs treating chronic conditions. Dr. Wright asked a series of questions. Why was it necessary to add these chronic conditions to the list of conditions an LSC may treat? What evidence was there that LSCs can provide safe and effective treatment for chronic conditions? What did these changes do to Kentucky's health system because LSCs provided fractured care at a time when the goal was coordinated, comprehensive care? Why was a pilot study not conducted first to ensure safe and effective treatment of chronic conditions by LSCs? How did this administrative regulation improve access because most LSCs were located in relatively affluent areas? If an LSC was unaffiliated with a primary care physician, it may be difficult to transition an LSC patient into a more rigorous care facility if that became necessary.

In response to questions by Co-Chair Harris, Dr. Wright stated that the Kentucky Medical Association recommended two (2) to three (3) more stakeholder meetings before this administrative regulation moved further toward becoming effective. Ms. Mynear stated that the cabinet did not believe that further stakeholder meetings were necessary. This administrative regulation improved access while providing public protection. The cabinet declined to defer.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; (2) to amend Sections 3 and 7 to comply with the drafting requirements of KRS Chapter 13A; (3) to amend Section 3: (a) to replace "physician specialist" with "specialist"; (b) for clarity and flow; (c) to delete the requirement for a chronically ill patient to provide written consent every thirty (30) days in order to continue treatment at the limited service clinic (LSC) and replace it with a requirement for the patient to provide written consent at each subsequent visit to the LSC; (d) to establish that the LSC shall cease treatment for the patient's chronic disease if the patient fails to provide written consent; (e) to authorize any individual to request modification of any part of this administrative regulation; (f) to require the cabinet to appoint and convene an advisory committee within sixty (60) days of the request to modify; (g) to add the Kentucky Academy of Family Physicians to the advisory committee; (h) to require that the committee review each request for modification within sixty (60) calendar days of receiving the request and make recommendations to the cabinet regarding approval or denial within forty-five (45) days after the committee convenes for review; and (i) to delete prior language about the committee procedure; and (4) to amend Section 4 to: (a) replace the term "medical director" with "clinical director"; (b) add an advanced practice registered nurse as a qualified candidate for the clinical director position; (c) replace the term "chart audit" with "chart review"; (d) allow for a Kentucky-licensed physician, in lieu of the clinical director, to conduct monthly chart reviews in conjunction with a practitioner from each clinic; (e) add clarifying language related to the required number of monthly chart reviews; and (f) insert clarifying language related to the clinical director's responsibilities in confirming that the clinic's practitioners remain in compliance with the requirements of their professional licenses. Without objection, and with agreement of the agency, the amendments were approved.

#### Food and Cosmetics

902 KAR 45:011. Repeal of 902 KAR 45:010, 45:030, 45:040, 45:050, 45:060, and 45:130. Laura Begin, regulation coordinator, and Kathy Fowler, division director, represented the cabinet.

902 KAR 45:110. Permits and fees for retail food establishments, food manufacturing plants, food storage warehouses, salvage processors and distributors, vending machine companies, and restricted food concessions. Laura Begin, regulation coordinator, and Kathy Fowler, division director, represented the cabinet. Scott

Lockard, public health director, Clark County Health Department, and president, Kentucky Health Departments Association; and Matt Rhodes, deputy director, Louisville Metro Public Health and Wellness, appeared in support of this administrative regulation. Gay Dwyer, vice president of governmental affairs, Kentucky Retail Federation, appeared in opposition to this administrative regulation.

In response to a question by Senator Kerr, Ms. Begin stated that the fee increases were proportional to the complexity of the facility to be inspected. Fees had not been increased since 2001.

In response to a question by Co-Chair Harris, Ms. Begin stated that the inspection program costs the agency approximately \$11 million annually. Most of that funding came from local health tax money. More money could be retained by local health departments for other important programs if these fees were increased. Even with the fee increases, the program would not be fully self-funded. The fee increase was expected to bring in at least \$1 million annually.

Mr. Lockard stated that every citizen was affected by local health departments by using a grocery store or restaurant. The Clark County Health Department and the Kentucky Health Departments Association supported the fee increases. Programs and inspections were more complex and costly than in the past. For a small provider, the fee was seventy-five (75) dollars annually and included use of technical support. For large providers, the annual fee was \$300.

Mr. Rhodes stated that 4,114 facilities in Louisville alone were required to be inspected, and there were approximately 1,200 complaints to be investigated annually. Louisville's cost was over \$1 million annually.

Ms. Dwyer stated that the Kentucky Retail Federation appreciated the agency's financial needs, but the current proposed fee increases were three (3) times the existing fees in many cases. The concern was not the increase itself, but the level of the increase. Retailers had not tripled profits since 2001 to compensate for tripled fee increases.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 45:160. Kentucky food processing, packaging, storage, and distribution operations.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1 through 3 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 1, 16, and 17 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### Department for Medicaid Services: Division of Policy and Operations: Hospital Service Coverage and Reimbursement

907 KAR 10:830. Acute care inpatient hospital reimbursement. Stuart Owen, regulation coordinator, and Neville Wise, deputy commissioner, represented the cabinet.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to: (a) clarify the federal grouping software version that shall be used; (b) require the department to make interim payments for dates of service beginning October 1, 2015, if the Centers for Medicare and Medicaid Services releases version 33 on October 1, 2015; and (c) change references from "upon adoption of this administrative regulation" to "beginning October 1, 2015" for consistency throughout the administrative regulation; (2) to amend Section 8 to: (a) clarify the timing of the annual software update based on the timing of changes made at the federal level; and (b) specify that the department shall not update the Medicare grouper software more than once per federal fiscal year; and (3) to amend Sections 1, 2, 5, 6, 7, 10, 11, 13, 14, 17, 22, and 24 to comply with the drafting requirements of KRS Chapter 13A.

## VOLUME 42, NUMBER 2 – AUGUST 1, 2015

Without objection, and with agreement of the agency, the amendments were approved.

**The following administrative regulations were deferred to the August 11, 2015, meeting of the Subcommittee:**

**GENERAL GOVERNMENT CABINET: Board of Medical Imaging and Radiation Therapy: Board**

201 KAR 46:070. Violations and enforcement.

**JUSTICE AND PUBLIC SAFETY CABINET: Parole Board: Board**

501 KAR 1:080. Parole Board policies and procedures.

**PUBLIC PROTECTION CABINET: Department of Financial Institutions: Division of Non-Depository Institutions: Mortgage Loan Companies and Mortgage Loan Brokers**

808 KAR 12:020. Claims of exemption.

808 KAR 12:021. Licensing and registration.

808 KAR 12:110. Report of condition.

**CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Public Health Protection and Safety: Health Services and Facilities**

902 KAR 20:091. Facilities specifications, operation and services; community mental health center.

902 KAR 20:180. Psychiatric hospitals; operation and services.

902 KAR 20:320. Level I and Level II psychiatric residential treatment facility operation and services.

**Department for Medicaid Services: Division of Community Alternatives: Medicaid Services**

907 KAR 1:045 & E. Reimbursement provisions and requirements regarding community mental health center services.

**Division of Policy and Operations: Medicaid Services**

907 KAR 1:046. Community mental health center primary care services.

**Division of Policy and Operations: Psychiatric Residential Treatment Facility Services and Reimbursement**

907 KAR 9:010. Reimbursement for non-outpatient Level I and Level II psychiatric residential treatment facility services.

**The Subcommittee adjourned at 3:25 p.m. until August 11, 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.

**INTERIM JOINT COMMITTEE ON EDUCATION**  
**Meeting of July 13, 2015**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Education for its meeting of July 13, 2015, having been referred to the Committee on July 1, 2015, pursuant to KRS 13A.290(6):

13 KAR 2:045 & E  
725 KAR 1:061

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 13, 2015 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON TRANSPORTATION**  
**Meeting of July 7, 2015**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Transportation for its meeting of July 7, 2015, having been referred to the Committee on July 1, 2015, pursuant to KRS 13A.290(6):

601 KAR 9:135  
601 KAR 14:020

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 8, 2015, meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE**  
**Meeting of July 15, 2015**

The following administrative regulation was available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of July 15, 2015. It was referred to the Committee on June 3, 2015, pursuant to KRS 13A.290(6), but deferred by the Cabinet for Health and Family Services prior to the Committee's June 17, 2015 meeting:

910 KAR 1:170

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of July 15, 2015, having been referred to the Committee on July 1, 2015, pursuant to KRS 13A.290(6):

201 KAR 21:090 & E  
202 KAR 7:701  
910 KAR 1:170  
921 KAR 3:045

The following administrative regulation was approved as amended at the Committee meeting pursuant to KRS 13A.320:

910 KAR 1:170

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 15, 2015 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

## CUMULATIVE SUPPLEMENT

### Locator Index - Effective Dates

B - 2

The Locator Index lists all administrative regulations published in VOLUME 42 of the *Administrative Register of Kentucky* from July 2015 through June 2016. 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 41 are those administrative regulations that were originally published in VOLUME 41 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *2015 Kentucky Administrative Regulations Service* was published.

### KRS Index

B - 8

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 42 of the *Administrative Register of Kentucky*.

### Technical Amendment Index

B - 13

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the *2015 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

B - 14

The Subject Index is a general index of administrative regulations published in VOLUME 42 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

## LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	41 Ky.R. Page No.	Effective Date	Regulation Number	41 Ky.R. Page No.	Effective Date
<b>VOLUME 41</b>					
The administrative regulations listed under VOLUME 41 are those administrative regulations that were originally published in Volume 41 (last year's) issues of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the <i>2015 Kentucky Administrative Regulations Service</i> was published.					
<b>SYMBOL KEY:</b>			As Amended	2544	
* Statement of Consideration not filed by deadline			101 KAR 2:210		
** Withdrawn before being printed in Register			Amended	845	
**** Emergency expired after 180 days			101 KAR 3:015		
‡ Withdrawn deferred more than twelve months (KRS 13A.300(4) and 13A.315(1)(d))			Amended	2125	
(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.			As Amended	2546	
			103 KAR 3:010		
			Amended	2287	See 42 Ky.R.
			103 KAR 3:030		
			Amended	2015	
			AmComments	2226	
<b>EMERGENCY ADMINISTRATIVE REGULATIONS:</b>			103 KAR 3:040		
(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.)			Amended	1841	
			As Amended	2199	
			103 KAR 15:180		
			Amended	85	
			As Amended	439	
13 KAR 2:045E	2062	3-2-15	200 KAR 14:011		
31 KAR 4:180E	2527	5-5-15	Amended	2604	
103 KAR 3:030E	1958	1-16-15	200 KAR 14:081		
103 KAR 3:040E	1742	12-31-14	Amended	2607	
201 KAR 2:360E	2529	5-14-15	201 KAR 2:015		
201 KAR 21:090E	1969	2-10-15	Amended	2609	See 42 Ky.R.
601 KAR 1:112E	1481	12-5-14	201 KAR 2:360	2691	See 42 Ky.R.
Withdrawn		7-8-15	201 KAR 10:050		
900 KAR 7:030E	1755	12-31-14	Amended	2131	
907 KAR 1:045E	1759	12-31-14	201 KAR 12:083		
907 KAR 3:017E	1764	12-31-14	Amended	2292	See 42 Ky.R.
908 KAR 2:220E	1766	1-7-15	201 KAR 12:110		
908 KAR 2:230E	1770	1-7-15	Amended	2294	
908 KAR 2:260E	1773	1-7-15	Withdrawn		6-17-15
921 KAR 2:015E	1776	12-30-14	201 KAR 20:063	2692	See 42 Ky.R.
921 KAR 3:060E	2530	4-30-15	201 KAR 21:090		
921 KAR 3:070E	2533	4-30-15	Amended	2026	
			201 KAR 44:010		
			Amended	2132	
			As Amended	2550	
<b>ORDINARY ADMINISTRATIVE REGULATIONS:</b>			201 KAR 45:120		
11 KAR 4:080			Amended	2611	
Amended	2099		201 KAR 45:170	211	
11 KAR 5:145			Amended	2612	See 42 Ky.R.
Amended	2100		201 KAR 46:010		
11 KAR 15:010			Amended	2295	
Amended	2102		201 KAR 46:020		
As Amended	2538		Amended	2299	
11 KAR 15:090			201 KAR 46:030		
Amended	2104		Amended	2301	
13 KAR 2:045			201 KAR 46:040		
Amended	2108	See 42 Ky.R.	Amended	2304	
31 KAR 3:040	2447	See 42 Ky.R.	201 KAR 46:045	2449	
31 KAR 4:120			201 KAR 46:050	2450	
Amended	2285	See 42 Ky.R.	201 KAR 46:060	2452	
31 KAR 4:180	2689	See 42 Ky.R.	201 KAR 46:070		
101 KAR 2:102			Amended	2308	
Amended	2113		201 KAR 46:081		
As Amended	2538		Amended	2309	
101 KAR 2:105			202 KAR 7:701		
Amended	2118		Amended	2313	See 42 Ky.R.
As Amended	2542		301 KAR 1:122		
101 KAR 2:106			Amended	2614	See 42 Ky.R.
Amended	2120		301 KAR 2:049		
As Amended	2543		Amended	2615	See 42 Ky.R.
101 KAR 2:160			301 KAR 2:132		
Amended	2121		Amended	1868	
101 KAR 2:180			301 KAR 2:172		
Amended	2123				

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	41 Ky.R. Page No.	Effective Date	Regulation Number	41 Ky.R. Page No.	Effective Date
Amended	1873		As Amended	2223	
AmComments	2092		725 KAR 1:061		
301 KAR 2:178			Amended	2353	
Amended	1878		803 KAR 1:035		
301 KAR 2:300			Amended	2045	
Amended	2318		As Amended	2550	
301 KAR 3:132			804 KAR 1:061(r)	2696	
As Amended	2208		804 KAR 4:370		
301 KAR 2:178			Amended	2630	
As Amended	2212		804 KAR 7:011(r)	2180	
302 KAR 20:110			804 KAR 10:010		
Amended	2027		Amended	2632	See 42 Ky.R.
As Amended	2217		804 KAR 10:020		
302 KAR 20:120			Amended	2633	See 42 Ky.R.
Amended	2030		804 KAR 10:025	2697	See 42 Ky.R.
As Amended	2219		805 KAR 1:100		
402 KAR 3:010			Amended	2355	
Amended	2619	See 42 Ky.R.	805 KAR 1:130		
402 KAR 3:030			Amended	2361	
Amended	2621		805 KAR 1:140		
402 KAR 3:050	2694	See 42 Ky.R.	Amended	2364	
500 KAR 13:020			805 KAR 1:170		
Amended	2623	See 42 Ky.R.	Amended	2366	
501 KAR 1:080			808 KAR 6:015	2462	See 42 Ky.R.
Amended	2032		808 KAR 6:105		
501 KAR 6:020			Amended	2369	See 42 Ky.R.
Amended	1887	See 42 Ky.R.	808 KAR 9:010		
503 KAR 1:060			Amended	2634	
Amended	326		808 KAR 12:020		
As Amended	747		Amended	2636	
503 KAR 1:080			808 KAR 12:021		
Amended	591		Amended	2638	
As Amended	1056		808 KAR 12:110	2698	
503 KAR 1:100			810 KAR 1:027		
Amended	595		Amended	612	
As Amended	1057		As Amended	1066	
503 KAR 1:110			810 KAR 1:090		
Amended	2626	See 42 Ky.R.	Amended	2371	See 42 Ky.R.
503 KAR 1:120			810 KAR 1:300	2699	
Amended	327		811 KAR 1:300	2701	
As Amended	747		811 KAR 2:300	2702	
601 KAR 1:112	1725		815 KAR 6:010		
AmComments	2095		Amended	2641	See 42 Ky.R.
Withdrawn		7-8-2015	815 KAR 35:015		
601 KAR 9:135			Amended	2645	See 42 Ky.R.
Amended	2321	See 42 Ky.R.	900 KAR 2:050		
601 KAR 14:020		See 42 Ky.R.	Amended	2133	
603 KAR 5:155	2453		As Amended	2551	
603 KAR 10:002	2456		900 KAR 5:020		
603 KAR 10:010			Amended	2649	
Amended	2325		900 KAR 7:030		
603 KAR 10:021	2458		Amended	1891	
702 KAR 3:320	1728		900 KAR 10:010		
AmComments	2012		Amended	2651	
As Amended	2220		900 KAR 10:020		
703 KAR 5:200			Amended	2658	See 42 Ky.R.
Amended	2034		900 KAR 10:040	2464	See 42 Ky.R.
AmComments	2236	See 42 Ky.R.	900 KAR 10:050		
703 KAR 5:225			Amended	2664	See 42 Ky.R.
Amended	2037		900 KAR 10:100		
AmComments	2240	See 42 Ky.R.	Amended	2667	See 42 Ky.R.
703 KAR 5:240			900 KAR 10:110	2704	See 42 Ky.R.
Amended	2042	See 42 Ky.R.	902 KAR 4:041(r)	2051	
704 KAR 3:370			902 KAR 10:022	2468	
Amended	2342		902 KAR 20:091		
704 KAR 5:070			Amended	1896	
Amended	2351		AmComments	2245	
705 KAR 4:250			902 KAR 20:160		
Amended	1144		Amended	2374	
AmComments	1672		902 KAR 20:180		

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	41 Ky.R. Page No.	Effective Date	Regulation Number	41 Ky.R. Page No.	Effective Date
Amended	2383		921 KAR 2:015		
902 KAR 20:320			Amended	1932	
Amended	2393		921 KAR 3:045		
902 KAR 20:400			Amended	2177	
Amended	1905		921 KAR 3:060		
AmComments	2256	See 42 Ky.R.	Amended	2682	
902 KAR 45:011	2469		921 KAR 3:070		
902 KAR 45:110			Amended	2685	
Amended	2414	See 42 Ky.R.			
902 KAR 45:120					
Amended	2672				
902 KAR 45:160	2470	See 42 Ky.R.			
907 KAR 1:044					
Amended	1910				
AmComments	2261				
As Amended	2553				
907 KAR 1:045					
Amended	1915				
907 KAR 1:046	1940				
AmComments	2266				
907 KAR 1:055					
Amended	2674				
907 KAR 1:102					
Amended	1920				
AmComments	2268				
As Amended	2556				
907 KAR 1:350					
Amended	2136				
As Amended	2559				
907 KAR 3:017	1943				
As Amended	2224				
907 KAR 9:005					
Amended	2417	See 42 Ky.R.			
907 KAR 9:010					
Amended	2425				
907 KAR 9:015	2475	See 42 Ky.R.			
907 KAR 9:020	2487				
907 KAR 10:014					
Amended	2428				
907 KAR 10:016					
Amended	2442				
907 KAR 10:020	2491				
907 KAR 10:025	2503				
907 KAR 10:826(r)	2181				
907 KAR 10:830	2182				
907 KAR 15:080	2507				
907 KAR 15:085	2515				
908 KAR 2:220					
Amended	1925				
AmComments	2273				
As Amended	2560				
908 KAR 2:230					
Amended	1929				
AmComments	2277				
As Amended	2562				
908 KAR 2:260	1945				
AmComments	2280				
As Amended	2565				
910 KAR 1:140					
Amended	2138				
As Amended	2568				
910 KAR 1:170					
Amended	2143				
As Amended	2573	See 42 Ky.R.			
910 KAR 1:210					
Amended	2150				
As Amended	2578				
910 KAR 1:220					
Amended	2157				
As Amended	2583				



# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	42 Ky.R. Page No.	Effective Date	Regulation Number	42 Ky.R. Page No.	Effective Date
<b>VOLUME 42</b>			As Amended	12	
<b>SYMBOL KEY:</b>			105 KAR 1:200		
* Statement of Consideration not filed by deadline			Amended	452	
** Withdrawn before being printed in Register			200 KAR 5:365		
**** Emergency expired after 180 days			Amended	456	
(r) Repealer regulation: KRS 13A.310-on the effective date of an			201 KAR 2:220		
administrative regulation that repeals another, the regulations			Amended	458	
compiler shall delete the repealed administrative regulation and			201 KAR 2:015		See 41 Ky.R.
the repealing administrative regulation.			Amended		
			As Amended	272	
<b>EMERGENCY ADMINISTRATIVE REGULATIONS:</b>			201 KAR 2:360		See 41 Ky.R.
(Note: Emergency regulations expire 180 days from the date filed;			As Amended	273	
or 180 days from the date filed plus number of days of requested			Amended		
extension, or upon replacement or repeal, whichever occurs first.)			201 KAR 2:370	630	
			201 KAR 9:305		
			Amended	460	
200 KAR 5:365E	231	6-16-15	201 KAR 9:310		
201 KAR 11:170E	233	6-29-15	Amended	461	
201 KAR 11:175E	236	6-29-15	201 KAR 11:170		
201 KAR 11:235E	238	6-29-15	Amended	463	
201 KAR 11:240E	240	6-29-15	201 KAR 11:175		
201 KAR 12:110E	244	6-17-15	Amended	466	
505 KAR 1:100E	246	7-1-15	201 KAR 11:195	631	
505 KAR 1:110E	248	7-1-15	201 KAR 11:210		
505 KAR 1:130E	250	7-1-15	Amended	468	
601 KAR 1:113E	252	7-8-15	201 KAR 11:230		
			Amended	469	
787 KAR 2:040E	6	5-21-15	201 KAR 11:232	632	
804 KAR 4:015E	256	6-23-15	201 KAR 11:240		
804 KAR 4:400E	258	6-23-15	Amended	473	
804 KAR 4:410E	259	7-10-15	201 KAR 11:460		
902 KAR 20:420E	261	6-25-15	Amended	476	
921 KAR 3:090E	267	7-2-15	201 KAR 12:083		
			Amended		See 41 Ky.R.
<b>ORDINARY ADMINISTRATIVE REGULATIONS:</b>			As Amended	274	
11 KAR 15:090			201 KAR 12:110		
Amended	445		Amended	478	
11 KAR 15:100	627		201 KAR 20:056		
11 KAR 16:060			Amended	480	
Amended	449		201 KAR 20:062		
13 KAR 2:045		See 41 Ky.R.	Amended	483	
As Amended	9		201 KAR 20:063		See 41 Ky.R.
16 KAR 2:020			As Amended	275	
Amended	72		201 KAR 20:064 r	637	
16 KAR 4:030			201 KAR 20:070		
Amended	74		Amended	488	
30 KAR 7:010	628		201 KAR 20:110		
31 KAR 3:040		See 41 Ky.R.	Amended	490	
As Amended	270		201 KAR 20:215		
31 KAR 4:120			Amended	492	
Amended		See 41 Ky.R.	201 KAR 20:225		
As Amended	271		Amended	494	
31 KAR 4:180		See 41 Ky.R.	201 KAR 20:230		
As Amended	271		Amended	496	
101 KAR 2:020			201 KAR 20:370		
Amended	76		Amended	497	
101 KAR 2:034			201 KAR 20:390		
Amended	78		Amended	499	
101 KAR 2:046			201 KAR 26:115		
Amended	83		Amended	501	
101 KAR 2:056			201 KAR 26:121		
Amended	85		Amended	503	
101 KAR 2:066			201 KAR 26:175		
Amended	86		Amended	505	
101 KAR 2:120			201 KAR 26:200		
Amended	88		Amended	507	
101 KAR 3:045			201 KAR 30:070		
Amended	91		Amended	95	
103 KAR 3:010		See 41 Ky.R.	201 KAR 32:060		
			Amended	509	

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	42 Ky.R. Page No.	Effective Date	Regulation Number	42 Ky.R. Page No.	Effective Date
201 KAR 45:170			704 KAR 3:370		See 41 Ky.R.
Amended		See 41 Ky.R.	AmComments	38	
As Amended	276		As Amended	287	
201 KAR 46:010			705 KAR 4:041		
AmComm	338		Amended	106	
201 KAR 46:030			787 KAR 2:040	196	
AmComm	341		803 KAR 2:180		
201 KAR 46:040			Amended	108	
AmComm	344		803 KAR 2:200		
201 KAR 46:045			Amended	110	
AmComm	347		803 KAR 2:250		
202 KAR 7:701		See 41 Ky.R.	Amended	113	
As Amended	17		803 KAR 2:305		
301 KAR 1:015			Amended	116	
Amended	511		803 KAR 2:317		
301 KAR 1:146			Amended	117	
Amended	97		803 KAR 2:402		
301 KAR 1:201			Amended	119	
Amended	514		803 KAR 2:421		
301 KAR 1:122			Amended	121	
Amended		See 41 Ky.R.	803 KAR 2:505		
As Amended	277		Amended	124	
301 KAR 2:049			803 KAR 25:008	198	
Amended		See 41 Ky.R.	803 KAR 25:013(r)	208	
As Amended	278\		804 KAR 4:015		
402 KAR 3:010			Amended	525	
Amended		See 41 Ky.R.	804 KAR 4:370		
As Amended	281		AmComm	375	
402 KAR 3:050		See 41 Ky.R.	804 KAR 4:390		
As Amended	282		Amended	126	
500 KAR 13:020			804 KAR 4:400		
Amended		See 41 Ky.R.	Amended	527	
As Amended	282		804 KAR 4:410		
501 KAR 6:020		See 41 Ky.R.	Amended	528	
As Amended	21		804 KAR 9:040		
501 KAR 6:241 r	638		Amended	530	
501 KAR 6:270			804 KAR 9:050		
Amended	99		Amended	532	
503 KAR 1:110			804 KAR 10:010		
Amended		See 41 Ky.R.	Amended		See 41 Ky.R.
As Amended	284		As Amended	294	
505 KAR 1:100			804 KAR 10:020		
Amended	519		Amended		See 41 Ky.R.
505 KAR 1:110			As Amended	294	
Amended	521		804 KAR 10:025		See 41 Ky.R.
505 KAR 1:130			As Amended	295	
Amended	523		805 KAR 1:100		See 41 Ky.R.
601 KAR 1:113	639		AmComments	46	
601 KAR 9:135		See 41 Ky.R.	805 KAR 1:130		See 41 Ky.R.
As Amended	22		AmComments	53	
601 KAR 14:020		See 41 Ky.R.	805 KAR 1:140		See 41 Ky.R.
As Amended	25		AmComments	55	
603 KAR 5:155			805 KAR 1:170		See 41 Ky.R.
AmComm	348		AmComments	58	
603 KAR 10:002			808 KAR 6:015		See 41 Ky.R.
AmComm	351		As Amended	35	
603 KAR 10:010			808 KAR 6:105		See 41 Ky.R.
AmComm	353		As Amended	35	
603 KAR 10:021			808 KAR 10:500	643	
AmComm	371		810 KAR 1:070		
702 KAR 7:065			Amended	534	
Amended	101		810 KAR 1:090		See 41 Ky.R.
703 KAR 5:200		See 41 Ky.R.	As Amended	36	
As Amended	26		815 KAR 6:010		
703 KAR 5:225		See 41 Ky.R.	Amended		See 41 Ky.R.
As Amended	29		As Amended	295	
703 KAR 5:240		See 41 Ky.R.	815 KAR 20:060		
As Amended	33		Amended	127	
704 KAR 3:303			815 KAR 20:100		
Amended	104		Amended	130	

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	42 Ky.R. Page No.	Effective Date	Regulation Number	42 Ky.R. Page No.	Effective Date
815 KAR 20:130			Amended	561	
Amended	133		910 KAR 1:170		
815 KAR 35:015			Amended		
Amended		See 41 Ky.R.	As Amended		See 41 Ky.R.
As Amended	298		As Amended	332	
815 KAR 35:020			910 KAR 1:240		
Amended	540		Amended	565	
820 KAR 1:001			910 KAR 1:270		
Amended	138		Amended	161	
820 KAR 1:032			921 KAR 1:400		
Amended	142		Amended	570	
820 KAR 1:033	209		921 KAR 2:006		
900 KAR 6:055			Amended	572	
Amended	542		921 KAR 2:016		
900 KAR 6:070			Amended	581	
Amended	544		921 KAR 2:017		
900 KAR 6:075			Amended	588	
Amended	546		921 KAR 2:046		
900 KAR 6:090			Amended	592	
Amended	550		921 KAR 2:050		
900 KAR 10:020			Amended	594	
Amended		See 41 Ky.R.	921 KAR 2:055		
As Amended	301		Amended	597	
900 KAR 10:040		See 41 Ky.R.	921 KAR 2:060		
As Amended	306		Amended	601	
900 KAR 10:050			921 KAR 2:370		
Amended		See 41 Ky.R.	Amended	602	
As Amended	309		921 KAR 2:500		
900 KAR 10:100			Amended	607	
Amended		See 41 Ky.R.	921 KAR 2:510		
As Amended	311		Amended	610	
900 KAR 10:110		See 41 Ky.R.	921 KAR 2:520		
As Amended	315		Amended	612	
902 KAR 20:160			921 KAR 3:090		
AmComm	377		Amended		
902 KAR 20:400			921 KAR 3:035		
Amended			Amended	614	
AmComments		See 41 Ky.R.	921 KAR 3:042		
As Amended	316		Amended	617	
902 KAR 20:420			921 KAR 3:050		
Amended	553		Amended	620	
902 KAR 45:110			921 KAR 3:090		
Amended		See 41 Ky.R.	Amended	624	
As Amended	320		922 KAR 1:310		
902 KAR 45:160		See 41 Ky.R.	Amended	170	
As Amended	321		922 KAR 1:340	216	
902 KAR 115:010			922 KAR 1:350		
Amended	145		Amended	184	
907 KAR 1:026			922 KAR 1:495	219	
Amended	148				
907 KAR 1:626					
Amended	155				
907 KAR 9:005					
AmComm	386	See 41 Ky.R.			
907 KAR 9:015					
AmComm	394	See 41 Ky.R.			
907 KAR 10:014					
AmComm	406				
907 KAR 10:016					
AmComm	420				
907 KAR 10:020					
AmComm	424				
907 KAR 10:830		See 41 Ky.R.			
AmComments	62				
As Amended	325				
907 KAR 15:080					
AmComm	436				
908 KAR 3:050					
Amended	559				
908 KAR 3:060					

## 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.

# KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
2.015	922 KAR 1:310	61.930	601 KAR 1:113
	922 KAR 1:340	61.931	601 KAR 1:113
	922 KAR 1:350	67.750	30 KAR 7:010
13B	908 KAR 3:060	67.767	30 KAR 7:010
	910 KAR 1:240	78.545	105 KAR 1:200
	921 KAR 2:055	148.853	804 KAR 4:370
15A.065	505 KAR 1:100	150.010	301 KAR 1:146
	505 KAR 1:110		301 KAR 1:201
	505 KAR 1:130	150.025	301 KAR 1:146
15A.067	505 KAR 1:100	150.090	301 KAR 1:015
	505 KAR 1:110	150.120	301 KAR 1:146
	505 KAR 1:130	150.170	301 KAR 1:146
15A.0652	505 KAR 1:100		301 KAR 1:201
	505 KAR 1:110	150.175	301 KAR 1:146
	505 KAR 1:130		301 KAR 1:201
16.576	105 KAR 1:200	150.340	301 KAR 1:201
16.577	105 KAR 1:200	150.445	301 KAR 1:146
16.645	105 KAR 1:200	150.450	301 KAR 1:146
17.165	910 KAR 1:240	150.620	301 KAR 1:201
	922 KAR 1:310	150.625	301 KAR 1:015
17.500	501 KAR 6:241	150.990	301 KAR 1:015
	601 KAR 1:113		301 KAR 1:146
	922 KAR 1:310		301 KAR 1:201
17.550	501 KAR 6:241	150.160	704 KAR 3:303
18A.005	101 KAR 2:020	154A.130	11 KAR 15:090
	101 KAR 2:056	156.029	705 KAR 4:041
18A.030	101 KAR 2:020	156.070	702 KAR 7:065
	101 KAR 2:034		704 KAR 3:303
	101 KAR 2:046	156.095	16 KAR 2:020
	101 KAR 2:066	156.802	705 KAR 4:041
18A.032	101 KAR 2:020	158.135	922 KAR 1:310
	101 KAR 2:046		922 KAR 1:495
18A.110	101 KAR 2:020	158.810	705 KAR 4:041
	101 KAR 2:034	158.6451	704 KAR 3:303
	101 KAR 2:046	158.6453	704 KAR 3:303
	101 KAR 2:056	160.290	704 KAR 3:303
	101 KAR 2:066	160.380	702 KAR 7:065
	101 KAR 3:045	160.445	702 KAR 7:065
	803 KAR 2:317	161.020	16 KAR 2:020
	803 KAR 4:402		16 KAR 4:030
	803 KAR 2:421	161.028	16 KAR 2:020
	803 KAR 2:505		16 KAR 4:030
	803 KAR 2:200	161.030	16 KAR 2:020
	803 KAR 2:305		16 KAR 4:030
18A.120	101 KAR 2:046	161.124	16 KAR 4:030
	101 KAR 2:056	161.126	16 KAR 4:030
18A.150	101 KAR 2:046	164.298	201 KAR 20:064
18A.155	101 KAR 3:045	164.518	11 KAR 16:060
18A.165	101 KAR 2:034	164.772	201 KAR 20:225
	101 KAR 2:066		804 KAR 4:400
18A.202	101 KAR 2:120	164.7871	11 KAR 15:090
	101 KAR 3:045		11 KAR 15:100
45.237	921 KAR 2:055	164.7874	11 KAR 15:090
45.237-241	921 KAR 2:017		11 KAR 15:100
	921 KAR 2:510	164.7877	11 KAR 15:090
45A.030	200 KAR 5:365		11 KAR 15:100
45A.085	200 KAR 5:365	164.7879	11 KAR 15:090
45A.180	200 KAR 5:365	164.7881	11 KAR 15:090
45A.183	200 KAR 5:365	164.7882	11 KAR 15:100
45A.340	900 KAR 6:090	164.7885	11 KAR 15:090
45A.690-45A.725	200 KAR 5:365	164.7889	11 KAR 15:090
61.590	105 KAR 1:200	176.050	603 KAR 5:155
61.595	105 KAR 1:200	177.106	603 KAR 5:155
61.623	105 KAR 1:200	177.572-177.576	603 KAR 10:002
61.637	105 KAR 1:200		603 KAR 10:010
61.680	105 KAR 1:200		603 KAR 10:021
61.705	105 KAR 1:200	177.830	603 KAR 5:155
61.805-61.850	702 KAR 7:065	177.830-177.890	603 KAR 10:002
61.870	922 KAR 1:495		603 KAR 10:010
61.870-61.884	922 KAR 1:350		603 KAR 10:021
61.878	601 KAR 1:113	177.990	603 KAR 5:155

# KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	603 KAR 10:010	205.237	921 KAR 2:055
	603 KAR 10:021	205.245	921 KAR 2:046
186.050	601 KAR 1:113		921 KAR 2:050
186.281	601 KAR 1:113	205.520	907 KAR 1:026
189.125	922 KAR 1:310		907 KAR 1:626
189.290	601 KAR 1:113		907 KAR 9:005
189A.010	601 KAR 1:113		907 KAR 9:015
194A.005	922 KAR 1:495		907 KAR 10:014
194A.050	922 KAR 1:340		907 KAR 10:016
194A.060	910 KAR 1:240		907 KAR 10:020
	910 KAR 1:270		907 KAR 15:080
	922 KAR 1:310	205.703	921 KAR 2:006
	922 KAR 1:340	205.710-205.800	921 KAR 1:400
	922 KAR 1:350	205.720	921 KAR 2:006
194A.540	201 KAR 20:070	205.990	921 KAR 1:400
	201 KAR 20:110	205.2001	921 KAR 2:016
	201 KAR 20:225	205.2003	921 KAR 2:017
194A.700-729	910 KAR 1:240		921 KAR 2:370
194.540	201 KAR 32:060		921 KAR 2:500
196.030	501 KAR 6:241		921 KAR 2:520
196.035	501 KAR 6:241	205.2005	921 KAR 2:006
197.020	501 KAR 6:241	205.8451	907 KAR 1:026
197.170	501 KAR 6:241	209.030	910 KAR 1:240
198B.040	815 KAR 20:100	210.005	902 KAR 20:160
198B.050	815 KAR 20:100	210.336	201 KAR 32:060
	815 KAR 35:020	210.710	908 KAR 3:050
199.011	922 KAR 1:310		908 KAR 3:060
	922 KAR 1:340	210.720	908 KAR 3:050
	922 KAR 1:350		908 KAR 3:060
	922 KAR 1:495	210.730	908 KAR 3:050
199.430	922 KAR 1:310		908 KAR 3:060
	922 KAR 1:340	210.770-210.795	910 KAR 1:270
199.464	922 KAR 1:495	211	902 KAR 115:010
199.470	922 KAR 1:310	213.046	921 KAR 1:400
199.492	922 KAR 1:310	214.610	201 KAR 9:305
199.493	922 KAR 1:310		201 KAR 9:310
199.510	922 KAR 1:310	214.615	201 KAR 20:070.
199.520	922 KAR 1:310		201 KAR 9:310
		214.620	201 KAR 9:310
199.555	101 KAR 2:120		201 KAR 20:110
	101 KAR 3:045	216.300	910 KAR 1:240
199.570	922 KAR 1:310	216.595	910 KAR 1:240
199.572	922 KAR 1:310	216.789	910 KAR 1:240
199.590	922 KAR 1:310	216.793	910 KAR 1:240
199.640	922 KAR 1:310	216B.010	900 KAR 6:075
	922 KAR 1:340		902 KAR 20:160
	922 KAR 1:495	216B.010-216B.131	902 KAR 20:420
199.645	922 KAR 1:310	216B.015	900 KAR 6:055
199.650-199.670	922 KAR 1:310		900 KAR 6:070
	922 KAR 1:340		900 KAR 6:075
200.080-200.120	505 KAR 1:100		900 KAR 6:090
	505 KAR 1:110		902 KAR 20:160
	505 KAR 1:130	216B.020	900 KAR 6:090
202A.011	922 KAR 1:350	216B.040	900 KAR 6:090
202A.241	902 KAR 20:160	216B.062	900 KAR 6:070
205.010	921 KAR 2:006		900 KAR 6:090
	921 KAR 2:046	216B.090	900 KAR 6:070
205.170	921 KAR 2:060		900 KAR 6:075
205.200	921 KAR 2:016	216B.095	900 KAR 6:090
	921 KAR 2:017	216B.445	900 KAR 6:075
	921 KAR 2:370	216B.450	907 KAR 9:005
	921 KAR 2:500	216B.455	907 KAR 9:005
	921 KAR 2:520	216B.459	907 KAR 9:005
205.210	921 KAR 2:016	216B.990	900 KAR 6:075
205.211	921 KAR 2:016		900 KAR 6:090
	921 KAR 2:017		902 KAR 20:420
	921 KAR 2:055	216B.105	902 KAR 20:160
	921 KAR 2:500	218A.175	902 KAR 20:420
	921 KAR 2:510	218A.205	201 KAR 9:310
	921 KAR 2:520		201 KAR 20:056
205.220	921 KAR 2:050		201 KAR 20:215
205.231	921 KAR 2:055	227.460	815 KAR 35:020

# KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
227.480	815 KAR 35:020		201 KAR 46:045
227.487	815 KAR 35:020	311B.180	201 KAR 46:040
227.491	815 KAR 35:020		201 KAR 46:045
230.330	810 KAR 1:070	311B.190	201 KAR 46:040
230.800	810 KAR 1:070		201 KAR 46:045
235.010	301 KAR 1:015	311.565	201 KAR 9:310
235.990	301 KAR 1:015	311.620	201 KAR 9:310
238.500-238.995	820 KAR 1:001	311.720	922 KAR 1:310
238.505	820 KAR 1:032		922 KAR 1:350
	820 KAR 1:033		922 KAR 1:495
238.545	820 KAR 1:032	311.840	922 KAR 1:310
	820 KAR 1:033		922 KAR 1:350
241.060	804 KAR 4:370		922 KAR 1:495
	804 KAR 4:400	311.901	201 KAR 9:305
	804 KAR 4:410	311.905	201 KAR 9:305
	804 KAR 9:040	313.909	201 KAR 9:305
	804 KAR 9:050	314.011	201 KAR 20:056
241.065	804 KAR 9:040		201 KAR 20:062
	804 KAR 9:050		201 KAR 20:215
242.125	804 KAR 9:040		201 KAR 20:390
	804 KAR 9:050		902 KAR 20:160
242.127	804 KAR 9:050		922 KAR 1:310
242.129	804 KAR 9:050		922 KAR 1:350
243.030	804 KAR 4:015		922 KAR 1:495
	804 KAR 4:370	314.025	201 KAR 20:390
	804 KAR 9:040	314.026	201 KAR 20:390
	804 KAR 9:050	314.027	201 KAR 20:390
243.040	804 KAR 4:015	314.031	201 KAR 20:110
	804 KAR 4:370	314.041	201 KAR 20:070
243.050	804 KAR 4:370		201 KAR 20:110
243.090	804 KAR 4:390		201 KAR 20:225
	804 KAR 4:400		201 KAR 20:230
243.110	804 KAR 4:015		201 KAR 20:370
243.230	804 KAR 9:050	314.042	201 KAR 20:056
243.380	804 KAR 4:400		201 KAR 20:225
243.390	804 KAR 4:400		201 KAR 20:370
244.240	804 KAR 4:015		902 KAR 20:160
244.590	804 KAR 4:015	314.051	201 KAR 20:070
258.015	922 KAR 1:310		201 KAR 20:110
258.035	922 KAR 1:310		201 KAR 20:225
273.161	922 KAR 1:310		201 KAR 20:370
281.600	601 KAR 1:113		201 KAR 20:230
281.630	601 KAR 1:113	314.071	201 KAR 20:225
281.631	601 KAR 1:113		201 KAR 20:230
281.640	601 KAR 1:113		201 KAR 20:370
281.650	601 KAR 1:113	314.073	201 KAR 20:215
281.655	601 KAR 1:113		201 KAR 20:225
281.656	601 KAR 1:113		201 KAR 20:230
281.912	601 KAR 1:113	314.075	201 KAR 20:225
281.990	601 KAR 1:113	314.085	201 KAR 20:225
281.6301	601 KAR 1:113	314.091	201 KAR 20:056
292.330	808 KAR 10:500		201 KAR 20:110
292.411	808 KAR 10:500		201 KAR 20:225
292.412	808 KAR 10:500		201 KAR 20:370
304.3-070	601 KAR 1:113	314.103	201 KAR 20:056
304.10-304.070	601 KAR 1:113		201 KAR 20:110
304.39-020	601 KAR 1:113		201 KAR 20:370
304.39-040	601 KAR 1:113	314.111	201 KAR 20:062
304.39-320	601 KAR 1:113	314.131	201 KAR 20:062
309.080	902 KAR 20:160	314.161	201 KAR 20:056
309.130	902 KAR 20:160	314.470	201 KAR 20:056
310.200	815 KAR 20:130		201 KAR 20:070
311.560	902 KAR 20:160		201 KAR 20:110
311.571	902 KAR 20:160		201 KAR 20:370
311.840-311.862	902 KAR 20:160	314.991	201 KAR 20:110
311B.020	201 KAR 46:010		201 KAR 20:215
311B.050	201 KAR 46:040	315.010	201 KAR 2:220
	201 KAR 46:045		201 KAR 2:370
311B.100	201 KAR 46:030	315.020	201 KAR 2:370
	201 KAR 46:040	315.030	201 KAR 2:370
	201 KAR 46:045	315.040	201 KAR 2:220
311B.120	201 KAR 46:040	315.121	201 KAR 2:370

# KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
315.191	201 KAR 2:220	342.260	803 KAR 25:008
317A.060	201 KAR 12:110	342.265	803 KAR 25:008
317A.090	201 KAR 12:110	342.270	803 KAR 25:008
318.010	815 KAR 20:130	342.300	803 KAR 25:008
318.015	815 KAR 20:130	342.310	803 KAR 25:008
318.130	815 KAR 20:060	342.315	803 KAR 25:008
	815 KAR 20:100	342.710	803 KAR 25:008
	815 KAR 20:130	342.715	803 KAR 25:008
318.150	815 KAR 20:060	342.732	803 KAR 25:008
	815 KAR 20:100	342.760	803 KAR 25:008
	815 KAR 20:130	342.0011	803 KAR 25:008
319.010	201 KAR 26:115	403.160	921 KAR 1:400
319.032	201 KAR 26:121	403.210-403.240	921 KAR 1:400
	201 KAR 26:175	405.430	921 KAR 1:400
319.050	201 KAR 26:121	405.440	921 KAR 1:400
	201 KAR 26:175	405.991	921 KAR 1:400
	201 KAR 26:200	406.021	921 KAR 1:400
	902 KAR 20:160	406.025	921 KAR 1:400
319.053	201 KAR 26:175	439.330	501 KAR 6:241
319.056	902 KAR 20:160	439.346	501 KAR 6:241
319.064	201 KAR 26:175	439.348	501 KAR 6:241
	902 KAR 20:160	439.470	501 KAR 6:241
319.071	201 KAR 26:175	440.010	501 KAR 6:241
319C.010	902 KAR 20:160	454.220	921 KAR 1:400
320.210	902 KAR 20:160	503.110	922 KAR 1:310
324.010	201 KAR 11:170	520.010	501 KAR 6:241
	201 KAR 11:175	527.100	922 KAR 1:310
	201 KAR 11:210	527.110	922 KAR 1:310
	201 KAR 11:230	532.060	601 KAR 1:113
	201 KAR 11:232	532.200	501 KAR 6:241
	201 KAR 11:235	532.210	501 KAR 6:241
324.040	201 KAR 11:210	532.220	501 KAR 6:241
324.045	201 KAR 11:210	532.230	501 KAR 6:241
324.046	201 KAR 11:170	532.240	501 KAR 6:241
	201 KAR 11:210	532.250	501 KAR 6:241
	201 KAR 11:230	532.260	501 KAR 6:241
	201 KAR 11:232	532.262	501 KAR 6:241
	201 KAR 11:235	533.020	501 KAR 6:241
	201 KAR 11:240	533.030	501 KAR 6:241
324.085	201 KAR 11:170	Chapters 600-645	505 KAR 1:100
	201 KAR 11:230		505 KAR 1:110
	201 KAR 11:232		505 KAR 1:130
	201 KAR 11:240	600.020	922 KAR 1:310
	201 KAR 11:460		922 KAR 1:340
324.090	201 KAR 11:230		922 KAR 1:350
	201 KAR 11:232		922 KAR 1:495
	201 KAR 11:235	605.090	922 KAR 1:310
324.160	201 KAR 11:195		922 KAR 1:340
	201 KAR 11:230		922 KAR 1:350
	201 KAR 11:232	610.110	922 KAR 1:310
	201 KAR 11:235		922 KAR 1:340
324.170	201 KAR 11:195		922 KAR 1:350
324.281	201 KAR 11:195	605.120	921 KAR 2:046
	201 KAR 11:230	610.125	922 KAR 1:310
	201 KAR 11:232	615.010-615.990	922 KAR 1:310
	201 KAR 11:240	620.020	201 KAR 9:310
335.080	902 KAR 20:160	620.030	922 KAR 1:310
335.100	902 KAR 20:160		922 KAR 1:350
335.300	902 KAR 20:160	620.050	922 KAR 1:350
335.340	201 KAR 32:060	620.090	922 KAR 1:310
335.500	902 KAR 20:160	620.140	922 KAR 1:310
338	803 KAR 2:421		922 KAR 1:340
338.015	803 KAR 2:505		922 KAR 1:350
338.051	803 KAR 2:305	620.230	922 KAR 1:310
	803 KAR 2:317	620.360	922 KAR 1:350
338.061	803 KAR 2:305		922 KAR 1:495
	803 KAR 2:317	625	922 KAR 1:310
338.121	803 KAR 2:180		922 KAR 1:350
	803 KAR 2:250	7 C.F.R.	921 KAR 3:035
338.161	803 KAR 2:180		921 KAR 3:042
342	803 KAR 25:013		921 KAR 3:050
342.125	803 KAR 25:008		921 KAR 3:090

# KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
16 C.F.R.	922 KAR 1:310		
	922 KAR 1:350		
23 C.F.R.	603 KAR 10:002		
	603 KAR 10:010		
26 C.F.R.	921 KAR 3:050		
29 C.F.R.	803 KAR 2:180		
42 C.F.R.	902 KAR 20:160		
	907 KAR 1:626		
	907 KAR 10:014		
45 C.F.R.	902 KAR 20:160		
	910 KAR 1:270		
	921 KAR 1:400		
	921 KAR 2:006		
	921 KAR 2:016		
	921 KAR 2:017		
	921 KAR 2:055		
	921 KAR 2:370		
	921 KAR 2:520		
	922 KAR 1:310		
	922 KAR 1:350		
	922 KAR 1:495		
7 U.S.C.	921 KAR 2:006		
	921 KAR 3:035		
	921 KAR 3:042		
8 U.S.C.	921 KAR 2:006		
	921 KAR 2:016		
	922 KAR 1:310		
	922 KAR 1:350		
20 U.S.C.	702 KAR 7:065		
	921 KAR 2:016		
21 U.S.C.	921 KAR 2:006		
22 U.S.C.	921 KAR 2:006		
23 U.S.C.	603 KAR 10:002		
	603 KAR 10:010		
25 U.S.C.	921 KAR 2:016		
26 U.S.C.	921 KAR 2:016		
29 U.S.C.	921 KAR 2:016		
	921 KAR 2:370		
30 U.S.C.	921 KAR 2:055		
38 U.S.C.	921 KAR 2:006		
	921 KAR 2:016		
	921 KAR 2:055		
42 U.S.C.	815 KAR 20:060		
	902 KAR 20:160		
	907 KAR 1:026		
	907 KAR 1:626		
	907 KAR 9:015		
	907 KAR 10:020		
	907 KAR 15:080		
	921 KAR 1:400		
	921 KAR 2:006		
	921 KAR 2:016		
	921 KAR 2:017		
	921 KAR 2:046		
	921 KAR 2:050		
	921 KAR 2:055		
	921 KAR 2:060		
	921 KAR 2:370		
	921 KAR 2:500		
	921 KAR 2:510		
	921 KAR 2:520		
	921 KAR 3:035		
	922 KAR 1:310		
	922 KAR 1:340		
	922 KAR 1:350		
	922 KAR 1:495		
45 U.S.C.	921 KAR 2:055		
Pub.L. 111-118	921 KAR 2:006		



## TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 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>.

Regulation Number	Amendment Date
13 KAR 2:025	7/15/2015

## SUBJECT INDEX

### AGING AND INDEPENDENT LIVING, DEPARTMENT OF

#### Aging Services

- Certification of assisted-living communities; 910 KAR 240
- Hart-supported Living grant program; 910 KAR 1:270

### ALCOHOLIC BEVERAGE CONTROL, DEPARTMENT OF

#### Licensing

- ABC basic application and renewal form incorporated by reference; 804 KAR 4:400
- Entertainment destination center license; 804 KAR 4:370
- Interlocking substantial interest between licensees prohibited; 804 KAR 4:015
- Quota retail drink licenses; 9:050
- Quota retail package licenses; 804 KAR 9:040
- Renewals; 804 KAR 4:390
- Special applications and registration forms incorporated by reference; 804 KAR 4:410

### BEHAVIORAL HEALTH, DEPARTMENT OF

- Per Diem rates; 908 KAR 3:050
- "Means test" for determining patient liability; 908 KAR 3:060

### CHARITABLE GAMING, DEPARTMENT OF

- Definitions; 820 KAR 1:001
- Electronic pulltabs; 820 KAR 1:033
- Pulltab construction; 820 KAR 1:032

### COMMUNITY BASED SERVICES, DEPARTMENT FOR

#### Child Welfare, Department of

- Child-placing agencies, standards for; 922 KAR 1:310
- Family preparation: foster/adoptive parents, respite care providers; for children in cabinet's custody; 922 KAR 1:350
- Independent living program standards; 922 KAR 1:340
- Training requirements: foster/adoptive parents, respite care providers; for children in cabinet's custody; 922 KAR 1:495

#### Community Based Services, Department of

- Simplified assistance for the elderly program or "SAFE"; 921 KAR 3:090

#### Family Support; Division of

- Adverse action; conditions; 921 KAR 2:046
- Certification process; 921 KAR 3:035
- Claims and additional administrative provisions; 921 KAR 3:050
- Delegation of power for oaths and affirmations; 921 KAR 2:060
- Family Alternatives Diversion (FAD); 921 KAR 2:500
- Hearings and appeals; 921 KAR 2:055
- Kentucky Works Program (KWP) supportive services; 921 KAR 2:017
- Relocation Assistance Program; 921 KAR 2:510
- Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP); 921 KAR 2:016
- Supplemental Nutrition Assistance Program Employment and Training Program; 921 KAR 3:042
- Technical requirements for Kentucky Works Program (KWP); 921 KAR 2:370
- Time and manner of payments; 921 KAR 2:050
- Work Incentive or "WIN"; 921 KAR 2:520

### CORRECTIONS, DEPARTMENT OF

#### Office of the Secretary

- Probation and parole policies and procedures; 501 KAR 6:270
- Repeal of 501 KAR 6:240; 501 KAR 6:240

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET

#### Education; Kentucky Board of

##### Office of Instruction

- Professional growth and effectiveness system; 704 KAR 3:370

##### School Terms, Attendance and Operation

- Designation of agent to manage middle and high school interscholastic athletics; 702 KAR 7:065

- Required academic standards; 704 KAR 3:303

#### Higher Education Assistance Authority

#### Student and Administrative Services, Division of

- Comprehensive transition and postsecondary programs; 11 KAR 15:100

- Early Childhood Development Scholarship Program system of monetary incentives; 11 KAR 16:060

- Kentucky Educational Excellence Scholarship (KEES) program; 11 KAR 15:090

#### Office of Special Instructional Programs

- Work-based learning program standards; 705 KAR 4:041

- Workforce Development (*See Workforce Investment, Department of; KAR Title 787*)

### EDUCATION PROFESSIONAL STANDARDS BOARD

#### Certification Procedures

- Out-of-state educator preparation; 16 KAR 4:030

#### Teaching Certificates

- Occupation-based career and technical education certification; 16 KAR 2:020

### FINANCE AND ADMINISTRATION CABINET,

#### Office of Secretary

- Alternative project delivery methods for capitol construction; 200 KAR 5:365

#### Retirement Systems

- Retirement procedures and forms; 105 KAR 1:200

### FISH AND WILDLIFE RESOURCES, DEPARTMENT OF

#### Fish

- Boat and motor restrictions; 301 KAR 1:015
- Commercial fishing gear; 301 KAR 1:146
- Taking of fish by traditional fishing methods; 301 KAR 1:201

### GENERAL GOVERNMENT CABINET

#### Examiners of Psychology, Board of

- Continuing education; 201 KAR 26:175
- Definitions of terms used by the Board of Examiners of Psychology for meeting education requirements for licensure as a licensed psychologist; 201 KAR 26:200
- Psychological testing; 201 KAR 26:115
- Scope of practice and dual licensure; 201 KAR 26:121

#### Hairdressers and Cosmetologists, Board of

- School license; 201 KAR 12:110

#### Licensure of Marriage and Family Therapists, Board of

- Continuing education requirements; 201 KAR 32:060

#### Medical Imaging and Radiation Therapy, Board of

- Definitions for 201 KAR Chapter 46; 201 KAR 46:010
- Education for medical imaging technologists, advanced imaging professionals and radiation therapists; 201 KAR 46:030
- Medical imaging technologist, advanced imaging professional and radiation therapist licenses; 201 KAR 46:040
- Temporary license application for medical imaging technologists, ;advanced imaging professionals, and radiation therapists; 201 KAR 46:045

#### Medical Licensure, Board of

- Continued licensure of athletic trainers; 201 KAR 9:305
- Continuing medical education; 201 KAR 9:310

#### Pharmacy, Board of

- Collaborative care agreements; 201 KAR 2:220
- Pharmacy services in long-term care facility (LTCF)

- Real Estate Appraisers (*See Real Estate Appraisers Board*) 201 KAR Chapter 30

### HEALTH AND FAMILY SERVICES, CABINET FOR

- Aging and Independent Living (*See Aging and Independent Living, Department of*) KAR Title 910

- Behavioral Health, Department of (*See Behavioral Health, Department of*) Title 908

- Health Policy, Office of (*See Health Policy, Office of*) KAR Title 900

- Income Support, Department of (*See Income Support, Department of*) Title 921

- Inspector General, Office of (*See Inspector General, Office of*) Title 902

- Medicaid Services (*See Medicaid Services, Department for*) KAR

## SUBJECT INDEX

*Title 907*

Public Health (*See Public Health, Department for*) KAR Title 902

### HEALTH POLICY, OFFICE OF

- Certificate of need; 900 KAR 6:055
- Certificate of need considerations for formal review; 900 KAR 6:070
- Certificate of need filing, hearing and show cause hearing; 900 KAR 6:090
- Certificate of need nonsubstantive review; 900 KAR 6:075

### HORSE RACING COMMISSION

- Kentucky thoroughbred breeders' incentive fund; 810 KAR 1:070

### INCOME SUPPORT, DEPARTMENT OF

- Establishment, review, and modification of child support and medical support orders; 921 KAR 1:400
- Technical requirements for the Kentucky Transitional Assistance Program (K-TAP) 921 KAR 2:006

### INSPECTOR GENERAL, OFFICE OF

- Healthcare, Division of
  - Chemical dependency treatment services and facility specifications; 902 KAR 20:160
  - Pain management facilities; 902 KAR 20:420

### JUSTICE AND PUBLIC SAFETY CABINET

- Corrections (*See Corrections, Department of*) KAR Title 501
- Juvenile Justice, Department of
  - Department of Juvenile Justice policies and procedures: admissions; 505 KAR 1:100
- Department of Juvenile Justice policies and procedures: juvenile services in community; 505 KAR 1:130
- Department of Juvenile Justice policies and procedures: program services; 505 KAR 1:110

### LABOR CABINET

- Occupational Safety and Health
  - 29 C.F.R. Part 1926.950-968; 803 KAR 2:421
  - Confined spaces in construction; 803 KAR 2:200
  - Cranes and derricks in construction; 803 KAR 2:505
  - Discrimination; 803 KAR 2:250
  - Industries, special; 803 KAR 2:317
  - Powered platforms, manlifts, and vehicle-mounted platforms; 803 KAR 2:305
  - Recordkeeping; reporting; statistics; 803 KAR 2:180
  - Safety and health provisions, general; 803 KAR 2:402
- Workers' Claims, Department of
  - Claims adjustments using Litigation Management Systems; 803 KAR 25:008
  - Repeal of 803 KAR 25:009 and 25:010; 803 KAR 25:013

### MEDICAID SERVICES, DEPARTMENT FOR

- Policy and Operations
  - Acute care inpatient hospital reimbursement; 907 KAR 10:830
  - Coverage provisions and requirements regarding inpatient psychiatric hospital services; 907 KAR 10:016
  - Coverage provisions and requirements regarding outpatient chemical dependency treatment center services; 907 KAR 15:080
  - Coverage provisions and requirements regarding outpatient psychiatric hospital services; 907 KAR 10:020
  - Coverage provisions and requirements regarding outpatient services provided by Level I or Level II psychiatric residential treatment facilities; 907 KAR 9:015
  - Non out-patient Level I and II psychiatric residential treatment facility service and coverage policies; 907 KAR 9:005
  - Outpatient hospital service coverage provisions and requirements; 907 KAR 10:014
- Services
  - Dental
    - Coverage provisions and requirements; 907 KAR 1:026
    - Reimbursements; 907 KAR 1:626

### NATURAL RESOURCES, DEPARTMENT OF

- Oil and Gas
  - Commission's rules of procedure; 805 KAR 1:100
  - Reclamation plan, content of operations; 805 KAR 1:170
- Wells
  - Casing, cementing, plugging, detection; 805 KAR 1:130
  - Directional and horizontal; 805 KAR 1:140

### NURSING, BOARD OF

- Advanced practice registered nurse licensure and certification requirements; 201 KAR 20:056
- Applications for licensure; 201 KAR 20:370
- Continuing competency requirements; 201 KAR 20:215
- Licensure by endorsement; 201 KAR 20:110
- Licensure by examination; 201 KAR 20:070
- Nursing Incentive Scholarship Fund; 201 KAR 20:390
- Reinstatement of license; 201 KAR 20:225
- Renewal of licenses; 201 KAR 20:230
- Repeal of 201 KAR 20:064; 201 KAR 20:064
- Standards for advanced practice registered nurse (APRN) programs of nursing; 201 KAR 20:062

### PERSONNEL CABINET

- Classified
  - Applications, qualifications and examinations; 101 KAR 2:046
  - Certification, selection of applicants for appointment; 101 KAR 2:066
  - Classified compensation; 101 KAR 2:034
  - Incentive programs; 101 KAR 2:120
- Job classification plan; 101 KAR 2:020
- Registers; 101 KAR 2:056
- Unclassified
  - Compensation plan and pay incentives; 101 KAR 3:045

### ELECTRICAL, DIVISION OF

- Electrical inspections; 815 KAR 35:020

### PLUMBING, DIVISION OF

- House sewers and storm water piping; installation; 815 KAR 20:130
- Joints and connections; 815 KAR 20:100
- Materials, quality and weight; 815 KAR 20:060

### PUBLIC HEALTH, DEPARTMENT FOR

- Maternal and Child Health, Division of
  - Water Fluoridation
    - Dental health protection; 902 KAR 115:010

### PUBLIC PROTECTION CABINET

- Charitable Gaming (*See Charitable Gaming, Department of*) KAR Title 820
- Financial Institutions, Department of
  - Securities, Division of
    - Required forms, fees, filing procedures, and recordkeeping requirements for persons operating pursuant to KRS 292.411 and KRS 292.412, the Kentucky Intrastate Crowdfunding Exemption; 808 KAR 10:500
- Housing, Buildings and Construction; KAR Title 815
  - Electrical (*See Electrical, Division of*) 815 KAR Chapter 35
  - Plumbing (*See Plumbing, Division of*) 815 KAR Chapter 20
- Horse Racing Commission (*See Horse Racing Commission*) KAR Title 810

### REAL ESTATE APPRAISERS BOARD

- Continuing education provider requirements; 201 KAR 11:232
- Continuing education requirements; 201 KAR 11:230
- Distance education requirements; 201 KAR 11:240
- Grievances; 201 KAR 30:070
- Informal settlement procedures; 201 KAR 11:195
- Instructor approval procedures and guidelines; 201 KAR 11:175
- Licensing, education, and testing requirements; 201 KAR 11:210
- Minimum rating requirements for instructors; 201 KAR 11:460
- Post-license education requirements; 201 KAR 11:235

## **SUBJECT INDEX**

Real estate school and pre-license course approval; 201 KAR  
11:170

### **SECRETARY OF THE STATE, OFFICE OF**

Standard form for occupational license fee return; 30 KAR  
7:010

### **TRANSPORTATION CABINET**

Highways, Department of

Maintenance, Division of

Definitions for 603 KAR Chapter 10; 603 KAR 10:002

Electronic advertising devices; 603 KAR 10:021

Removal and pruning of vegetation; 603 KAR 5:155

Static advertising devices; 603 KAR 10:010

Vehicle Regulation, Department of

Motor Carriers, Division of

Transportation network company; 601 KAR 1:113

### **WORKFORCE INVESTMENT, DEPARTMENT OF**

Office of Employment Training

Local workforce development area governance; 787 KAR  
2:040